

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH NORTH, SS

SUPERIOR COURT

Docket No: 216-2015-CV-00354

DENNIS ORSI,

ELIZABETH BEHRING,

LISA BOURBEAU,

JAMES GANN

and

PRESCOTT G. TOLMAN

v.

THE TOWN OF FRANCESTOWN

and

ABIGAIL ARNOLD,

CHAIR, BOARD OF SELECTMEN

PETITION FOR INJUNCTIVE RELIEF PURSUANT TO RSA 91-A AND
FRANCESTOWN POLICY

NOW COMES Dennis Orsi, et al., citizens of the town of Frankestown, New Hampshire, and petitions this Court pursuant to RSA 91-A:7 for injunctive relief against the Town of Frankestown, (the "Town"), a body corporate and politic, and Abigail Arnold, ("Arnold") Chair of the Frankestown Board of Selectmen (the "Board").

INTRODUCTION

1. The New Hampshire Constitution, Part 1, Article 8, provides that all power derives from the People and that public bodies are at all times accountable to the People. This Constitutional grant ensures that the People's right of access to governmental proceedings and records is not unreasonably restricted. This grant guarantees that government is open, accessible, accountable and responsive.

2. By enacting, RSA 91-A, the New Hampshire legislature declared that the open conduct of public business is essential to a democratic society. RSA 91-A establishes rules to ensure an open public process in government. In recent months, the Board has repeatedly violated the tenets and the spirit of RSA 91-A, has actively avoided compliance with RSA 91-A:2, RSA 91-A:3 and RSA 91-A:4, and has pursued a hidden agenda that has been destructive to the public safety and threatens the budgetary constraints voted on and expected by the citizens of Frankestown.

PARTIES

3. Dennis Orsi is an individual with a resident address of 101 Main Street, Elizabeth Behrsing is an individual with a resident address of 128 Gerrish Road, Lisa

Bourbeau is an individual with a resident address of 1058 Bible Hill Road, James Gann is an individual with a resident address of 62 Mountain Road, and Prescott G. Tolman is an individual with a resident address of 142 Stevens Road, all parties residents of the town of Francestown, County of Hillsborough, and State of New Hampshire.

4. The Town of Francestown is a political body organized under the laws of the State of New Hampshire with a principal address of 27 Main Street, Francestown, County of Hillsborough, and State of New Hampshire.

5. Abigail Arnold is the Chair of the Francestown Board of Selectmen and a member of the Board since March 2011, Scott Carbee (“Carbee”) is a member of the Francestown Board of Selectmen, serving on the Board since March 2010, A. Bradley Howell (“Howell”) is a member of the Board of Selectmen serving on the Board since March 2015, Michael Branley (“Branley”) is Town Administrator for the Town of Francestown, and Betsy Hardwick (“Hardwick”) was a member of the Francestown Board of Selectmen at most times relevant to this petition, serving on the Board from April 2008 until March 2015. Hardwick currently serves as Chair of the Conservation Commission and as an alternate on the Planning Board.

VENUE

6. Venue is proper in this Court because the parties and actions complained of all occurred within the jurisdiction of this Court.

FACTUAL ALLEGATIONS

7. On July 1, 2013, the Francestown Board of Selectmen approved and signed the document "Board of Selectmen Guidelines & Procedures" ("Guidelines"). (Exhibit 1) As outlined, the Selectmen are "to perform the duties prescribed by law in accordance with the Right-to-Know Law (RSA 91-A)." It is further stated that "it is illegal for the Board of Selectmen to make any decisions by use of a secret ballot or by email or in any way as to be contrary to the Right-to-Know Law." Additionally, it states "votes should be taken by the Board upon a clearly stated motion and a second whenever the Board members wish to go on record as having made a decision on behalf of the Town." Signed by Hardwick, Arnold and Carbee, it is acknowledged that "[i]ndividual Selectmen have no authority to make decisions on behalf of the Town or to take any action as a Town Official except upon majority vote of the Board or as otherwise allowed by law." Guidelines (Exhibit 1)

8. On August 7, 2014 Tolman and Bourbeau, both members of the Planning Board, submitted a Right-To-Know request for the name(s) of the person who had requested and authorized a change in the representation of the classification of a portion of Cressy Hill Road from Class VI to Class V on all maps incorporated into the Town of Francestown, New Hampshire Conservation Plan August 2013 that would be presented at a Planning Board hearing on adopting this plan into the Town's Master Plan on August 19, 2014. Hardwick was Chair of the Conservation Commission, and seated on the Board of Selectman at the time this Conservation Plan was introduced, as

well as the sole resident on this road and should have known the answer. Additionally, no minutes of the Conservation Commission record any decision to make this change. The decision to make this change remained hidden, in spite of the fact that the sole person who would financially benefit from the change in the status of this section of this road, Hardwick, was seated on both the Conservation Commission and the Board of Selectmen at the time.

