

THE STATE OF NEW HAMPSHIRE

STRAFFORD COUNTY

SUPERIOR COURT

David Scott

v.

City of Dover

Docket No.: 05-E-170

ORDER ON RIGHT TO KNOW PETITION

Pursuant to RSA 91-A, the petitioner seeks an order directing the respondent to disclose the name, position title, and salary for each Dover municipal employee whose gross annual pay exceeds \$60,000. The respondent moves to dismiss the petition, arguing the respondent has already furnished the petitioner with the information required by law, and the specific information the petitioner seeks is exempt from disclosure under RSA 91-A. The Union Leader Corporation ("the Union Leader") moves to intervene, arguing it is an interested party in this matter. The respondent objects to this motion. The court held a hearing on the merits of this case on August 24, 2005, and all parties were present. During the hearing, the court granted the Union Leader's motion to intervene. After reviewing the parties' arguments and the applicable law, the court finds and rules as follows.

The petitioner is an individual and a resident of the City of Dover ("the City"). On May 6, 2005, the petitioner submitted a request to the Acting City Manager, J. Michael Joyal, for copies of municipal records containing the name, position title, and salary of each municipal employee whose gross annual pay exceeds \$60,000. In response to the petitioner's request, the respondent provided the petitioner with a job classification table, which contained a list of municipal job positions and the

corresponding wages for each position for the 2003 calendar year. (Pet., Ex. B). The petitioner subsequently asked the respondent to provide the corresponding names of the individuals who held the municipal job positions. The respondent refused to provide the petitioner with the requested information, citing municipal employee privacy rights. (Pet., Ex. C).

The petitioner cites Mans v. Lebanon Sch. Bd., 112 N.H. 160 (1972), and various case law from other jurisdictions to support his argument that the public has a right to know the names and salaries of the respondent's employees. The petitioner argues the names of the respondent's employees are not "intimate details" and to disclose these names would not violate the privacy rights of these individuals.

The respondent argues New Hampshire's Right-to-Know Law, RSA 91-A, does not require the disclosure of the names of its employees, and the Mans case only requires a municipality to disclose salary amounts. The respondent also argues disclosing the employee names would violate the privacy rights of the employees, especially considering the accessibility of personal information through the use of current technology. Further, the respondent contends releasing the names of certain undercover law enforcement officers employed by the respondent would jeopardize the City's criminal investigations and may put the safety of these officers at risk. The respondent urges the court to look to Lamy v. NH P.U.C., 872 A.2d 1006, 1009 (N.H. 2005), and to follow the United States Supreme Court's three-prong analysis in U.S. D.O.D. v. FLRA., 510 U.S. 487 (1994), to find that the interests of the government and of the individual employees outweigh the public interest in this case.

The State Legislature created the Right-to-Know Law, to "ensure both the greatest possible public access to the actions, discussions and records of all public bodies, and their accountability to the people." RSA 91-A:1; see Liberty Union v. City of Manchester, 149 N.H. 437, 438 (2003). 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." Goods v. N.H. Legis. Budget Assistant, 148 N.H. 551, 553 (2002). The court resolves questions under 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. at 554. Therefore, the court construes "provisions favoring disclosure broadly, while construing exemptions narrowly." Id.

"With a view to providing [the public with] the utmost information," a court should narrowly interpret the Right-to-Know Law exemptions, which are provisions specifying what a public body need not disclose. Mans v. Lebanon Sch. Bd., 112 N.H. 160, 162-163 (1972) (citation omitted). In Mans, the Court devised a balancing test to determine if public records are confidential, or, in other words, to determine if disclosing these records would constitute "an invasion of privacy." See id. at 164; see also RSA 91-A:5, IV. Under Mans, to determine if the requested records are confidential and consequently exempted from the Right-to-Know Law disclosure requirements, a court must balance "the benefits of disclosure against the benefits of nondisclosure." 112 N.H. at 164. The Mans Court specifically found that disclosing the salaries of the teachers in the school district to the general public would not constitute an invasion of privacy, because this information was not "intimate details . . . the disclosure of which might harm the individual." Id. at 164 (citation omitted).

