

VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 22-CV-01246

News & Citizen v. Village of Johnson

ENTRY REGARDING MOTION

Title: Motion Miscellaneous Motion for Access (Motion: 1)
Filer: Matthew B. Byrne
Filed Date: May 13, 2022

The motion is GRANTED.

This is a public records matter involving the withholding of a resignation letter submitted by a public employee to a public body. Plaintiff News & Citizen has filed a Motion for Access seeking a copy of this resignation letter submitted by Troy Dolan, who served as a foreman in the Village of Johnson's Water and Light Department until March 2022. The Village has denied, this request citing to the personal record exemption of 1 V.S.A. § 317(c)(7). The parties have agreed that *in camera* review of the letter is proper to resolve the question of disclosure.

Background Facts

The following facts are not in dispute. On March 14, 2022, Troy Dolan resigned his position with the Village of Johnson. On that date, Mr. Dolan submitted a resignation letter to the Village Trustees. On or about that date, Mr. Dolan also issued a public statement concerning his resignation in which he alleged that: (1) he had received statements that he perceived as threats against himself and his family; (2) the statements had caused him months of severe stress, anxiety, and trauma; (3) he felt the Village Trustees has not taken the threats seriously and had, in his perception, deemed his and his family's safety unimportant; (4) resignation was Mr. Dolan's only option to protect himself and his family; and (5) he felt the entire situation was unfair to him.

Prior to this resignation letter, Mr. Dolan had been involved in a labor arbitration concerning a union employee, Paul Stankiewicz, who was employed as a first-class lineman for the Village's Water and Light Department and subject to Mr. Dolan's direct supervision. The arbitration decision, which came out on February 3, 2022, details Mr. Stankiewicz's issues with the Department and chronicles an incident where Mr. Stankiewicz made a comment to Mr. Dolan's wife that she, according to the arbitrator, interpreted as threatening. The Arbitrator ruled that Mr. Stankiewicz had been improperly terminated and ordered his immediate reinstatement.

Following this Order, the Village Trustees asked Water and Light Department employees to share their thoughts about Mr. Stankiewicz at a public meeting on February 23, 2022. Mr. Dolan stated that: (A) he had a great deal of concern about Mr. Stankiewicz returning to the Department; (B) Mr. Stankiewicz had called Mr. Dolan after hours and made statements that Mr. Dolan interpreted as threatening him physically and a indicating a desire to hurt Mr. Dolan's family financially; (C) Mr. Dolan believed the threats to be credible; (D) Mr. Stankiewicz's return would create an unsafe work environment for Mr. Dolan; and (E) Mr. Dolan felt he could not trust Mr. Stankiewicz to administer necessary first aid to Mr. Dolan if it became necessary.

Other employees echoed these sentiments during this meeting. During this time, the News & Citizen reported these issues and quote the statements of Mr. Dolan and other. The News & Citizen states that it has covered this story because it is a matter of public importance involving questions of governance, management, and oversight with a publicly owned and controlled utility.

On March 17, 2022, the News & Citizen requested a copy of Mr. Dolan's resignation letter from the Village Clerk. The Clerk denied the request citing exemption 1 V.S.A. § 317(c)(7). The News & Citizen appealed this denial to the Trustees, who after some deliberation voted to uphold the denial. The present litigation followed.

Standards for Reviewing Public Record Denials

The Parties agree that Mr. Dolan's resignation letter is a public record as defined under 1 V.S.A. § 317(b). As a public record, the letter is subject to the Public Record Act (1 V.S.A. §§ 315, et sec. It is axiomatic, that the Public Records Act is to be liberally construed to favor disclosure. See, e.g., 1 V.S.A. § 315; *Rutland Herald v. Vermont State Police*, 201 VT 24, ¶ 8.

It is similarly well-established that an exemption to the Public Record Act is to be narrowly construed, that the agency bears the burden of proof in case of such an exemption, and that any doubts should be resolved in favor of disclosure. *Caledonia-Record Publishing, Co. v. Walton*, 154 Vt. 15, 20 (1990).

Given the Village's assertion of exemption under 1 V.S.A. § 317(c)(7), the Court's analysis focuses on the concept of "personal documents" as laid out in the exemption. The Vermont Supreme Court has held that "we must construe the term 'personal documents' in a limited sense to apply only when the privacy of the individual is involved. Thus, it covers personal documents only if they reveal 'intimate details of a person's life, including any information that might subject the person to embarrassment, harassment, disgrace, or loss of employment or friends.'" *Trombley v. Bellows Falls Union High School Dist.* 27, 160 Vt. 101, 109–10 (1993) (quoting *Young v. Rice*, 826 S.W.2d 252, 255 (Ark.1992)).

In *Trombley*, the Vermont Supreme Court noted that this exemption is premised on a balancing between the public's right to know and an individual public employee's expectation of privacy. *Id* at 109–10. Subsequent Vermont Supreme Court decisions have indicated that this examination is a fact-specific analysis. *Norman v. Vermont Office of Ct. Adm'r*, 2004 VT 13, ¶ 9 (mem.). This includes looking at the content of the document, the reasonable privacy expectations attached, and the nature of the counterbalancing public interest. *Kade v. Smith*, 2006 VT 44, ¶¶ 7–9 (mem.).