9. In response, at the August 11, 2014 Board meeting, Arnold read the request, with Hardwick seated beside her, and said: "I want to make clear to everybody that the right to know provisions indicate that you can request specific documents, you can request minutes, you can request correspondence related to the particular subject matter. You don't have the right to interrogate officials, or to ask them to read the information, to find the appropriate documents. You have to identify what it is you are asking for and the town has to make that available to you. If you want copies of it we can make those copies at quite a cost we charge. In this case I also want to make clear that the board of selectmen have absolutely nothing to do with this, and have no information regarding that. My personal comment is we all have better things to be doing." (Exhibit 2) (emphasis added) The minutes of this meeting contain a garbled representation of the request, hindering public scrutiny. (Exhibit 3)

10. The response received on August 14, 2014 was a non-response, citing an earlier letter that was not submitted as a right to know request but which was treated as one, and from which no response was ever received. Arnold's spoken comments and

the written response demonstrates the bad faith response given to unwanted questions, and the hindrance of public scrutiny that prevailed during the tenure of this board.

11. On October 6, 2014 Arnold participated in a conference call with Michael Branley and Alan Gould ("Gould") of Municipal Resources, Inc ("MRI"). Prior to this, there was no public discussion about contacting or hiring MRI, or any recorded decision and record of a majority vote made by the Board authorizing Arnold to contact MRI and discuss services they could offer. This violates "Board of Selectmen Guidelines and Procedures" that state "Individual Selectmen have no authority to make decisions on behalf of the Town or to take any action as a Town Official except upon majority vote of the Board or as otherwise allowed by law." (Exhibit 1) There was no record of this call in the Administrators weekly report.

12. On October 13, 2014, at the end of the regularly scheduled meeting, after all business had been conducted, the Board entered non-public session. The agenda stated that there would be two non-public meetings, one pursuant to 91-A:3, II (d) and one pursuant to 91-A:3, II (a).

13. The public minutes of the meeting on October 13, 2014 records a motion and roll call vote to enter a non-public session, pursuant to RSA 91-A:3, II(d), that provides: "(d) Consideration of the acquisition, sale, or lease of real or personal property which, if discussed in public, would likely benefit a party or parties whose interests are adverse to those of the general community." The minutes record this non-public session taking place between 7:30 and 8:05:

"MOTION: Betsy made a motion to enter nonpublic session, seconded by Abigail pursuant to RSA 91-A:3, II (d)

Roll Call vote to enter nonpublic session: Besty Hardwick Aye

Scott Carbee Aye

Abigail Arnold Aye

The meeting room was cleared and the Board entered nonpublic session at 7:30 p.m.

At 8:05 the Board returned to public session" (Exhibit 4)

14. Even though the public minutes only record a single non-public session, at 7:45 p.m., the Board in fact entered a second non-public session ostensibly pursuant to RSA 91-A:3, II(a). (Exhibit 5). The Board did not return to public session prior to the 7:45 session. There was no public "motion properly made and seconded," see RSA 91-A:3, I(a), that "state[ed] on its face the specific exemption under paragraph II which is relied upon as foundation for the nonpublic session." RSA 91-A:3, I(b). There was no public "vote on [the] motion ... by roll call." RSA 91-A:3, I(b). The motion and vote occurred, but not in public as required by RSA 91-A:3, I. As such, this 7:45 session was not a non-public session since "[n]o public body may enter nonpublic session, except pursuant to a motion properly made and seconded." RSA 91-A:3, I(a)

