THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

CHESHIRE, SS.

Marianne Salcetti, et al.

v.

City of Keene

No. 213-2017-CV-00210

ORDER ON MOTION TO RECONSIDER

Marianne Salcetti, a journalism professor at Keene State College, brought this petition against the City of Keene ("the City"), alleging the City has violated RSA Chapter 91-A, New Hampshire's Right-to-Know law, when it denied several requests made by five of her students. Professor Salcetti has been certified under Super. Ct. R. 20 as a non-attorney representative for the students.

On June 5, 2018, the Court held a hearing on the merits of Professor Salcetti's petition. The Court issued an order on the merits of Professor Salcetti's petition on August 29, 2018 ("August 29 Order").[1] While the Court determined most of the petition's arguments in the City's favor, the Court also determined that the City had failed to adequately respond to several issues Professor Salcetti raised. Thus, the Court ordered the City to submit further documentation to address its burden under the Right-to-Know law. Presently before the Court is a motion to reconsider filed by Professor Salcetti. In this motion, Professor Salcetti asserts several grounds upon

[1] Marianne Salcetti v. City of Keene, Cheshire Cty. Super. Ct., No. 213-2017-CV-00210 (Aug. 29, 2018) (Order, Ruoff, J.)

which the Court must reconsider its decisions in its August 29 Order. For the following reasons, Professor Salcetti's motion to reconsider is DENIED.

"A motion for reconsideration allows a party to present points of law or facts that the Court has overlooked or misapprehended." Barrows v. Boles, 141 N.H. 382, 397 (1996) (quotation removed); Super. Ct. R. 12(e). "Whether to receive further evidence on a motion for reconsideration rests in the sound discretion of the trial court." Lillie-Putz Trust v. Downeast Energy Corp., 160 N.H. 716, 726 (2010).

New Hampshire's Right-to-Know law provides that "[a]ny person aggrieved by a violation of this chapter may petition the superior court for injunctive relief." RSA 91-A:7. The purpose of the Right-to-Know law is to "ensure both the greatest possible public access to the actions, discussions and records of all public bodies, and their accountability to the people." N.H. Civil Liberties Union v. City of Manchester, 149 N.H. 437, 438–39 (2003) (quoting RSA 91-A:1). The Right-to-Know law "helps further our State Constitutional requirement that the public's right of access to governmental proceedings and records shall not be unreasonably restricted." Id. at 438–39 (quoting Goode v. N.H. Legislative Budget Assistant, 148 N.H. 551, 553 (2002)) (citing N.H. CONST. pt. I, art. 8). In addressing a Right-to-Know petition, the Court will resolve questions "with a view to providing the utmost information in order to best effectuate the statutory and constitutional objective of facilitating access to all public documents. Thus, we construe provisions favoring disclosure broadly, while construing exemptions narrowly." Id. at 439 (quoting Goode, 148 N.H. at 554). "The party seeking nondisclosure has the burden of proof." N.H. Civil Liberties Union, 149 N.H. at 439 (citing Union Leader Corp. v. N.H. Housing Fin. Auth., 142 N.H. 540, 549 (1997)).

"When a public entity seeks to avoid disclosure of material under the Right-to-Know Law, that entity bears a heavy burden to shift the balance toward nondisclosure." Montenegro v. City of Dover, 162 N.H. 641, 649 (2011) (quoting Murray v. N.H. Div. of State Police, 154 N.H. 579, 581 (2006)).

New Hampshire courts may rely on federal Freedom of Information Act ("FOIA") law when interpreting Chapter 91-A and will "look to the decisions of other jurisdictions, since other similar acts, because they are in *pari materia*, are interpretively helpful, especially in understanding the necessary accommodation of the competing interests involved." Montenegro, 162 N.H. at 645 (quoting Murray, 154 N.H. at 581).

I. Interpretation of Requests

Professor Salcetti first argues that the Court failed to liberally interpret the students' requests, specifically Ms. King's and Mr. Dudal's requests to the City for food inspection reports. (Pet.'s Mot. Recon. 1–2.) In its August 29 Order, the Court acknowledged that the City had an obligation to interpret the students' requests liberally and with common sense but not to mean something the requestor did not intend. (August 29 Order, 30 (quoting Hall & Assocs. v. U.S. Envtl. Prot. Agency, 83 F. Supp. 3d 92, 101 (D.D.C. 2015)).

