

THE STATE OF NEW HAMPSHIRE
ROCKINGHAM, SS. SUPERIOR COURT
ROCKINGHAM COUNTY NEWSPAPERS
v.
TOWN OF HAMPTON

ORDER ON PLAINTIFF'S PETITION UNDER RSA 91-A

Rockingham County Newspapers seeks to review records in the Town of Hampton's files pertaining to the December 6, 1995 resignation or severance of Hunter Riesberg, former Town Manager. Plaintiff argues that on December 6, 1995, Hampton selectmen Chairman, Paul Powell, told reporters that those records were sealed, despite the Plaintiff's formal request for access to those records. Plaintiff formally requested records detailing: (1) any payment of salary or extension of fringe benefits from the town to Mr. Riesberg beyond compensation for time actually worked; (2) the terms of any confidentiality agreement pertaining to Mr. Riesberg's departure; and (3) the value of any "exit package" that he received.

In a letter dated December 7, 1995, Acting Town Manager Thomas Gillick Jr. provided a copy of Mr. Riesberg's employment contract to Plaintiff, but declined to release any additional documents. When referred to Attorney Stephen G. Ells, Plaintiff was also denied access, as Attorney Ells claimed that these documents are exempt from public disclosure pursuant to RSA 91-A:5, IV. Plaintiff argues that the benefits of disclosing records showing taxpayers how their money is being spent outweigh the benefits of nondisclosure. Plaintiff further argues that any compensation in the form of severance pay is akin to the concept of "salaries" which were required to be disclosed in Mans. v. Lebanon School Board, 112 N.H. 160 (1972).

The Court notes that,

[c]onstrued broadly, and without reference to the objectives of the right-to-know law, these provisions would exclude teachers' contracts from disclosure. But such an expansive construction allows the exemption to swallow the rule and is inconsistent with the purposes and objectives of the right-to-know law. RSA ch. 91-A (supp.); see Herron v. Northwood, 111 N.H. 324 (1971). Additionally such an expansive construction would justify the criticism that our act, although promising, is "weak and easily evaded."

The exemption provisions of our right-to-know law, RSA 91-A:5(IV)(supp.), are similar to the Federal Freedom of Information Act, 5 U.S.C.A. s. 552(b)(2), (4) and (6). There appears to be general agreement that the Federal Freedom of Information Act should be resolved "with a view to providing the utmost information," also "[t]he exemptions authorizing nondisclosure should be interpreted restrictively." *Recommendation No. 24 of the Administrative Conf. of the United States - Principles and Guidelines for Implementation of the Freedom of Information Act*, in *Administrative Conf. of the United States*, Report 1970-71, at 51-52 (1971).

Mans v. Lebanon School Board, 112 N.H. 160 (1972). Thus, this Court is inclined to interpret the exemption section of the New Hampshire Right-to-Know law narrowly in weighing the benefits of nondisclosure against the benefits of disclosure.

However, in light of the insufficiency of the information that is presently available to the Court, the Court is not prepared to engage in the balancing test at this time. Therefore, the Court will grant an in camera review of the facts of this case, in order to obtain sufficient information on which to base its decision. Therefore, the town is to provide to the Court for in camera review, copies of all executive session minutes, correspondence and any other documents concerning the matters raised in the petition. *WITHIN 10 DAYS*
D.M.G.

SO ORDERED.

Date: January 16, 1996


Douglas R. Gray
PRESIDING JUSTICE