15. The 7:45 p.m. session was ostensibly pursuant to RSA 91-A:3, II(a), that

provides: "(a) The dismissal, promotion, or compensation of any public employee or the disciplining of such employee, or the investigation of any charges against him or her, unless the employee affected (1) has a right to a meeting and (2) requests that the meeting be open, in which case the request shall be granted." However, the minutes show the Board discussed that Arnold "spoke to Alan Gould with MRI about reviewing the police department, and mentoring Chief Bell, and working with the Board of Selectmen in regards to the Police Department. She stated he estimated the expense in 2014 would be \$1000-2000 and then the Board could decide if they wanted to continue past then, the Board agreed this sounded like a good opportunity and directed Mike to contact Alan to get it set up." Reviewing the police department in general does not fall within dismissal, promotion, compensation, disciplining, or investigating charges against an individual employee and therefore was not "confined to the matters set out in the motion." RSA 91-A:3, I(c) In fact, reviewing the police department in general does not fall within any "of the purposes set out in paragraph II." RSA 91-A:3, I(a). The same two violations apply to all the discussion that followed. Indeed, since there was no proper public motion, any discussion in this meeting was beyond "the matters set out in the motion." RSA 91-A:3, I(c)

16. The minutes for the 7:45 session states "the Board agreed this sounded like a good opportunity and directed Mike to contact Alan to get it set up." Since the Board had already discussed that engaging MRI would commit the Town of Frankestown to "\$1000-2000" or more, this "decision on behalf of the Town" was not proper for the Board "to convey its opinion or consent by a simple consensus process." Guidelines

(Exhibit 1) There is no record of "a clearly stated motion and a second." Guidelines

(Exhibit 1) There is no record of the result of the vote. As such, this decision and instruction to Branley "to get it set up" was in violation of the Guidelines.

17. At the end of the 7:45 session, at 8:05 p.m., the Board decided to seal the minutes of this session. Since this session was in fact a public session because it was in violation of RSA 91-A:3, I(a), the decision to seal the public minutes was a violation of RSA 91-A:3, III.

18. On October 27, 2014, during a regularly scheduled Board meeting, Arnold "stated that the Board had hired Alan Gould, a retired police chief, to give advice on what kind of communications to have and to evaluate the police department." There had been no prior public discussion of this decision.

19. Later during the same meeting, the Board signed an agreement with MRI for Police Department consulting services. ("Agreement") (Exhibit 6 and Exhibit 7) The decision and signing was not a motion properly made and seconded as per the Guidelines. This was a public document about which no prior public discussion had taken place, hindering any public insight into the reason for the agreement other than in its plain language.

20. The Agreement signed with MRI defined as its Scope of Work "a general management/operational review of the Francestown Police Department." It promises to "...provide administrative guidance and mentoring to the Francestown Police Chief..."

to “offer input as to the proper Selectboard/Police Chief relationship and communication process...” and “to serve to assess, generally, the strengths and weaknesses of the Police Department, as well as to identify potential deficiencies, non-compliance issues, risks and alternatives for service delivery.” It also promises to provide “progress reports to the Board of Selectmen as needed.”

21. On October 29, 2014, the Board posted a meeting to be held at 7:30 a.m., stating that “the Board will immediately enter nonpublic session pursuant to RSA 91-A:3, II (a) and conduct no other business.” The minutes of this meeting were approved on November 3, 2014, according to the minutes of that later meeting. As of June 8, 2015, however, no minutes of the October 29 meeting had been posted to the town website, in spite of an email from Branley to Tolman on March 12, 2015 stating “all meeting minutes from 2014 have been approved and are posted on the Board of Selectmen's page on the Town website.” These minutes were requested and received, however, on June 8, 2015.

22. The October 29, 2014 non-public session pursuant to RSA 91-A:3, II (a) was the first face-to-face meeting between Gould and the Board to discuss a contract that had been presented to the public as a “general management/operational review of the Francestown Police Department.” Pursuant to RSA 91-A:3, I, “[b]odies or agencies shall not meet in nonpublic session, except for one of the purposes set out in paragraph II. No session at which evidence, information, or testimony in any form is received shall be closed to the public, except as provided in paragraph II.” There is no language in the

MRI Agreement that provides for any discussion on “the dismissal, promotion, or compensation of any public employee or the disciplining of such employee, or the investigation of any charges against him or her,” especially in a first meeting called to discuss the Agreement. The language of the Agreement clearly states that “MRI will provide administrative guidance and mentoring to the Police Chief” and “offer input as to the proper Selectboard/Police Chief relationship and communication process” neither of which fall within the parameters of the narrow exception of the law. All other language speaks to a departmental overview, and is not in itself personnel related.