Mr. Dudal's request sought two items: "A list of the of the (sic) food establishments that are a part of license class I, license class II, and license class III in Keene that received a score of less than 85 from Jan. 1, 2012 – Aug. 31, 2017," and "A list of the violations for any and all food establishments that are a part of license class I, license class II, and license class III in Keene that received scores of 85 or less, and the checklist of the inspection accompanying each score from Jan. 1, 2012 – Aug. 31, 2017."

(Ex. 9.) Ms. King requested: "A list of the out of the 275 (sic) listed in Keene that received a score of less than 85 from Jan. 1 – Aug. 31, 2017," and "A list of the violations from any and all food establishments Class IV, V, and Vi in Keene from Jan. 1 2012 – Aug. 31, 2017 received (sic) scores of 85 or less, and the checklist of the inspection accompanying each score." (Ex. 15.) The City had denied Ms. King's and Mr. Dudal's requests because the City's electronic database could not produce reports with the information they had requested, and thus the information in the City's database did not exist as the students had requested. (August 29 Order, 18–21; Ex. 21; Ex. 34; Ex. 40.) The City explained that, because the Code Enforcement Department had recently changed its database software, it could not "provide City staff with the capability to create or print custom reports at this time" and determining individual restaurant scores would require the requestor to take the raw data within an individual restaurant's reports and score it themselves. (Ex. 34.) In its August 29 Order, the Court determined that the City's response was reasonable because Ms. King and Mr. Dudal had requested records that the City was not capable of creating. (August 29 Order, 18–21.) And, the Court also noted, Ms. King and Mr. Dudal had explicitly requested "lists," something that the City undisputedly was not obligated to create as per the Right-to-Know law. (August 29 Order, 18–21.)

The Court also considers Professor Salcetti's interpretations of Ms. King's and Mr. Dudal's requests as proposed in her motion to reconsider. Professor Salcetti asserts that the City was obligated to interpret Ms. King's and Mr. Dudal's requests, specifically their requests for the checklists of each restaurant, as requests for "another large set of items to be included with each main item for the restaurant in one large list"; or, "as

requests for separate checklists, one for each item in the main list of restaurants." (Pet.'s Mot. Recon. 1–2.) The Court interprets Professor Salcetti's assertions to mean that Ms. King's and Mr. Dudal's requests should have been interpreted as requests for all of the checklists corresponding to each restaurant that would have met the specifications that the students requested; or, phrased another way, the checklist for each restaurant that would have been on the lists they requested.

Ms. King and Mr. Dudal requested lists of restaurants within specific classes, within a specific time frame, that received a score of 85 or less. (Ex. 9; Ex. 15.) Professor Salcetti's proposed interpretations of these requests, even with their emphasis on the "follow-on clauses" requesting checklists for the resulting restaurants, still rely on the City generating a list that it cannot generate. In order for the City to have gathered the checklists that Professor Salcetti asserts the students requested, it would have needed to run a custom report to generate a list, and then would need to gather the checklists that correspond to those resulting restaurants. At the hearing and in its pleadings, as well as in its replies to the students' requests, the City explained that it was unable to generate custom reports. And, the City explained, in order to determine what restaurants received total scores that landed in the range the students specified, the students would have to add up the items on the restaurants' checklists to determine the total scores. Neither at the hearing nor in any of her pleadings has Professor Salcetti challenged the City's representations about its inability to generate custom reports or to satisfy Ms. King's and Mr. Dudal's requests, whether interpreted as requests for lists or for checklists corresponding to the restaurants on such a list. There

is thus no basis for this Court to now find that such a list could have been generated such that the Court's original finding was improper.

Without the capability to create such a list, there was no way for the City to provide "separate checklists, one for each item in the main list of restaurants." (Pet.'s Mot. Recon. 2.) Changing the interpretation of Ms. King's and Mr. Dudal's requests does not change the nature of what the City would need to do to fulfill the requests, and thus reading the requests as Professor Salcetti has proposed does not affect the Court's decision. As the Court determined in its August 29 Order:

> The City's database is subject to disclosure, as the City indicated by stating it could be required to provide a copy of the entire database. (Ex. 34.) However, the database is made up of data, and the Right-to-Know law cannot obligate the City to compile requested pieces of data into a new record. RSA 91-A:4, VII.

