

# THE STATE OF NEW HAMPSHIRE

GRAFTON, SS.

SUPERIOR COURT

DEMETRIOS "JIM" SOURGIADAKIS

v.

TOWN OF LITTLETON

Docket No.: 215-2011-CV-00321

## ORDER

The plaintiff, Demetrios "Jim" Sourgiadakis, has filed a Petition under RSA chapter 91-A, New Hampshire's Right-to-Know Law, against the Town of Littleton (town). The Court conducted a hearing on the petition on August 29, 2011. For the reasons set forth on the record, the Court granted the State Employees' Association of NH, Inc.'s (SEA) Motion to Intervene. See Superior Court Rule 139; Lamarche v. McCarthy, 158 N.H. 197, 200 (2008).

The plaintiff requests that the town be ordered to produce all town records "relating to the boycott of . . . thirteen area businesses," including the plaintiff's business, for the period March 1, 2011 to March 31, 2011, for an *in camera* review. (Pl.'s Pet. ¶ 13, Prayer A.) The town furnished the plaintiff with some of the requested documents but refused to disclose other documents on the ground that they are exempt under RSA 91-A:5, IV. "When there is a question whether materials are exempt from public access, the trial judge should conduct an *in camera* review to determine whether portions of the materials meet any of the other statutory exemptions." Prof'l Firefighters of N.H. v. HealthTrust, 151 N.H. 501, 506 (2004) (brackets omitted). The parties agree that the Court should conduct an *in camera* review of the disputed records, and the town furnished the Court with those records, consisting of 107 pages, along with a Vaughn index. See id. The

town concedes that the disputed records are "governmental records" within the meaning of RSA 91-A:1-a, III and RSA 91-A:4, I but contends that they are exempt because they are "[r]ecords pertaining to internal personnel practices[,] confidential . . . information[,] . . . and[/or] personnel . . . and other files whose disclosure would constitute invasion of privacy." RSA 91-A:5, IV. The SEA asserts that the disputed records are not "governmental records" within the meaning of RSA chapter 91-A that a citizen has a right to inspect under RSA 91-A:4, I. The SEA further argues that even if the disputed records are "governmental records," they are exempt under RSA 91-A:5, IV for the reasons that the town articulates. The plaintiff contends that the disputed records are "governmental records" that he has a right to inspect and that they are not exempt. Because the town agrees that the disputed records are "governmental records" and the SEA has not briefed the issue, the Court assumes without deciding that the disputed records are "governmental records" within the meaning of the statute for purposes of this *in camera* review.

"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." Lambert v. Belknap Country Convention, 157 N.H. 375, 378 (2008). "The Right-to-Know Law does not guarantee the public an unfettered right of access to all governmental workings, as evidenced by the statutory exceptions and exemptions." Prof'l Firefighters of N.H. v. Local Gov't Ctr., 159 N.H. 699, 707 (2010). Nevertheless, "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 non-

disclosure.” Id. (brackets and quotations omitted). The Court must “resolve questions regarding the Right-to-Know Law 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.” Id. (quotations omitted). Accordingly, the Court must “construe provisions favoring disclosure broadly, while construing exemptions narrowly.” Id. (quotations omitted).

In evaluating an exemption claim under RSA 91-A:5, IV, the Court “must analyze both whether the information sought” pertains to internal personnel practices, confidential information or personnel files “and whether disclosure would constitute an invasion of privacy.” Id. (quotations omitted). “If no privacy interest is at stake, then the Right-to-Know Law mandates disclosure.” Id. “Whether information is exempt from disclosure because it is private is judged by an objective standard and not a party’s subjective expectations.” Id. (brackets and quotations omitted).

The New Hampshire Supreme Court has articulated a three-step analysis in which courts must engage “when considering whether disclosure of public records constitutes an invasion of privacy under RSA 91-A:5, IV.” Lambert, 157 N.H. at 382. The Court must first “evaluate whether there is a privacy interest at stake that would be invaded by the disclosure.” Id. The Court must next “assess the public’s interest in disclosure.” Id. at 383. “Disclosure of the requested information should inform the public about the conduct and activities of their government. . . . If disclosing the information does not serve this purpose, disclosure will not be warranted even though the public may nonetheless prefer, albeit for other reasons, that the information be released.” Id. (quotations omitted). Finally, the Court must “balance the public interest in disclosure against the government’s

interest in non-disclosure and the individual's privacy interest in non-disclosure." Id.

Having carefully reviewed the records that the town furnished to the Court and applying the foregoing legal principles, the Court makes the following findings and rulings with respect to the disputed records:

1. Pages 1–2 of the disputed records consist of two emails from an SEA representative to the Littleton police chief regarding a police officer, which make no mention of the boycott. These records are personnel records whose disclosure would constitute invasion of privacy and, therefore, are exempt;
2. Pages 3–8 consist of an email from an SEA representative to the Littleton police chief and three employee grievances. These records are personnel records whose disclosure would constitute invasion of privacy and, therefore, are exempt;
3. Pages 9–10 consist of two emails between the SEA Communications Administrator and the SEA President regarding the boycott, on which a Littleton police officer was copied. These records constitute confidential information whose disclosure would constitute invasion of privacy and, therefore, are exempt;
4. Page 11 is an email from a Littleton police officer to an SEA representative enclosing copies of an article on the boycott and an article on the town's budget. They are not exempt;
5. Pages 15–16 contain the same two emails that appear on pages 9–10 and a third email from a Littleton police officer to the SEA President, all regarding the boycott. These records constitute confidential information whose disclosure would constitute invasion of privacy and, therefore, are exempt;
6. Page 17 is an email from a Littleton police officer to an SEA representative

