

The State of New Hampshire

ROCKINGHAM COUNTY

SUPERIOR COURT

STATE OF NEW HAMPSHIRE

V.

MICHAEL VERROCCHI

No. 218-2020-CR-0077

**OMNIBUS ORDER ON STATE'S MOTION TO UNSEAL AFFIDAVIT
AND REQUEST OF ACLU OF NEW HAMPSHIRE AND THE UNION LEADER
CORPORATION.**

The defendant, Michael Verrocchi, is charged with one count of Reckless Conduct and one count of Disobeying a Police Officer occurring on November 12, 2012.

The state filed an arrest warrant and supporting affidavit with the Court on January 23, 2020 in order to support probable cause for the charges filed. On January 8, 2021, the state filed a motion to unseal the document. The defendant objected. A hearing was scheduled for February 9, 2021. Just prior to the hearing, the ACLU of New Hampshire and the Union Leader Corporation filed a request to participate at the hearing. The state and the defense objected. The Court GRANTED the request of the ACLU and the Union Leader Corporation. In so granting the request, however, the Court first heard arguments from the state and the defense. That portion of the hearing was sealed by the Court. The Court then allowed the ACLU and Union Leader to present their arguments. Both parties requested that the documents in question be unsealed.

For the following reasons, the state's motion is GRANTED in part and DENIED in part.

Analysis

"The preamble of the Right-to-Know Law ... stat[es], in part, that "[t]he purpose of this chapter 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. The purpose of the Right-to-Know Law is to "provide the utmost information to the public about what its government is up to." Goode, 148 N.H. at 555 (quotation omitted). Accordingly, the statute furthers "our state constitutional requirement that the public's right of access to governmental proceedings and records shall not be unreasonably restricted." Clay, 169 N.H. at 685 (quotation omitted). We therefore resolve questions regarding the Right-to-Know Law with a view to providing the utmost information, broadly construing its provisions in favor of disclosure and interpreting its exemptions restrictively. Id.; see also Dept. of Air Force v. Rose, 425 U.S. 352, 361 (1976) (noting that FOIA exemptions must be narrowly construed)." Seacoast Newspapers, Inc. v. City of Portsmouth, 173 N.H. 325, 338 (2020).

Here, the state has submitted an affidavit with the Court outlining the facts and circumstances surrounding the alleged criminal acts that occurred on November 12, 2012. For the most part, this affidavit outlines the fruits of Detective Todd Flanagan's investigation into the incident. At one point the affidavit mentions the Kroll Report and indicates that redacted portions of said report are available online through the Town of Salem's website. At the hearing, the parties conceded that much of the report is now in the public sphere. To the extent that the report mentions the fact that the defendant

was involved in an internal investigation, this information has already been released by the Court in a prior ruling. See Union Leader Corporation et al. v. Town of Salem, Rockingham County Superior Court 218-2018-CR-01406 Final Order on Remand (Shulman, J. 2021). The Court finds no reason to seal that information and finds that the public's right to know outweighs the defendant's argument regarding prejudice. Further, as stated above, the Court has already released the material through the civil action.

Much of the information in the affidavit consists of the results of the state's investigation into the alleged criminal acts. This is standard with any warrant and affidavit that is available to the public in criminal cases. However, the affidavit does diverge from the standard where it starts to describe and in some instances quote, the internal investigation involving the defendant. Paragraphs 12 through 15 of the affidavit contains personnel information of the type that would be consistent with employee performance and personnel actions that the employer may levy as a result of an investigation into an employee's actions. The Supreme Court has stated, "[w]e conclude that records documenting the history or performance of a particular employee fall within the exemption for personnel files." Seacoast Newspapers at 340. These are the types of records which are typically maintained in the human resources office and maintained in the defendant's personnel file. See Id.

Conclusion

For the reasons articulated herein, the Court GRANTS the state's motion in part and shall unseal all but paragraph's 12 through 15 of the affidavit. Paragraph's 12 through 15 shall be redacted. The ACLU and the Union Leader Corporation were allowed by the Court to intervene for the limited purpose to make arguments regarding the public's right to know on this limited issue which has now been resolved. The Court clarifies that they are not parties to this case and are not entitled to receive notice of hearings for future dates.

So ordered.

April 9, 2021

Date



Judge Daniel I. St. Hilaire

Clerk's Notice of Decision
Document Sent to Parties
on 04/09/2021