(August 29 Order, 19.) Therefore, the Court does not find that Professor Salcetti's proposed interpretations change the Court's analysis.

The Court also reconsiders the original requests generally and the City's original response. In its August 29 Order, the Court determined that the City's response was reasonable because the students used the word "list" in all of their requests, and it was undisputed that the City was incapable of producing such a list. (August 29 Order, 19–21.) Professor Salcetti now asserts that, "An expert in food inspections would readily recognize that food inspection records are predominantly a checklist of the inspection items and their violations, and hence the inspection records would be responsive to King's and Dudal's requests." (Pet.'s Mot. Recon. 2.) The Court notes that entities responding to Right-to-Know requests have no obligation to possess or obtain an

expert-level comprehension to analyze requests. The City's obligation in reading the requests it received is the same as that of an entity receiving a FOIA request:

> A FOIA request must reasonably describe the records requested. A request must enable a professional agency employee familiar with the subject area to locate the record with a reasonable amount of effort. The government must use some semblance of common sense in interpreting FOIA requests, and an agency also has a duty to construe a FOIA request liberally. However, the linchpin inquiry when determining whether a request reasonably describes records is whether the agency is able to determine precisely what records (are) being requested. The agency is not obliged to look beyond the four corners of the request for leads to the location of responsive documents, and ultimately it is the requester's responsibility to frame requests with sufficient particularity.

Hall & Assocs. v. U.S. Envtl. Prot. Agency, 83 F. Supp. 3d 92, 101 (D.D.C. 2015) (citations and quotations omitted). The City thus had no obligation to approach Ms. King's and Mr. Dudal's requests with expert-level comprehension of food inspection procedures. Ms. King's and Mr. Dudal's requests were read as requests for what they had precisely and particularly stated: lists, and accompanying checklists for the items on those lists. The City denied these requests because it could not provide those items. And even if the City did take an expert-level approach to the requests, the City's response would not have differed: reading the requests as Professor Salcetti now asserts they should be read still would require the City to generate a custom report, either in a list form, something the City has said is impossible, or through a search that it lacked the capability to run.

Additionally, the City could not have reasonably taken a more liberal reading of a request for a "list," which is an unambiguous word. Professor Salcetti asserts that, while "list" may have been unambiguous, the students' "follow-on clauses" of "the checklist of the inspection accompanying each score" is ambiguous. Certainly, apart from the main

thrust of the students' requests—for lists—the clauses are ambiguous; a checklist "accompanying" a score cannot stand on its own grammatically and clearly relies on what the requested checklist is, in fact, accompanying. Read together, as the students intended, it is clear that the requested checklists are meant to be those accompanying the scores of restaurants that would populate the lists they requested. Ambiguous requests are to be read liberally. Pinson v. U.S. Dep't of Justice, 69 F. Supp. 3d 125, 133 (D.D.C. 2014) (quoting LaCedra v. Exec. Office for U.S. Attorneys, 317 F.3d 345, 348 (D.C.Cir.2003)). However, the Court does not find that even a supposed more liberal approach to these requests could separate the students' requests for checklists from their improper requests for lists. Professor Salcetti has failed to assert points of law or fact that the Court has overlooked or misapprehended, and thus the Court affirms its original decision. Super. Ct. R. 12(e).

Professor Salcetti has also asserted that this Court erred in its interpretation of Ms. Vasas' request for sexual assault "charges," which the City interpreted as a request for a list of any time someone had been charged with violating the statutes Ms. Vasas indicated. (Ex. 6; Ex. 8.) In its August 29 Order, the Court found the City's response was reasonable since Ms. Vasas' request for "[a]ll charges" was unclear and the most reasonable interpretation of this request, all things considered, was for a list. (August 29 Order, 30–31.) Professor Salcetti agrees with the Court that this interpretation was reasonable, and there is no dispute that the City was not obligated to create such a list. (Pet.'s Mot. Recon. 2) Professor Salcetti now alleges, however, that the City could have read the request more liberally as one for "any records about those charges." (Id.) First, the Court notes that this phrase is not any clearer than Ms. Vasas' original request for

"[a]ll charges" since the problematic term "charges" is still used and undefined in this proposed interpretation. (Ex. 6.) Second, Professor Salcetti relies on the reasoning that this interpretation would have been a "reasonable interpretation by an expert." (Pet.'s Mot. Recon. 2.) As noted above, there was no obligation on the City to acquire expertise in reading Ms. Vasas' request. Hall & Assocs., 83 F. Supp. 3d at 101. And, third, Professor Salcetti points out that the City has since "identified such records" responsive to Ms. Vasas' request. (Pet.'s Mot. Recon. 2.) Professor Salcetti has not specified what records the City has that would satisfy Ms. Vasas' request, nor has she alleged how those unidentified records would have been provided had the City taken a more liberal approach to Ms. Vasas' request.

