

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS.

SUPERIOR COURT

ROCKINGHAM COUNTY NEWSPAPERS

v.

TOWN OF HAMPTON

ORDER

Following an in-camera review of the materials requested by the Court in its January 16, 1996 Order, the Court GRANTS Plaintiff's request to review the Town of Hampton's records pertaining to the December 6, 1995 resignation or severance of Hunter Riesberg, former Town Manager. In its January 10, 1996 formal request, Rockingham County Newspapers sought access to 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. Plaintiff argues that the benefits of disclosing records showing taxpayers how their money is being spent outweigh the benefits of nondisclosure.

On January 16, 1996, the Court granted an in-camera review of copies of all executive session minutes, correspondence and any other documents concerning the matters raised in the petition. After careful review of these materials, the Court ORDERS that they be disclosed to Rockingham County Newspapers. In its January 16 order, the Court noted its inclination to interpret the exemption section of the New Hampshire Right-to-Know law, RSA 91-A:5(IV), narrowly in weighing the benefits of nondisclosure against the benefits of disclosure. It bears repeating that,

(1)

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, 162 (1972).

Further, "... an expansive construction [of RSA 91-A:5(IV)] allows the exemption to swallow the rule and is inconsistent with the purposes and objectives of the right-to-know law." *Id.* The Supreme Court of New Hampshire has concluded that, because "[t]he right-to-know law, RSA ch. 91-A (Supp. 1973), was intended to increase public access to governmental proceedings in order to augment popular control of government and to encourage agency responsibility. Since its enactment, this Court has broadly construed the statute's provisions in order to further these objectives." Society for Protection of N.H. Forests v. Water Supply & Pollution Control Comm'n, 115 N.H. 192 (1975) *citing* Mans v. Lebanon School Bd., 112 N.H. 160 (1972). Moreover, the Supreme Court has reiterated its position that, "[t]he statutory exemption from public access to executive sessions, like all other exemptions, must be construed narrowly." Orford Teachers Assoc. v. Watson, 121 N.H. 118, 121 (1981). Specifically, the Orford Court stated that,

Although paragraph III [of RSA 91-A:3 (Supp. 1979)] permits a governmental body to withhold minutes [of executive sessions] in some circumstances, it does not allow the group to reserve that information indefinitely but requires disclosure when the circumstances compelling secrecy no longer apply.

121 N.H. 118, 121 (1981).

In the materials submitted by the Town of Hampton for in-camera review, the only stated reason for withholding the information from the press and from the public was that, [i]t was

further determined by the vote of all five (5) members that divulgence of the minutes and decisions reached in this nonpublic session would render the proposed action ineffective." See Minutes, re: Board of Selectmen/Emergency Meeting 12/1/95. However, the circumstances compelling nondisclosure of this information no longer apply. The Town of Hampton has accepted the resignation of Hunter Riesberg, and Mr. Riesberg has accepted another post as Town Manager in Hartford, Vermont. Thus, disclosure of the information surrounding his resignation, including any sums of money paid to him pursuant to a termination/resignation agreement, will no longer render the proposed resignation ineffective.

Accordingly, in weighing the benefits of disclosure against the benefits of nondisclosure, and in light of the changed circumstances surrounding the need for nondisclosure, the Court concludes that the citizens of the Town of Hampton have a right to know the information surrounding Mr. Riesberg's resignation. The Court ORDERS that the Town of Hampton comply with Rockingham County Newspaper's request for the information pertaining to Mr. Riesberg's resignation.

SO ORDERED.

Date: January 22, 1996

  
Douglas R. Gray  
PRESIDING JUSTICE