23. Yet in emails arranging for this first face-to-face meeting, Branley describes sending personnel files, an act inconsistent with the terms of the public Agreement. In addition, Frankestown’s Personnel Policy states: “A personnel file for each employee is kept in the Town Office, and access is limited to the employee’s supervisor, the Board of Selectmen and the Board of Selectmen’s designee” and that “Personnel files are kept confidential to the maximum extent permitted by law. Except for routine verifications of employment, no information from an employee’s personnel file will be released to the public, including the press, without both a written request for specific information and written permission to release the information from the employee.” The town did not request or receive written permission to release Chief Bell’s information, or in fact notify him in any way that they were doing so. Chief Bell was informed of this action, a violation of the Town’s personnel policy, by Gould, the member of the public who received them.

24. The agreement was signed by MRI on October 29, 2014 and states that “MRI will provide progress reports to the Board of Selectmen as needed.” It also states: “Communications or correspondence related to any problems, issues or changes required for this project shall be directed to the Client at the following address:

Abigail Arnold, Chair

Fracestown Board of Selectmen

27 Main Street

PO Box 5

Fracestown, NH 03043”

There was never any public reporting or public communication on this public contract.

No written communications followed the format specified by the terms of this Agreement and instead, all communications were handled by email and private meetings.

25. While this was not part of any public record, Arnold did meet with Gould on November 4, 2014 and on December 22, 2014. (Exhibit 8 and Exhibit 9). Where no public discussion and/or vote took place authorizing Arnold, an individual Selectman, to conduct these meetings, and where each of these hidden meetings were held at the expense of the taxpayer, these were actions in violation of the terms of the Agreement signed by the Board, in violation of the Guidelines and procedures, and in violation of the spirit and tenets of RSA 91-A:1. Additionally, subsequent to these meetings there

was no public discussion on them, nor was there mention of them in the Administrator's weekly report and their content was never made public.

26. On February 16, 2015 during the regularly scheduled Board Meeting, Branley announced that Gould would like a meeting with the Selectmen and then with the Police Chief. Prior to this there had been no public meeting with Gould present, and no discussion of any "progress reports" received from MRI. This was, in fact, the first public mention of the public Agreement that the Town had entered into with MRI since its signing.

27. The following morning, February 17, 2015, Bourbeau contacted Branley and asked if the meeting with Gould would be a public meeting. When Branley said it would be non-public, involving personnel issues, Bourbeau suggested that the Agreement was a public document, citing departmental evaluation and administrative guidance, not personnel evaluation, and that in her opinion discussion of this Agreement should be public. Branley stated that he would check with town counsel. Subsequent to this, there was an email exchange between Gould and Branley in which a discussion took place about what could be discussed publicly and what should be discussed in nonpublic session.

28. On February 26, 2015, Arnold and Carbee, a quorum of the Board, met in the Town of Bennington, NH to discuss the Tri-Town Landfill. According to the Minutes of the Town of Bennington, Branley and Road Agent Gary Paige had also attended. (Exhibit 10) According to Bennington minutes, during this meeting,

“Francestown Selectmen acknowledged their high usage and are willing to pay for excessive removal of material.” This meeting of the Board was not posted as such in Francestown. Additionally, there are no minutes of the Board of this meeting, and in fact, in response to a request for these minutes, the answer given was that there was no meeting.

29. The decision to commit the Town of Francestown to “pay for excessive removal of material” was not made by a motion properly made, seconded or voted on as required by the Guidelines. There was no discussion at a subsequent meeting about the amount Francestown would be paying for its excessive removal of material.

30. On March 4, 2015 the Board posted a meeting to be held at 7:30 a.m., listing a nonpublic session pursuant to RSA 91-A:3, II (a) and “other business as needed.” Alan Gould of MRI was present at this meeting. At the public session of this meeting, Carbee presented a letter stating that he did not feel that a progress report based on the MRI contract would meet the requirements of RSA 91-A:3, II (a). (Exhibit 11) While it was acknowledged by Hardwick that this was a progress report (“That’s what we’re here for”) and in spite of the fact that Branley publicly stated that some could be public, and Gould stated that he felt that the posting should be under “reputation” not personnel, Arnold stated “I see no reason not to go forward.” The Board voted to go into non-public session as posted. Arnold’s statement showed further bad faith disregard for the Right-To-Know.