Assuming, for the sake of argument, that the City does have records that Ms. Vasas would have wanted as per her request for "charges," the Court cannot hold the City accountable for failing to provide those records when Ms. Vasas failed to request them with particularity. While Ms. Vasas may be able to retrospectively state that the records the City has would have satisfied her request, the issue before the Court is not whether Ms. Vasas can now point to what records she meant to request but rather whether the City was obligated to provide records in the form she "reasonably described." RSA 91-A:4, IV. The Court cannot hold the City to a retrospective interpretation of Ms. Vasas' request when its initial response was proper. "[A]n agency is required to read a FOIA request as drafted, not as either the agency or the requester might wish it was drafted." Judicial Watch, Inc. v. Dep't of State, 177 F. Supp. 3d 450, 456 (D.D.C. 2016), aff'd sub nom. Judicial Watch, Inc. v. United States Dep't of State,

681 F. App'x 2 (D.C. Cir. 2017) (quoting Miller v. Casey, 730 F.2d 773, 777 (D.C.Cir.1984)) (quotations and brackets omitted).

Neither does the Court find that Ms. Vasas' request has been misconstrued by the City or in the Court's August 29 Order. Professor Salcetti's assertions have not affected the Court's characterization of Ms. Vasas' request and the ambiguous term "charges":

> The best that could be garnered from this request is that Ms. Vasas was interested in a list of how many times any prosecutorial body in New Hampshire made, against any defendant, a charge of violating either statute, regardless of whether the defendant was ultimately acquitted or convicted. This interpretation would be a reasonable interpretation whether it would include grand jury indictments or not. The most obvious way to obtain such information would be through a list, rather than pulling each individual file that contains any mention of the two statutes. Professor Salcetti has not suggested any other form of records Ms. Vasas could have meant with her request.

(August 29 Order, 31.) Because Professor Salcetti has failed to assert points of law or fact that the Court has overlooked or misapprehended, the Court affirms its original decision. Super. Ct. R. 12(e).

II. Student Expressions of Intent

Professor Salcetti next argues that the Court erred in construing the students' requests by failing to consider each student's expressions of intent with their request. (Pet.'s Mot. Recon. 2.) Professor Salcetti provides two examples of when the City allegedly failed to read the students' requests as the students intended. First, she points to Ms. King's second request for "email correspondences" between the City and restaurants or code enforcement, stating that Ms. King's second request demonstrates that she never intended for her first request to be construed as a request for only a single list. Professor Salcetti's characterization of Ms. King's second request as a

"second request" does not support her argument since it implies that the two requests were intended to be, and were in fact, separate requests. And, in construing Ms. King's first request, the City had no obligation to read her second request to understand the first's intent. Hall & Assocs., 83 F. Supp. 3d at 101 ("The agency is not obliged to look beyond the four corners of the request for leads to the location of responsive documents, and ultimately it is the requester's responsibility to frame requests with sufficient particularity."). A public body or entity cannot be obligated to read several requests, even by the same person, to properly interpret another request. See Hall & Assocs., 83 F. Supp. 3d at 101.

Then, Professor Salcetti points to Mr. Dudal's "exceptional persistence" in pursuing his requests, alleging this demonstrated his intent. Mr. Dudal's diligence does not change the nature of his requests. Mr. Dudal constantly requested the same information with negligible differences in the language he used in each request. (See Ex. 9; Ex. 16; Ex. 20; Ex. 21.) There is no reason for Mr. Dudal's diligence to affect the meaning of his request, or the City's interpretation of that request, when Mr. Dudal repeatedly made the same request. In fact, Mr. Dudal's repetitive requests would indicate that he was certain of the information he sought and that he did not intend for his request to be read differently than he articulated. And, Professor Salcetti has not provided support for the idea that a requestor's diligence affects the responding agency's obligation to provide records, nor can the Court support such a principle. Certainly, allowing exempted records to be divulged, or forcing an agency to create records it does not have, simply because of a requestor's "persistence" would be unreasonable and unworkable. Professor Salcetti's proposal, to read the students'

requests more broadly than their reasonable interpretations whenever the students are especially emphatic, is rejected.