- regarding the boycott. This record constitutes confidential information whose disclosure would constitute invasion of privacy and, therefore, is exempt;
7. Pages 18–19 contain three emails. The first email is the same one that appears on page 17; the second one is a short reply from the SEA representative; and the third one is an email from the same police officer to the same SEA representative regarding the boycott, the March 16, 2011 selectmen's meeting, and contract negotiations. These records constitute confidential information whose disclosure would constitute invasion of privacy and, therefore, are exempt;
  8. Page 28 contains an email from the SEA to a police officer, to which is attached a copy of the SEA News, and an email from the officer to various persons forwarding a copy of the SEA News. It is not exempt;
  9. Page 51 contains an email from an SEA representative to the SEA President, on which a Littleton police officer was copied, regarding the boycott. This record constitutes confidential information whose disclosure would constitute invasion of privacy and, therefore, is exempt;
  10. Pages 52–54 contain four emails: the same three as are set forth on pages 15–16 and a brief reply from the SEA President to the Littleton police officer. These records constitute confidential information whose disclosure would constitute invasion of privacy and, therefore, are exempt;
  11. Page 55 contains an email from Jim Alden, the owner of one of the boycotted businesses, to a Littleton police officer. It is not exempt;
  12. Page 56 contains two emails between an SEA representative and a Littleton police officer, both of which were included in those emails set forth on pages 18–

19. These records constitute confidential information whose disclosure would constitute invasion of privacy and, therefore, are exempt;
13. Page 63 contains an email from Herb Lahout to [madiess@roadrunner.com](mailto:madiess@roadrunner.com) regarding the boycott. It is not exempt;
14. Pages 64–65 contain the same email as set forth on page 63, but this time it is sent to a Littleton selectman, and an email from that selectman to the police chief. These records are not exempt;
15. Page 69 contains an email from the SEA to a Littleton police officer, to which is attached a copy of the SEA News, an email from the officer to various persons forwarding a copy of the SEA News, and an email from the police chief to Charles Connell forwarding same. These records are not exempt;
16. Page 81 contains an email from the SEA to a Littleton police officer, to which is attached a copy of the SEA News on pages 82–92, and an email from the officer to various persons forwarding a copy of the SEA News. These records are not exempt. Page 81 also contains an email from the police chief to the town's attorney. This record pertains to internal personnel practices and constitutes confidential information whose disclosure would constitute invasion of privacy and, therefore, is exempt;
17. Page 93 contains an email from the police chief to the town's attorney regarding disciplinary action, grievances, and a personnel policy. These records pertain to internal personnel practices and constitute confidential information whose disclosure would constitute invasion of privacy and, therefore, are exempt;
18. Page 94 contains an email from an SEA representative to the police chief

regarding grievances. This record constitutes confidential information and a personnel record whose disclosure would constitute invasion of privacy and, therefore, is exempt;

19. Pages 95–97 contain a series of emails between an SEA representative and the police chief regarding grievances. These records constitute confidential information and personnel records whose disclosure would constitute invasion of privacy and, therefore, are exempt;
20. Pages 98–99 contain two of the same emails that appear on pages 95–97. They are exempt for the same reasons;
21. Pages 100–01 contain emails to/from the police chief regarding grievances. These records constitute confidential information and personnel records whose disclosure would constitute invasion of privacy and, therefore, are exempt;
22. Pages 102–03 contain three emails between an SEA representative and the police chief regarding grievances. These records constitute confidential information and personnel records whose disclosure would constitute invasion of privacy and, therefore, are exempt; and
23. Page 107 contains an email from a Littleton police officer to various persons regarding Union matters and a brief reply from an SEA representative. These records constitute confidential information whose disclosure would constitute invasion of privacy and, therefore, are exempt.

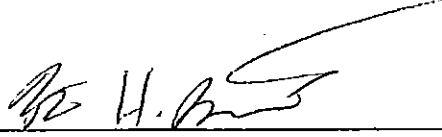
The town shall promptly furnish the plaintiff and the SEA with copies of those records that the Court has ruled are not exempt.

The plaintiff also asserts that the town "knew or should have known that refusal to

produce the [requested] records is a violation of RSA [chapter] 91-A" and requests an award of attorney's fees under RSA 91-A:8, I. "Under RSA 91-A:8, attorney's fees shall be awarded if the trial court finds that: (1) such lawsuit was necessary in order to make the information available; and (2) the public body, public agent, public agency, or person knew or should have known that the conduct engaged in was a violation of RSA chapter 91-A." Prof'l Firefighters, 159 N.H. at 710 (quotations and brackets omitted). The Court has ruled that the majority of the disputed documents are shielded from public disclosure under RSA 91-A:5, IV. The Court finds that the town reasonably believed that the remaining documents, which the Court has ruled are not exempt, were shielded from public disclosure under RSA 91-A:5, IV. Because the town neither knew nor should have known that its refusal to disclose those other records was a violation of RSA chapter 91-A, the plaintiff may not recover his attorney's fees. See Prof'l Firefighters, 159 N.H. at 710-11; Prof'l Firefighters, 151 N.H. at 507.

SO ORDERED.

Dated: September 2, 2011

  
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HON. PETER H. BORNSTEIN  
PRESIDING JUSTICE