31. On March 4, 2015, a Right-To-Know request was submitted by Bourbeau to review all written communications between the Board and MRI. On March 11, 2015 Branley responded that since some of the documents contained information “that is not subject to disclosure under RSA 91-A:5 IV,” he was “required to go through the emails and redact information that it is not legal for the Town to disclose” and therefore these would not be available for review until March 26, 2015.

32. On March 5, 2015 a meeting was posted on the Francestown public website for 4:00 p.m. listing a nonpublic session pursuant to RSA 91-A:3, II (a) and “other business as needed.” The minutes of this meeting are confusing in that there is no record of opening the meeting at 4:00 p.m. According to the minutes, the meeting was first called to order at 5:06 pm, and immediately recessed until the following morning, March 6, 2015 at 8:00 a.m.. The continuation of this meeting was closed at 8:41 a.m. on March 6, 2015 and the minutes were sealed. Shortly thereafter it became known that our Police Chief was negotiating his resignation.

33. On Monday, March 9, 2015 at 9:18 a.m., Tolman submitted a Right-to-Know request for a copy of the minutes of the meeting in which the decision to hire MRI was made.

34. The time that it took to respond was three business days, and on Thursday, March 12, 2015 at 2:19 pm, Tolman received the response that all 2014 minutes had been posted on the town’s website. This was a non-response as there were no minutes posted in 2014 that recorded any discussion about the hiring of, or decision

to hire MRI. Additionally, the town offices are closed to the public from noon on Thursdays until 8:00 a.m. on Monday mornings, further delaying the time in which information could be obtained.

35. On March 10, 2015 Arnold was quoted in the Monadnock Ledger-Transcript, , speaking about the residents of Frankestown: “we are older, but the data also shows that we are much wealthier and much better educated then either the (sic) Hillsborough county or the state.” (Exhibit 12)

36. On March 12, 2015 the Board posted a meeting for 7:30 am. In this meeting, Arnold “announced that the Board of Selectmen has received a letter of resignation from Police Chief Stephen Bell and that she has a release regarding the resignation for the Board to sign.” (Exhibit 13) There was no apparent plan in place for replacement of the Chief at this time. The signed release is dated March 9, 2015 not March 12, 2015. Many residents were very anxious about the sudden lack of police coverage, especially given the publicly advertised “age” and “wealth” of the town.

37. On March 12, 2015 Tolman placed a second Right-to-Know request for the minutes of the meeting in which the decision was made to hire MRI since there was no mention of any discussion or decision to hire in any of the public minutes posted.

38. Again, the time that it took to receive a response was not immediate. On March 17, 2015 Tolman received a copy of the minutes of October 27, 2014, the date on which the announcement was made that MRI had been hired, the contract with MRI was identified under items to sign, and the contract was signed without any vote being

taken. These minutes were immediately available, did not require any redaction or any substantial time to retrieve. In spite of this, it took three business days to reply.

39. On March 16, 2015 at the regularly scheduled Board meeting, Arnold made the statement "I want to just comment that there's been a lot of speculation that the chief's resignation had something to do with MRI. I want to say to you again that only the chief can say why he resigned, but I want to suggest to you that the relationship between the two is coincidental rather than causal. We hired MRI to assist both this Board and the Chief at the end of last October. MRI had an opportunity to have only two meetings with the Chief between that time and the end of the year, and ...didn't do any consulting work in that regard in January and February. In terms of expenses we have to date for the entire period of time spent \$ 1663.00, not a lot of time spent here to look into anything."

40. This statement that the MRI Agreement, which on its face is not a personnel evaluation contract, was not related to this personnel issue begs the question as to why all face-to-face meetings with MRI either took place in nonpublic session under RSA 91-A:3, II (a), or took place with Arnold and Branley outside of any public discussion and in violation of the Board's own Guidelines. There was no public decision to delegate Arnold to work with Gould. In fact, less than 44% of the time charged to town by MRI as of this date (excluding travel time) had been spent "mentoring" the Police Chief; the remaining time charged was for time spent either in nonpublic sessions

with the Board (without the Chief present) or in private meetings with Arnold (and possibly Branley).

41. On March 16, 2015 at the regularly scheduled Board meeting, Gould was introduced to the public as in attendance to “give the Board a recap of his findings in the time that he was here.” The use of the word recap is not coincidental, for in fact what was now being revealed publicly had previously been discussed with the Selectmen in prior nonpublic meetings, and in fact, Branley had coached Gould on the info the town wished provided to the public: “Key is to say “department” doesn’t have SOG’s etc.... Other main focus is Selectmen-Chief relations generally, what information the Board should expect.... I think we’ve discussed most of this previously.” These discussions did not take place in any public meeting, nor were they ever reported in the Administrator’s reports.

