

THE STATE OF NEW HAMPSHIRE

SULLIVAN, SS

SUPERIOR COURT

No. 220-2020-CV-00143

**JONATHAN STONE**

v.

**CITY OF CLAREMONT**

**JOINT MOTION TO INTERVENE**  
**OF THE ACLU OF NEW HAMPSHIRE AND UNION LEADER CORPORATION**

NOW COME the American Civil Liberties Union of New Hampshire (“ACLU-NH”) and the Union Leader Corporation, by and through their attorneys, and jointly move to intervene in this case pursuant to Superior Court Rule 15.

1. Consistent with New Hampshire’s liberal pleading rules, intervention is broadly available and is governed by court rule: “Any person shown to be interested may become a party to any civil action upon filing and service of an Appearance and pleading briefly setting forth his or her relation to the cause ....” *See* N.H. Super. Ct. R. 15.

2. As the New Hampshire Supreme Court has explained:

“The right of a party to intervene in pending litigation in this state has been rather freely allowed as a matter of practice.” *Brzica v. Trustees of Dartmouth College*, 147 N.H. 443, 446, 791 A.2d 990 (2002) (quotation omitted). A trial court should grant a motion to intervene if the party seeking to intervene has a right involved in the trial and a direct and apparent interest therein. *Snyder v. N.H. Savings Bank*, 134 N.H. 32, 35, 592 A.2d 506 (1991). It is within the trial court’s discretion to grant intervenor status. *Samyn–D’Elia Architects v. Satter Cos. of New England*, 137 N.H. 174, 177, 624 A.2d 970 (1993).

*Lamarche v. McCarthy*, 158 N.H. 197, 200 (2008).

3. On October 21, 2020, the ACLU-NH sent a Right-to-Know request to the City of Claremont seeking: (i) all reports, investigatory files, and disciplinary records concerning the actions of former officer Jon Stone that led to his termination; and (ii) all personnel records of Mr.

Stone concerning the 11 internal affairs investigations with sustained findings. *See Exhibit 1*. On October 22, 2020, the Union Leader Corporation submitted a Right-to-Know request to the City of Claremont seeking similar information concerning Mr. Stone. *See Exhibit 2*.

4. Though the pleadings in this case are sealed, Proposed Intervenors believe, on information and belief, that the records they are requesting are directly at issue in this case. Indeed, in *Union Leader Corp. v. Town of Salem*, No. 2019-0206, 173 N.H. \_\_\_, 2020 N.H. LEXIS 102 (N.H. Sup. Ct. May 29, 2020), the New Hampshire Supreme Court overruled *Union Leader Corp. v. Fenniman*, 136 N.H. 624 (1993), and held that the “internal personal practices” exemption in RSA 91-A:5, IV was not categorical in nature. Rather, for “personnel file” information, the public’s interest in disclosure must be evaluated in determining whether this exemption applies. *See also Reid v. N.H. AG*, 169 N.H. 509, 527-28 (2016) (“[W]e now hold that the determination of whether material is subject to the exemption for ‘personnel ... files whose disclosure would constitute invasion of privacy,’ RSA 91-A:5, IV, also requires a two-part analysis of: (1) whether the material can be considered a ‘personnel file’ or part of a ‘personnel file’; and (2) whether disclosure of the material would constitute an invasion of privacy.”; “[P]ersonnel files are not automatically exempt from disclosure”).

5. Here, as the ACLU-NH and Union Leader Corporation will advance as intervenors, the public interest in disclosure is high and dwarfs any privacy interests that Mr. Stone may have. Mr. Stone simply has no privacy interest with respect to discipline implicating his official duties. Moreover, the public interest concerning police misconduct is immense, especially as Mr. Stone is a city councilor and seeks election to the New Hampshire House of Representatives.

6. As the ACLU-NH and Union Leader Corporation have filed Right-to-Know requests that, on information and belief, seek the information at issue in Mr. Stone’s complaint,

the ACLU-NH and Union Leader Corporation have “a right involved in the trial and a direct and apparent interest therein,” *see Lamarche*, 158 N.H. at 200, especially where the ACLU-NH and Union Leader Corporation assert that the records in question are public records under the Right-to-Know Law and should be released by the City.

7. Assuming that this Motion to Intervene will be granted, the ACLU-NH and Union Leader Corporation have provisionally filed their Joint Statement of Interest conveying their position in this case.

8. On October 22, 2020, the ACLU-NH and Union Leader Corporation contacted counsel for Mr. Stone and the City to inquire as to their position as to the relief requested in this Motion. No response has yet been received.

WHEREFORE, Proposed Intervenors ACLU-NH and Union Leader Corporation respectfully pray that this Honorable Court:

- A. Allow the ACLU-NH and Union Leader Corporation’s Joint Motion to Intervene, permit the ACLU-NH and Union Leader Corporation to intervene as parties in this case, and accept for filing the ACLU-NH and Union Leader Corporation’s provisionally-filed Joint Statement of Interest; and
- B. Award such other relief as may be equitable.

Respectfully submitted,

AMERICAN CIVIL LIBERTIES UNION OF NEW  
HAMPSHIRE

by its attorneys,

/s/ Gilles Bissonnette

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UNION LEADER CORPORATION

by its attorney,

/s/ Gregory V. Sullivan

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Date: October 22, 2020

**Certificate of Service**

I hereby certify that a copy of the foregoing was sent to all counsel or record pursuant to the Court's electronic filing system.