As the Court found in its August 29 Order, the majority[2] of the City's responses to the students were reasonable. Therefore, because Professor Salcetti has failed to assert points of law or fact that the Court has overlooked or misapprehended, the Court affirms its original decision. Super. Ct. R. 12(e).

III. Inspection Fee

RSA 91-A:4, IV mandates that, "No fee shall be charged for the inspection or delivery, without copying, of governmental records, whether in paper, electronic, or other form." Professor Salcetti asserts that the Court ruled that the City properly imposed a "$300 fee in response to King's request for emails," such that the Court "allow[ed] the City to charge to inspect electronic records." (Pet.'s Mot. Recon. 3.) This is a massive mischaracterization of the Court's August 29 Order, and indeed would be counter to the explicit law in RSA 91-A:4, IV.

The Court determined that the City's response to Ms. King was reasonable because Ms. King's request was for "[a]ny and all email correspondences between" the City and the City's Code Enforcement Department, or between the City and "any and all Keene restaurants" or "restaurants in the city of Keene." (Ex. 35.) Professor Salcetti insists this request, though ambiguous, was a request to inspect records. Of course, as per RSA 91-A:4, IV, a responding government entity cannot charge a requestor for

[2] As noted above, the Court found that the City had not adequately responded to Professor Salcetti's Right-to-Know petition, causing the Court to require the City to file further information and documentation as per its burden under the law. Thus, because the Court was not able to adjudicate every issue for a lack of evidence, the Court cannot state that all of the City's responses were reasonable. But, as to the issues the Court did fully address, each issue was determined in the City's favor.

inspecting records; it can however charge for furnishing copies. See Taylor v. Sch. Admin. Unit #55, 170 N.H. 322, 328 (2017) ("Given that the statute allows the public body to charge for 'copying,' and contains no language suggesting that that term was intended to encompass paper copies only, we conclude that the term 'delivery' as used in the statute was intended to cover the public body's obligation to produce documents or make them available to the public in circumstances in which there is no need for their reproduction in any medium."). Thus, Professor Salcetti asserts that Ms. King's request to inspect records was improperly met with a proposed fee.

The nature of Ms. King's request for emails and City Manager Dragon's response do not logically support Professor Salcetti's allegation that the Court affirmed the City's imposing a $300 fee for accessing records. City Manager Dragon's response to Ms. King explained that, in order to provide Ms. King with access to the records she requested, the City would need to "retriev[e] and print[] these emails." (August 29 Order, 20–21, 25–26.) The Court's August 29 Order considered whether Ms. King could have inspected the emails she requested without any copies being made, and explicitly determined that the City could not have allowed Ms. King to inspect these emails "without either providing Ms. King with computer access to the email account or accounts that sent the reports or printing the emails," and there was "no reasonable argument that the City should provide Ms. King with access to a City employee's account or access to a City computer to view these emails." (August 29 Order, 26.) Professor Salcetti has not provided any counterargument or suggestion for how Ms. King could have inspected City emails.

As for the $300 figure, this was an estimate from City Manager Elizabeth A. Dragon in response to Ms. King's request. (Ex. 40.) In her request, Ms. King did not delineate what emails she exactly was requesting such that the City could pick them out and determine the amount of pages or digital memory necessary for them to be stored; she asked for a category of emails within a three-year period. City Manager Dragon's $300 estimate followed an explanation that the City conducted between 800 and 1,000 inspections during that time frame, that the City "would need to retrieve and print these emails" in order to provide them to her, and that the City charges fifty cents for the first page and twenty-five cents thereafter. (Ex. 40.) The law does not prohibit such a fee; indeed, Professor Salcetti does not assert that copies should be produced without a fee. Instead, Professor Salcetti seeks to alter Ms. King's request and mischaracterizes the Court's August 29 Order as one counter to explicit law in the process.