In New Hampshire, there are specific types of information that are exempt from the requirements of the Right-to-Know Law. Pursuant to RSA 91-A, IV, "records pertaining to internal personnel practices; confidential, commercial, or financial information . . . and personnel, medical, welfare, library user, videotape sale or rental, and other files whose disclosure would constitute invasion of privacy" are exempt from the Right-to-Know Law requirements. Generally, the court

strictly interprets exemptions to the Right-to-Know Law. Union Leader Corp. v. Fenniman, 136 N.H. 624, 626 (1993).

In N.H. Civ. Liberties Union v. City of Manchester, the Court went further than Mans and conducted a three-step analysis to ascertain whether the release of certain photographs "would constitute an invasion of privacy." See 149 N.H. 437, 440-442 (2003). First, a court must look to whether "there is a privacy interest at stake that would be invaded by disclosure" of the information sought. Id. at 440. If there is no privacy interest at stake, the Right-to-Know Law mandates disclosure. Id. Second, the court performing the analysis must determine if the public has an interest in the disclosure of this information. Id. In order for the public to have an interest in disclosure, a court must find "the requested information [serves] the purpose of informing the public about the conduct and activities of their government." Id. Third, a court must balance "the public interest in disclosure against the government interest in nondisclosure and the individual's privacy interest in nondisclosure." Id. In cases where this three-step analysis is to be applied, the party resisting disclosure "bears a heavy burden to shift the balance towards nondisclosure." Id. (citing Union Leader Corp. v. N.H. Housing Fin. Auth., 142 N.H. 540, 554 (1997)).

In this case, the respondent contends the privacy rights of its employees are at stake. Accordingly, this court follows the N.H. Civ. Liberties Union three-step analysis to determine whether the respondent's employees' names are exempt from disclosure under the Right-to-Know Law.

The respondent argues the names of its employees are private information, the release of which could jeopardize the safety and financial security of these individuals. The petitioner and the intervenor claim they do not seek any personal information about the respondents' employees, but merely seek to have these individuals identified in order to establish whose salary is paid with City taxes.

The New Hampshire Supreme Court and courts from other jurisdictions have found the release of an individual's name and address in conjunction with other personal information is a violation of a right to privacy. See Brent v. Paquette, 132 N.H. 415, 428 (1989); see also N.H. Civ. Liberties Union, 149 N.H. at 441 (A name, address, and date of birth is "personal and identifying information."). In this case, however, the petitioner seeks only the names and salaries of the respondent's employees. Although the respondent argues releasing the names of its employees could jeopardize their safety, the respondent has not convinced this court that the disclosure of only an individual's name, absent other extenuating circumstances, invokes an individual's privacy interests. Thus, because the privacy interests of the respondent's employees are not at stake, the Right-to-Know law mandates disclosure of their names.

Even if disclosing the names of the respondent's employees did invoke the privacy rights of the respondent's employees, the disclosure of this information serves the public purpose maintaining an accountable government. See Union Leader Corp. v. City of Nashua, 141 N.H. 473, 476 (1996) (quotations and citations omitted). Merely providing the salaries and the positions of these individuals does not satisfy the public's right to have "full disclosure of the mode and manner of public expenditures." Mans, 112 N.H. at 164. This court accepts that the safety and effectiveness of certain undercover law enforcement personnel may be jeopardized if the names of these individuals were released. Beyond these few, specific individuals, however, the respondent has not demonstrated that the City, itself, has an interest in nondisclosure. Thus, even if this court assumes the respondent's employees have a privacy interest in the nondisclosure of their names, and then balances the privacy interests of the respondent's employees in having their names withheld from the public against the interest of the public in maintaining an open and accountable government, the court finds in favor of releasing the information the petitioner seeks.

To address the respondent's concerns regarding the particular individuals involved in undercover law enforcement and to balance the interests of the respondent's employees with the interests of the public, the respondent shall provide the petitioner and the intervener with the requested information, redacting the names of the individuals involved in undercover law enforcement activities.

Accordingly, the Right-to-Know Petition seeking the names, job positions, and the salaries of the respondent's employees is GRANTED and the respondent's motion to dismiss is DENIED, consistent with the terms of this order.

So Ordered.

10-11-05
Date



Peter H. Fauver
Presiding Justice