

STATE OF NEW HAMPSHIRE**HILLSBOROUGH, SS
NORTHERN DISTRICT****SUPERIOR COURT**

Union Leader Corporation

v.

Wilton-Lyndeborough Cooperative School District

No. 12-C-450

ORDER ON PETITIONER'S RIGHT TO KNOW REQUEST

The Union Leader Corporation ("Union Leader") petitions for an order requiring the respondents, Wilton-Lyndeborough Cooperative School District ("School District"), to provide certain records under the Right to Know law (RSA 91-A). Specifically, the Union Leader requests a copy of sealed minutes from the April 24, 2012 non-public session, a copy of a report from an investigation into possible misuse of School District funds, and any additional documentation that has been attached to either the report or the minutes. Following in camera review, Union Leader's petition is **GRANTED** in part and **DENIED** in part.

In February of 2012, School District received an annual audit report from the 2011 fiscal year revealing payroll advances and reimbursed personal purchases made with the School District's credit card by former superintendent Trevor Ebel ("Ebel"). The purchases were related to alcohol, limousines, and movies, among other things.

The School District initiated an investigation into the findings and hired Attorney Dean Eggert ("Eggert") as an independent investigator. The School District reviewed the results of Eggert's investigation and his report at an April 24, 2012 non-public session. The report and the minutes were immediately sealed for fifty years. At the meeting, the School District announced Ebel's resignation and details surrounding his pension.

On April 26, 2012, the Union Leader submitted three written requests for records and information. The School District provided, among other things: a copy of Ebel's employment contract; list of all credit card transactions made by Ebel using School District credit cards from 7/1/10 to 4/24/12; Ebel's pension and retirement information; and copies of receipts corresponding to audit report. The School District, however, refused to provide sealed records such as Eggert's report, meeting minutes, and other related documents. The Union Leader then filed this petition with the court seeking disclosure and attorney's fees and cost pursuant to RSA 91-A.

The Right-to-Know law provides that "[e]very citizen . . . has the right to inspect all governmental records . . . including minutes of meetings of the public bodies. . . except as otherwise prohibited by statute or RSA 91-A:5." RSA 91-A:4, I. RSA 91-A:5, IV exempts from disclosure "[r]ecords pertaining to internal personnel practices."

First, the School District contends that Eggert's report is categorically exempt from disclosure as a "record pertaining to internal personnel practices." The court agrees. See Hounsell v. North Conway Water Precinct, 154 N.H. 1, 4 (2006) (finding investigative report as to whether an employee threatened and harassed a co-worker was categorically exempt under RSA 91-A:5, IV); Union Leader Corp. v. Fenniman, 136 N.H. 624, 627 (1993) (exempting documents compiled during an internal investigation of a department lieutenant accused of making harassing phone calls). Accordingly, Eggert's report will remain under seal.

Next, the School District argues that the meeting minutes and other related documents are exempt as they "invade the privacy interests of persons involved in the investigation." When considering whether disclosure constitutes an invasion privacy under RSA 91-A:5, IV, the court conducts a three-step analysis. See N.H. Civil Liberties Union v. City of Manchester, 149 N.H. 437, 440 (2003).

First, [the court] evaluate[s] whether there is a privacy interest at stake that would be invaded by the disclosure. If no privacy interest is at stake, the Right-to-Know Law mandates disclosure.

Next, [the court] assess[es] the public's interest in disclosure. Disclosure of the requested information should inform the public about the conduct and activities of their government. Finally, [the court] balance[s] the public interest in disclosure against the governmental interest in nondisclosure and the individual's privacy interest in nondisclosure.


Lamy v. N.H. Pub. Utils. Comm'n, 152 N.H. 106, 109 (2005) (internal citations omitted).

Here, because the minutes and related documents contain private information already released to the public, Ebel's privacy interest in nondisclosure is minimal. Thus, after balancing the public interest in disclosure and Ebel's limited privacy interest, the court finds disclosure of the meeting minutes and related documents is warranted with proper redactions.¹ Accordingly, the School District shall disclose the following, subject to the suggested redactions: meeting minutes from the April 24, 2012 non-public session; notes from the March 12, 2012 non-public meeting; the School District's "Annual Financial Report" (Tab A); spreadsheet (Tab B); and spreadsheet (Tab C).

Last, the court finds the Union Leader is not entitled to reasonable attorney's fees and costs in bringing this petition. The School District reasonable believed it was appropriate to balance the competing rights to avoid violating Ebel's privacy interests. See WMUR v. N.H. Dept. of Fish and Game, 154 N.H. 46, 50 (2006) (finding under RSA 91-A:8 attorney's fees not awarded unless body knew or should have known that their conduct violated RSA 91-A).

SO ORDERED.

May 30, 2012



Kenneth Brown
Presiding Justice

¹ Pursuant to this court's previous order (Doc. #4), the School District submitted a copy of the sealed documents with suggested redactions.