42. In fact, from October 27, 2014, the date the Agreement with MRI was signed, until March 16, 2015, as previously indicated, all physical exchange of information regarding expectation of and performance under this service agreement that the taxpayers were paying for was conveyed entirely either through non-public sessions pursuant to RSA 91-A:3, II (a) (see paragraph 15 and paragraph 19), or through secret meetings with Gould, Branley and Arnold, arranged by email and never revealed or discussed by Arnold and/or the Administrator in public meetings, nor recorded in the Administrator’s weekly reports.

43. On February 26, 2015 Gould had forwarded to Arnold an email he had sent Chief Bell on November 18, 2014. This same email had been sent to Branley on November 18, 2014 though that email does not seem to include the report mentioned. The February 26, 2015 email refers to “the document I sent to the Chief” implying that this was requested by Arnold, yet there is no record of prior public discussion of its existence, no email or other written record requesting this be provided, nor any discussion in any public meeting about a need and/or desire to see and review it. It was not entered into correspondence at any time, in spite of the fact that it was a communication with the Board that provided insight into how money was being spent. Information purchased by the Town, ostensibly to help improve a department, was received and discussed outside of public meeting and being incorporated into decision making that was taking place in secret.

44. The plain language of the MRI contract is in terms of the Police department, yet before March 16, 2015, all discussions with MRI occurred entirely within non-public sessions, and were never recorded in any public minutes. This necessarily implies that 1) the written Agreement does not accurately record the agreement and is fraudulent, and 2) the written Agreement that was made public is intentionally misleading to the public as to the purpose and intent of the Agreement. That is, that the written Agreement being different from the actual purpose shows an intent to mislead the public, contrary to the purpose of RSA 91-A.

45. On March 16, 2015, Gould spoke for 15 minutes and 42 seconds, addressing not the Board but the public. Gould stated: "So we found that in many smaller communities sometimes some chiefs need some help updating their policies and procedures. In this case what I found is that you don't have any, which really, from a risk management standpoint, and that's really what I view walking through the door what can I do to help minimize risk first. I think that the town's in great peril without any standard operating procedures." (Exhibit 14)

46. On March 18, 2015 Tolman sent a third request for the governmental record in which a decision was made to hire MRI.

47. The response to this was received on March 24, 2015 in which it was finally revealed that the subject of hiring MRI was "tentatively agreed to" in a nonpublic session discussing a personnel matter, for which the minutes had been sealed and "are not subject to disclosure". The response took four business days and provided no records, so there was nothing to redact or retrieve. There is no justification for this delay contrary to RSA 91-A:4, IV.

48. The tentative nature of this decision is contradicted by an email sent by Branley to Gould on October 14, 2014, in which it also states that "the Board of Selectmen agreed last night to engage you and MRI to perform the services we discussed regarding Francestown Police Department and Chief Bell in our conference call last" (See paragraph 11)

49. On March 24, 2015 Branley sent a second email response to Bourbeau's March 4, 2015 Right-to-Know request for all written communications between the Board and MRI. He stated that he had not had sufficient time and would therefore require an additional week and that these would now be available April 2, 2015. The original response had made these available March 25, 2015. When, on March 25, 2015, Bourbeau asked for the opportunity to review the documents that had been prepared while waiting for the rest, Bourbeau received the response that there was nothing that could be currently provided, that since Branley had no black marker, redaction had only been bracketed, and the additional time was needed to go back and properly redact what had been bracketed.

50. Because on March 16, 2015 Gould made the statement that the town had no policies and procedures, and since Bourbeau had witnessed the Police Chief carrying binders to the Board meeting on March 4, 2015 Bourbeau submitted a Right-To-Know request on March 25, 2015 for an opportunity to review these binders.

51. On March 27, 2015 Tolman placed a fourth request for the minutes in which the discussion and decision to hire MRI was made.