Because Professor Salcetti has not accurately articulated a decision made by the Court in its August 29 Order, there is no decision for the Court to reconsider.

IV. ATV Watch

Professor Salcetti next argues that the Court failed to distinguish the City's response to Ms. Pecci's request from the facts in ATV Watch v. New Hampshire Dep't of Transp., 161 N.H. 746 (2011). (Pet.'s Mot. Recon. 3–4.) In its August 29 Order, this Court determined that the City's delayed response to Ms. Pecci was reasonable because the City was waiting for Ms. Pecci to comply with the City's requirement for a written request form, something Ms. Pecci failed to submit at all. (August 29 Order, 45–46.) And, this Court noted, Ms. Pecci ultimately did receive the records—thus, because the delay was reasonable and because she had received the records after the

reasonable delay, there was no unwarranted delay and thus no injury under Chapter 91-A. (Id. at 46.) Now, Professor Salcetti alleges that the Court's determination was improper because "there is evidence that the City failed to properly search during the time of the delay, contrary to ATV Watch where there was no such evidence." (Pet.'s Mot. Recon. 3–4.)

Timing requirements for a public body's or entity's response to a Right-to-Know request is governed by RSA 91-A:4, IV. The Supreme Court determined that sending a receipt within five days of receiving a request satisfied the agency's requirements under RSA 91-A:4, IV "[o]n its face." ATV Watch, 161 N.H. at 756. And, in its August 29 Order, this Court explained that ATV Watch indicates that a court may not inquire into a public body's or entity's response to a records request when it has satisfied RSA 91-A:4, IV's five-day requirement unless the petitioner alleges what records are being withheld and why he or she believes such records exist but are being withheld. (August 29 Order, 44–46.) Professor Salcetti does not challenge the Court's interpretation of RSA 91-A:4, IV or with the Supreme Court's decision in ATV Watch but rather argues that the evidence indicates that "the City failed to properly search during the time of the delay." (Pet.'s Mot. Recon. 3.) However, Professor Salcetti has not pointed to any specific "evidence" that the Court failed to consider or that the Court may have misconstrued.

Upon review of the record, the Court does not find any evidence that it overlooked or misconstrued. In its August 29 Order, the Court considered that Ms. Pecci emailed a request to Mr. Dow on September 24, 2017,[3] (Ex. 3); Mr. Dow confirmed receipt of her request, and informed her that the City requires written and

[3] As in its August 29 Order, the Court assumes this date as the effective date of Ms. Pecci's request even though she did not submit a written request until September 27, 2017 and she never submitted a signed request. (Ex. 3; Ex. 10.)

signed requests, on September 25, (Id.); Ms. Pecci hand-delivered a written but unsigned request on September 27, (Ex. 10); Ms. Pecci emailed Mr. Dow on October 16 and he replied the same day that he was out of the office but would follow up when he was back, (Id.); Mr. Dow emailed Ms. Pecci about having not received a signed request on October 31, (Ex. 3); and that Mr. Dow emailed several City employees about Ms. Pecci's request on October 31, (Ex. 25). Throughout this time, Ms. Pecci did not submit a written, signed request as Mr. Dow explained was necessary. The Court determined that, while the City clearly delayed in replying to Ms. Pecci's request, this delay was reasonable because of Ms. Pecci's failure to submit a written, signed request as per the City's policy. (August 29 Order, 45–46.) Upon review of the record, the Court has not found any evidence that affects this determination. Therefore, the Court finds no evidence of "improper delay" that the Court failed to consider in its August 29 Order.

Furthermore, even if this Court were to compare the facts in ATV Watch with those at bar, ATV Watch does not aid Professor Salcetti's argument. In ATV Watch, the Court determined that the petitioners failed to identify and elaborate upon documents it had received that indicated that the respondent improperly withheld responsive documents after they became available. ATV Watch, 161 N.H. at 756–57 ("They do not identify those documents, however, or elaborate as to why they were 'probably' available for immediate release. We therefore reject their argument as inadequately supported."). While ATV Watch did concern a lack of evidence, it has no bearing on a court's determination of whether a delay in providing records responsive to or denying a Right-to-Know request is reasonable. Indeed, the Supreme Court did not address the petitioners' argument in ATV Watch on the merits at all but rather rejected it "as

inadequately supported." Id. at 757. The Supreme Court did determine, however, that RSA 91-A:4, IV's requirement of providing receipt of a request within five days had been met "[o]n its face." Id. at 756. Thus, while ATV Watch is relevant to interpreting RSA 91-A:4, IV's five-day requirement, it is irrelevant to the Court's determination of whether the City's delay was proper.

