

The State of New Hampshire

JUDICIAL BRANCH

SULLIVAN COUNTY

SUPERIOR COURT

No. 220-2020-CV-143

JONATHAN STONE

v.

CITY OF CLAREMONT

ORDER

In June 2007, an arbitrator approved a Stipulated Award between the plaintiff and the City of Claremont. A copy of the Award is attached as Exhibit 3 to the plaintiff's complaint.

Among other things, the Award required the City to "purge" the plaintiff's personnel file of certain documents. Stipulated Award, ¶ 5. Counsel for the City represents that records covered by the agreement were removed from the personnel file, although it isn't clear if they exist elsewhere in the City's universe of documents. The Award also directed the parties to keep the "existence, terms, and substance of this Award confidential . . . "except to the extent required by an order of some other agency, court of competent jurisdiction, or by law." *Id.* ¶ 4.

Relying on the Award's confidentiality provision, the plaintiff moves for a preliminary injunction against the City disclosing records that were to be eliminated from

the personnel file to the extent the records still exist and are responsive to a pending request under the Right to Know Law (RSA 91-A). This order addresses the limited issue of whether the agreement on confidentiality alone is enough to bar release of the records under the statute, even if the statute otherwise would require their release.

“A preliminary injunction is a provisional remedy that preserves the status quo pending a final determination of the case on the merits.” *DuPont v. Nashua Police Dept.*, 167 N.H. 429, 434 (2015) (internal quotation marks omitted). Securing a preliminary injunction requires four showings: (1) “an immediate danger of irreparable harm” to the party seeking the injunction; (2) that the moving party “would likely succeed on the merits”; (3) there is “no adequate remedy at law”; and (4) “the public interest would not be adversely affected if the court granted the preliminary injunction.” *N.H. Dept. of Environmental Servs. v. Mottolo*, 155 N.H. 57, 63 (2007). Granting injunctive relief is discretionary, “to be exercised according to the circumstances and exigencies of the case.” *MacDonald v. Jacobs*, 171 N.H. 668, 679 (2019).

Denying the injunction will not subject the plaintiff to “an immediate danger of irreparable harm,” because it remains to be determined whether the documents are responsive to the Right to Know Law request or if responsive, exempt from disclosure. Second, the plaintiff is unlikely to succeed on the merits of the question of whether a confidentiality agreement may supplant the statute. The Award acknowledges that its confidentiality provision yields to the requirements of law. Contracts, such as the

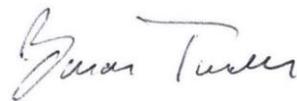
stipulation here, are not enforced if counter to public policy. *Mentis Sciences, Inc. v. Pittsburgh Networks, LLC*, 173 N.H. 584, 591 (2020). The public policy advanced by RSA 91-A “is to ensure both the greatest possible public access to the actions, discussions and records of all public bodies, and their accountability to the people,” RSA 91-A:1, and its provisions are construed in favor of disclosure. *Seacoast Newspapers, Inc. v. City of Portsmouth*, 173 N.H. 325, 330 (2020). So, not only is it unlikely the plaintiff would succeed on the merits — the parties could not lawfully agree that the City would violate the Right to Know Law — but an injunction also would adversely affect the public interest the statute advances.

The request for an injunction based solely on the confidentiality provision in the Stipulated Award, is DENIED. This order will be released to the parties and the intervenors, but it is otherwise sealed for 10 days. Unless a party files a motion with reasons to keep the order under seal, the order will be unsealed after 10 days and become part of the public file.

SO ORDERED.

DECEMBER 7, 2021

Clerk's Notice of Decision
Document Sent to Parties
on 12/08/2021



BRIAN T. TUCKER
SUPERIOR COURT JUDGE