52. On March 30, 2015, at the regularly scheduled Board meeting, Arnold stated: "Mr. Tolman has asked a couple times for minutes related to the meeting when the selectmen hired MRI. And in the last correspondence we had with Mr, Tolman, Michael advised him the selectmen had tentatively... talked about possibly engaging MRI when they met prior to that but the actual contract occurred at a subsequent date

in a public meeting which was the formal handling of that, but Mr. Tolman is now requesting the non-public minutes, and that would require us to decide to either unseal those minutes or to, I guess, to have Michael look at them and redact them. So I don't know if we need to decide this tonight but we'll need to decide that if you want to think about it, or if you have any thoughts now on it." Branley showed the Board a redacted copy of these minutes, and Arnold stated "and we don't have to decide this tonight do we?" Branley stated "we need to respond to him within five business days" to which Arnold responded "well that could be that we will let him know in a week, right?" This is a further demonstration of Arnold's bad faith with regards to the tenets of RSA 91-A, as she was fully aware that Tolman had been waiting for this information since March 9, had made numerous requests for it, and it was clearly something she wished to remain hidden from the public. Howell and Carbee, however, agreed that the redacted minutes should be released, with Arnold saying only "that's what you want to do?" (Exhibit 15)

53. On March 30, 2015 one hour and six minutes into the Board meeting, Arnold announced that "we still have to go into non-public to discuss real estate under... RSA 91-A:3, II (d)" and a roll call vote was taken. There was no non-public session listed on the agenda. Branley asks "do you want to retire to upstairs" Carbee replies "I think so" Branley stated that he had another non-public as well. Arnold responds "why don't we just stay here?" and the public record (audio tape) of this public meeting ends.

54. This was the first time that, instead of going upstairs away from the public, Arnold made the decision for the Board to remain in the room. Nor were the public invited to go upstairs, but instead the public was ushered to the door and outside. The temperature was 35.8 degrees and after several minutes the residents who chose to remain grew cold, and went around to the front of the building where it was determined that the front door was still unlocked and so they were able to wait inside the reception area. Gann, and one resident, Michael Tartalis, waited outside, but approximately twenty minutes later came upstairs with Susan Cripps. Michael Tartalis stated that at the end of the first non-public session, Arnold came outside and told Michael Tartalis that they were going into another non-public session. Michael Tartalis told her that everyone was waiting upstairs because they were cold. Arnold did not announce the exception under RSA 91-A for the 2nd non-public session even to Michael Tartalis, and Arnold nor anyone else made any contact with the rest of the public, waiting upstairs, until after the second non-public session was completed. The public was not able to see the motion made or the vote taken to know the exemption for the second meeting. The minutes reflect at return to public session at 8:00 p.m. but if this was done it was done in secret. This is in violation of RSA 91-A:3 and shows further bad faith on the part of Arnold.

55. Two business days later, on April 1, 2015 Tolman received the response that he could pick up a copy of the minutes he had requested 4 times, starting March 9, 2015. The redacted minutes of the October 13, 2014 nonpublic session (Exhibit 5) show that this session took place under RSA 91-A:3, II (a), where the approved minutes of the

public portion of the meeting show only a nonpublic pursuant to 91-A:3, II (d). Not only was public business discussed in a nonpublic session, but this nonpublic session was hidden as well. The decision in this hidden meeting, and the Agreement that arose from it, set into motion a series of events hidden from the public, which ultimately led to the destruction of the existing Police department (shortly after the resignation of the Chief three of the four part time officers either resigned or retired) a shortfall in public safety and significant insecurity and anxiety on the part of many of the town's citizens.

56. Additionally, it was well known that the Frankestown Police Department budget was a fraction of the funds allocated other Police Departments in towns of similar demographics in the region, and there was significant concern about the potential for increased expenditure for these services because of the actions taken by the Board. In fact, as of the end of April, 2015, only 49.2% of the Police budget remained, less than 57% of the manageable portion of the budget with 67% of the year remaining. Additionally, with the addition of a civilian to the Police force in the form of an Administrative Manager, it was clear that money was being spent on administrative services within the police department where administrative support had been withheld from the Police Chief in the past. Suddenly the town's Police Department had a civilian "Administrative Manager," however "transitional" with no public discussion about creating a new position, that is costing the town on average in excess of \$ 2000.00 a month, the entire annual administrative budget allowed the prior Police Chief. In fact, the administrative support provided the prior Chief in 2014 was \$ 87.39. Since there

was a limited budget in the first place, this sum allocated to administration adversely affects public safety by depriving the town of a significant number of patrols they had previously enjoyed, significantly reducing police presence on the roads and in the community.

