

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH NORTH, ss

SUPERIOR COURT

No. 216-2022-CV-00508

JOHN DOES

v.

MANCHESTER POLICE DEPARTMENT

BLACK LIVES MATTER-MANCHESTER; and
AMERICAN CIVIL LIBERTIES UNION OF NEW HAMPSHIRE

v.

MANCHESTER POLICE DEPARTMENT

**CROSS PETITION OF INTERVENORS BLACK LIVES MATTER-MANCHESTER
AND ACLU OF NEW HAMPSHIRE FOR ACCESS TO PUBLIC RECORDS UNDER
THE “RIGHT TO KNOW LAW,” RSA CH. 91-A, AND PART I, ARTICLE 8 OF THE
NEW HAMPSHIRE CONSTITUTION**

(PRIORITY HEARING REQUESTED UNDER RSA 91-A:7)

NOW COME Intervenors Black Lives Matter-Manchester and American Civil Liberties Union of New Hampshire, by and through their attorneys, and submit this cross petition seeking relief against the Manchester Police Department (hereinafter, “Department”) pursuant to RSA ch. 91-A and Part I, Article 8 of the New Hampshire Constitution.

This case concerns the Manchester Police Department’s (“Department”) investigation into Officer Christian Horn’s sustained misconduct where he, while on duty in February 2021, texted other officers a meme that made a “joke” out of the May 2020 murder of George Floyd and included the phrase “Black Love.” The racist meme at issue is the following:



It appears from the redacted documents produced by the Department that Mr. Horn admitted to “conduct unbecoming of an officer,” and he was suspended for 10 days (7 of which were held in abeyance for one year) and ordered to undergo sensitivity training.

In an effort to narrow this dispute, Intervenor, without prejudice, are *no longer* seeking unredacted copies of *all* the records concerning the Department’s investigation into the racist meme sent by Mr. Horn, including the names of *all* recipients of the meme. Rather, in response to Plaintiffs’ lawsuit, Intervenor have now targeted their remaining request to include *only* the unredacted information in these responsive records concerning the two supervisors who saw the racist meme and did not report it. Based on the face of Plaintiffs’ Petition for Temporary and Permanent Injunctive Relief and Declaratory Judgment, it is unclear if any of the Plaintiffs are these two supervisors who saw the meme and did not respond.

As a threshold matter, if none of the Plaintiffs are these two supervisors, then Plaintiffs' Petition for Temporary and Permanent Injunctive Relief and Declaratory Judgment is now moot and should either be withdrawn or dismissed. Plaintiffs do not have standing to assert the privacy rights of two supervisors who are not parties to this case. With this dismissal, there would be no basis for the Department to withhold this more targeted information concerning the two supervisors.

In seeking access to this information, Intervenors incorporate by reference their Objection to and Motion to Dismiss Plaintiffs' Petition for Temporary and Permanent Injunctive Relief and Declaratory Judgment, which has been contemporaneously filed. As explained in that filing, if any of the Plaintiffs are the two supervisors, then Plaintiffs' Petition for Temporary and Permanent Injunctive should be dismissed because RSA ch. 91-A only allows aggrieved requesters to seek relief in Court. And if this Court is not inclined to reach this initial "reverse" Chapter 91-A question, then the information concerning the two supervisors should be released because the public interest in disclosure outweighs any privacy interests in nondisclosure.

Intervenors also request expedited consideration of this case under the Right-to-Know Law. *See* RSA 91-A:7 ("In order to satisfy the purposes of this chapter, the courts shall give proceedings under this chapter high priority on the court calendar."). Intervenors further allege as follows:

1. This Court has jurisdiction over this matter pursuant to RSA 91-A:7. "Any person aggrieved by a violation of [RSA ch. 91-A] may petition the superior court for injunctive relief. In order to satisfy the purposes of [RSA ch. 91-A], the courts shall give proceedings under [RSA ch. 91-A] high priority on the court calendar. The petition shall be deemed sufficient if it states facts constituting a violation of this chapter" RSA 91-A:7.

2. Venue is proper in this Court pursuant to RSA 507:9 because both Intervenor Black Lives Matter-Manchester and the Respondent Department are located in Hillsborough County.

COUNT I
FAILURE TO PRODUCE DOCUMENTS PURSUANT TO RSA CH. 91-A AND PART I,
ARTICLE 8 OF THE NEW HAMPSHIRE CONSTITUTION

3. All prior paragraphs are incorporated.

4. Intervenor ACLU-NH filed a request under RSA ch. 91-A to the Manchester Police Department on August 8, 2022 seeking “[a]ll reports, investigatory files, and records concerning Christian Horn’s sending of a text message as described in the following article¹, including the actual contents of the text message, any and all records relating to Mr. Horn’s discipline (e.g., multiple-day suspension, sensitivity training and reassignment from detective to patrol officer), and the recipients of the message.” BLM-Manchester filed a request to the Manchester Police Department identical to the ACLU-NH’s request on September 1, 2022.

5. To date, the Department has not produced identifying information with respect to the two supervisors who saw Mr. Horn’s racist meme and did not report it.

6. The Department’s refusal to produce this information fails to comply with the dictates of RSA ch. 91-A and Part I, Article 8 of the New Hampshire Constitution.

7. Accordingly, the requested records are public documents under RSA ch. 91-A and should be produced immediately.

WHEREFORE, Intervenor Black Lives Matter-Manchester and ACLU-NH respectfully pray that this Honorable Court:

- A. Rule that the information in the responsive records concerning the two supervisors who saw the racist meme in question are public records that must be made available for inspection by Intervenor and members of the public under RSA ch. 91-A and Part I, Article 8 of the New Hampshire Constitution;

- B. Pursuant to RSA 91-A:8, I, grant Intervenors reasonable attorneys' fees and costs as this lawsuit was necessary to enforce compliance with the provisions of RSA ch. 91-A or to address a purposeful violation of RSA ch. 91-A. Fees are appropriate because the Department and the Plaintiffs knew or should have known that the conduct engaged in was in violation of RSA ch. 91-A;
- C. Give this action "priority on the Court calendar" as required by RSA 91-A:7, by issuing Orders of Notice forthwith and scheduling a hearing on the relief Intervenors seek; and
- D. Award such other relief as may be equitable.

Respectfully submitted,

BLACK LIVES MATTER-MANCHESTER AND
THE AMERICAN CIVIL LIBERTIES UNION OF
NEW HAMPSHIRE FOUNDATION,

By its attorneys,

/s/ Gilles Bissonnette

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Date: October 5, 2022

Certificate of Service

I hereby certify that a copy of the foregoing was sent to all counsel of record.

/s/ Gilles Bissonnette
Gilles Bissonnette

October 5, 2022