Therefore, because Professor Salcetti has failed to assert points of law or fact that the Court has overlooked or misapprehended, the Court affirms its original decision. Super. Ct. R. 12(e).

V. Written Requests

Lastly, Professor Salcetti argues that this Court erred by allowing the City to require signed written requests ("the City's policy"). (Pet.'s Mot. Recon. 4.) This allegation is, again, a mischaracterization of the Court's August 29 Order, in which the Court explained that it could not adjudicate the particular issue because none of the students had been prevented from accessing records by the City's policy. (August 29 Order, 48.) Thus, the Court's decision was based on a lack of standing. Though each student was asked to submit a signed and written request, there has been no allegation that any student was denied access that the Right-to-Know law permits because of the City's policy. Instead, Professor Salcetti alleges that the City's policy imposed "needless extra effort . . . on the students, most of whom filed multiple copies of the requests attempting to meet [it]."; and that Ms. Pecci experienced undue delay because of the City's policy. (Pet.'s Mot. Recon. 4.)

Here, Professor Salcetti has failed to allege that any of the students' rights to access public records were restrained. Indeed, each of the five students received

responsive records and none has alleged he or she was prevented from receiving records because of the City's policy. There is thus no indication before the Court that the City's policy "unreasonably restricted" any of the student's rights under Chapter 91-A. N.H. Civil Liberties Union v, 149 N.H. at 438–39 (quoting RSA 91-A:1). As stated in the August 29 Order, there has been no allegation that any student was prevented from enjoying any of their rights because of the City's policy nor that any student was denied responsive records because of it, nor has Professor Salcetti stated how the "needless extra effort" caused any articulable harm to the students.

In regard to how the City's policy affected Ms. Pecci, the Court has already determined that the City's delay in responding to Ms. Pecci's request was proper since it was based on Ms. Pecci's failure to comply with the City's policy, of which Ms. Pecci was aware. (Supra Part IV; August 29 Order, 44–46.) In that analysis, the Court was not required to analyze whether Ms. Pecci was prejudiced by this delay. ATV Watch, 155 N.H. at 441 ("The plain language of the provision does not allow for consideration of the factors applied by the trial court, such as 'reasonable speed,' 'oversight,' 'fault,' 'harm,' or 'prejudice.'"). Even in considering Ms. Pecci's delayed receipt of responsive records, attributable to the City's policy, there has been no allegation of prejudice or harm caused by the delay. In fact, Mr. Dow gathered records responsive to Ms. Pecci's request even though she never complied with the City's policy, indicating that the City intended for Ms. Pecci to receive the records she requested and not to use its policy to withhold responsive records. And, ultimately, Ms. Pecci received records she requested.

The Court understands Professor Salcetti's insistence that the policy should not be both a basis for the City to have reasonably delayed responding to Ms. Pecci's

request and also an issue no student has standing under—the Court recognizes that Ms. Pecci did experience a delay in receiving her records because of the City's policy. However, despite the delay, Ms. Pecci undisputedly did receive the records and there has been no allegation that she was harmed by the delay. Gen. Elec. Co. v. Comm'r, N.H. Dep't of Revenue Admin., 154 N.H. 457, 461 (2006) ("The general rule in New Hampshire is that a party has standing to raise a constitutional issue only when the party's own rights have been or will be directly affected."). Without such an allegation, the Court is powerless to address whether the City's policy violates the Right-to-Know law. See Montenegro, 162 N.H. at 651 (finding Right-to-Know petitioner lacked standing to seek information involving the privacy rights of "private parties utiliz[ing] public buildings to conduct private affairs" because the petitioner did not allege that he had done so himself). Therefore, the Court does not address the City's policy because no particularized harm has been alleged.

CONCLUSION

For the reasons stated above, Professor Salcetti's motion to reconsider is DENIED. The motion has failed to assert points of law or fact that the Court has overlooked or misapprehended. Super. Ct. R. 12(e). The Court affirms its original decision.

SO ORDERED.

12-17-18
DATE

David W. Ruoff
Presiding Justice