57. On April 2, 2015, Bourbeau was notified that the redacted written communications between the Board and MRI requested March 4 was ready. A charge of \$ 17.75 was attached with the explanation "because the items you requested were emails hard copies did not exist so I had to print them for you to review them." Contrary to the terms of the public Agreement with MRI, all correspondence was handled by email hidden from the public eye and never entered into the record or discussed publicly. See paragraph 23 and paragraph 24.

58. In response the the March 25, 2015 Right-To-Know request, Bourbeau was notified that the binders containing police policies was available for review on April 15, 2015.

59. Contrary to what the public had been told on March 16, 2015 there were in fact more than 150 pages of policies and procedures, including an 11 page policy on pursuit, a policy Gould had represented did not exist. (Exhibit 16) The public was not told the policies needed updating, they were told they did not exist. Additionally, Branley certainly knew they existed as he had suggested updates to them himself on March 4, 2015 in an email to MRI.

60. On May 6, 2015 the Board attended a meeting with the town of Bennington. RSA 91-A:2, II. states: "...a notice of the time and place of each such meeting, including a nonpublic session, shall be posted in 2 appropriate places ...at least 24 hours, excluding Sundays and legal holidays, prior to such meetings." There had been no prior public discussion of this meeting taking place on this day, and a notice of the meeting was not posted, in violation of the statute.

61. Several Francestown residents were present to witness this meeting, and most likely because there were witnesses, this time minutes were produced. RSA 91-A:2, II also states "minutes of all such meetings, including names of members, persons appearing before the public bodies, and a brief description of the subject matter discussed and final decisions, shall be promptly recorded ...and shall be treated as permanent records of any public body." The minutes for Francestown state "No decisions were made" and differ in a meaningful way both from the Bennington minutes of this meeting and from the article in the Monadnock Ledger reporting on this meeting, as well as from the recollections of the witnesses. (Exhibits 17 and Exhibit 18) The Francestown minutes ignore the decision to meet again and a chance to warn the town of an impending discussion, and demonstrate the continued pattern of hiding discussions and decisions from the town's citizens.

PRAYERS FOR RELIEF

WHEREFORE, ORSI, et al requests that this Honorable Court:

- A. Order production of all documents related to the authorization to reclassify any section of Cressy Hill Road as a Class V road, and all documents relating to the decision to change Town maps to reflect this reclassification.

- B. Review *in camera* all sealed minutes of known non-public sessions and open for disclosure improperly sealed minutes from the following dates and invalidate any hidden decisions.
 - a. August 11, 2014

 - b. August 19, 2014

 - c. August 25, 2014

 - d. October 13, 2014

 - e. October 20, 2014

 - f. October 29, 2014

 - g. March 2, 2015

 - h. March 4, 2015

 - i. March 6, 2015

- C. Invalidate the Agreement with Municipal Resources, Inc., and require the return of funds paid for the hidden services performed under this Agreement. Additionally, all actions taken by the Town in relationship to this Agreement, up to and including the Agreement and Release signed by the Police Chief should be reversed.
- D. Enjoin future violations of Chapter 91-A by the Board and Arnold in accordance with RSA 91-A:8 III, by issuing an order compelling the Board and Arnold to comply with all RSA 91-A requests within the mandates of that law.
- E. Mandate remedial training on RSA 91-A for all parties to the petition.
- F. In finding Arnold to have acted “in bad faith”, require that Arnold reimburse the town for all attorney’s fees and remedial training, and be fined as provided for in RSA 91-A:8, IV.
- G Award Orsi, et al. all costs and attorney’s fees made necessary by the bringing of this action as allowed by RSA 91-A:8, II.
- H. Declare such other relief as may be just and equitable.

Respectfully submitted,

Signature_____ Date: _____

Dennis Orsi
101 Main Street
Francestown, NH 03043
(603) 831-5043

Signature_____ Date: _____

Elizabeth Behrsing
128 Gerrish Road
Francestown, NH 03043
(603) 547-2905

Signature_____ Date: _____

Lisa Bourbeau
1058 Bible Hill Road
Francestown, NH 03043
(603) 547-8999

Signature_____ Date: _____

James Gann
62 Mountain Road,
Francestown, NH 03043
(603) 630-0229

Signature _____ Date: _____

Prescott G. Tolman

142 Stevens Road

Francestown, NH 03043

(603) 547-3923

MAILING ADDRESS FOR THE PLAINTIFFS