/s/ Gilles Bissonnette  
Gilles Bissonnette

October 22, 2020

## **Exhibit 1**



October 21, 2020

VIA EMAIL ([mchase@claremontnh.com](mailto:mchase@claremontnh.com))

Mark Chase  
Chief of Police  
Claremont Police Department  
58 Opera House Square  
Claremont, NH 03743

**Re: Right-to-Know Request**

Dear Chief Chase:

This is a Right-to-Know request to the Claremont Police Department (“the Department”) pursuant to RSA 91-A and Part I, Article 8 of the New Hampshire Constitution by the American Civil Liberties Union of New Hampshire (“ACLU-NH”). The ACLU-NH defends and promotes the fundamental principles embodied in the Bill of Rights and the U.S. and New Hampshire Constitutions. In furtherance of that mission, the ACLU-NH regularly conducts research into government activities in New Hampshire. We ask that your Department waive all fees associated with responding to this request. Please contact me to discuss the fee waiver in advance of preparing any copies.

Below is the specific request:

1. All reports, investigatory files, and disciplinary records concerning the actions of former officer Jon Stone that led to his termination.<sup>1</sup>
2. All personnel records or Mr. Stone concerning the 11 internal affairs investigations with sustained findings.

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<sup>1</sup> In conducting public interest balancing with respect to an internal audit report that documented misconduct of officers within the Salem Police Department, the Rockingham County Superior Court concluded: “A balance of the public interest in disclosure against the legitimate privacy interests of the individual officers and higher-ups strongly favors disclosure of all but small and isolated portions of the Internal Affairs Practices section of the audit report.” See *Union Leader Corp. and ACLU-NH v. Town of Salem*, No. 218-2018-cv-01406, at \*3 (Rockingham Cty. Super. Ct. Apr. 5, 2019) (emphasis in original), available at [https://www.aclu-nh.org/sites/default/files/field\\_documents/salem\\_final\\_order.pdf](https://www.aclu-nh.org/sites/default/files/field_documents/salem_final_order.pdf). The analysis is no different here. See also *Union Leader Corp. and ACLU-NH v. Town of Salem*, No. 2019-0206, 173 N.H. \_\_\_, 2020 N.H. LEXIS 102 (N.H. Sup. Ct. May 29, 2020) (overruling 1993 *Fenniman* decision in holding that the public’s interest in disclosure must be balanced in determining whether the “internal personnel practices” exemption applies to requested records).

If produced, these records must be produced irrespective of their storage format; that is, they must be produced whether they are kept in tangible (hard copy) form or in an electronically-stored format, including but not limited to e-mail communications. If any records are withheld, or any portion redacted, please specify the specific reasons and statutory exemption relied upon. *See* RSA 91-A:4, IV(c) (“A public body or agency denying, in whole or part, inspection or copying of any record shall provide a written statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld.”).

Thank you for your anticipated cooperation. I look forward to hearing from you as soon as possible. Of course, if you have any questions or concerns, do not hesitate to contact me.

Very truly yours,

*/s/ Gilles Bissonnette*

Gilles Bissonnette  
ACLU-NH, Legal Director  
[Gilles@aclu-nh.org](mailto:Gilles@aclu-nh.org)

Cc: Shawn M. Tanguay ([STanguay@dwmlaw.com](mailto:STanguay@dwmlaw.com))



## **Exhibit 2**

From: **Mark Hayward** <[mhayward@unionleader.com](mailto:mhayward@unionleader.com)>  
Date: Thu, Oct 22, 2020 at 10:40 AM  
Subject: Right to Know request, Jonathan Stone  
To: <[mchase@claremontnh.com](mailto:mchase@claremontnh.com)>, <[centralcollections@claremontnh.com](mailto:centralcollections@claremontnh.com)>  
Cc: Timothy Kelly <[tkelly@unionleader.com](mailto:tkelly@unionleader.com)>, Mike Cote <[mcote@unionleader.com](mailto:mcote@unionleader.com)>

Dear Chief Chase and Claremont City Clerk,

I am writing to request the review and possible reproduction of certain documents related to former Claremont Police Department employee, Jonathan (Jon) Stone. This request includes:

- Any and all documents involving any commendations, complaints, investigations and discipline, including termination, of Stone.
- Any and all documents related to any internal affairs investigations and findings against Stone.
- Any and all documents involving any collective-bargaining-related grievance, arbitration and arbitration decision involving Stone.
- Any and all documents your office has exchanged with the New Hampshire Police Standards and Training Council regarding the certification of Stone.
- Any and all documents your office has exchanged with the New Hampshire Attorney General regarding Stone's possible placement on the Exculpatory Evidence Schedule.

I am making these requests under the New Hampshire Right to Know Law, RSA 91-A. As you know, this request initiates several responsibilities and deadlines on your part.

Ideally, I request that electronic versions of these documents, such as PDFs, be emailed to me. If that is not possible, please contact me with an estimate of copying costs, and we can decide how to move forward.

Thank you so much, Chief Chase, for giving this matter your prompt attention.

Sincerely,

Mark Hayward

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"Open Up New Hampshire"