As a final point, the language of *Trombley*, *Norman*, and *Kade* emphasize that the analysis should focus on the public interest in disclosure and the individual's privacy interest. It does not include the public agency or any interest it might have in keeping such a letter from disclosure. While it is almost always the agency that is asserting the Personal Exemption, it is always done on behalf of the individual and not for the agency's own benefit.

Analysis of the Dolan Resignation Letter

As an initial point, the Court notes that unlike other employment documents, such as disciplinary records, evaluations, or employment files, a resignation letter is normally drafted only by the individual whose privacy is at issue. In at-will employment situations, such as the present one, there is no requirement for the employee to give reasons or other statements for

resigning their position. *Jones v. Keogh*, 137 Vt. 562, 563–64 (1979); see also *Dulude v. Fletcher Allen Health Care, Inc.* 174 Vt. 74, 82 (2002) (noting that “an employee may be discharged at any time with or without cause” and by implication may resign with or without cause). Therefore, any letter of resignation need not include information beyond the fact that the employee is resigning and the terms of their departure. Nevertheless, as the Vermont Supreme Court has noted in other context, sharing private information with a public entity does not in and of itself constitute a waiver of any exemption. See *Long v. City of Burlington*, 2018 VT 103, ¶ 26 (noting that “voluntary submission of [] information that qualified for protection” under a Section 317 exemption “does not operate as a waiver of that protection”).

While the Court is not adopting Plaintiff’s argument that resignation letters are per se public records, the self-creation and limited necessary language suggests that it is the author’s choice to include and to disclose any additional information to a public body and that such an act is by its nature indicative of a lower expectation of privacy. If an employee includes additional private details in a public document, it is difficult to assign a high expectation of privacy short of some evidence from the individual or the public entity to the contrary.¹

In this case, the expectation for privacy is even lower. Mr. Dolan delivered his letter to a public body that is obligated under 1 V.S.A. § 312 to conduct all of its business in public. He also made at least three public statements that contained at least ten different points of information (points 1-5 in his public statement and points A-E in his pre-resignation public statements to the Trustees) that if taken in totality constitute nearly all of the subject matter in his resignation letter. Comparing the resignation letter to the public statements, there is little in the letter that is not already part of the public record, and what little that appears to be new follows as part of the other public disclosures. While the Village notes that the February 23d meeting did not involve the subject of Mr. Dolan’s resignation, it did contain a discussion of Mr. Stankiewicz and Mr. Dolan’s concerns, which were also discussed in the earlier arbitration. Taken with his public statement, there is little inductive reasoning needed to connect the concerns. While the

¹ This is largely a function of the language of both 1 V.S.A. § 317(c)(7) and the analysis under the *Trombley* line of cases. For a counter-example, New Jersey has adopted an exemption favoring privacy of personal and personnel records. See, e.g., *Kieffer v. Highpoint Regional High School*, 2010 WL 5289002 (NJ App. Ct. Dec. 28, 2010) (unpub. mem.) (affirming the exemption of a resignation letter from a public records request under NJSA 47:1A-10, which allows for only a “very limited disclosure” of public employee records).

resignation letter connects these dots, there is little evidence of an expectation that this information would be held or intended by the writer as a private expression of concern when most of the information was already before the public.

In total, the Court finds there was a low expectation on the part of Mr. Dolan that the contents of this resignation letter would be held private once it was turned over to the Village Trustees and that the document contains very little information outside of the public record.

Turning then to the public interest side of the balancing test, the issue at hand has generated a number of articles in the press. The story raises questions about the management and oversight of a public utility.² The matter is an issue of general public concern, has generated public attention, and involves public funds and public utility services. As such, the public interest factor is high and strongly warrants disclosure.

Comparing the two sides, the Court concludes based on the limited privacy concerns and strong public interest that disclosure is warranted, and that the exemption cannot extend to the resignation letter as a matter of law under a *Trombley* analysis. *Trombley*, 160 Vt. at 110. Therefore, the Dolan resignation letter must be released a public record under 1 V.S.A. § 319.

Alleged Inaction by the Village

The News & Observer has asked the Court to clarify the process for releasing a public record and whether the Village acted in violation of Vermont Public Record Law. Apart from the burden that an agency carries in asserting an exemption and the burden of proof, 1 V.S.A. § 319(a) speaks to the obligation that a public agency must “sustain its action.” This language coupled with the language of 1 V.S.A. § 318(c)(2)(B) requiring the agency to provide “a brief statement of the reasons and supporting facts for upholding the denial” creates an on-going obligation on the part of the agency to establish the factual basis for the denial and then to continue to review this basis either providing supplemental information if additional facts become apparent or shifting away from denial if subsequent facts cause the basis to erode and

² As Plaintiff notes, a public utility raises the stakes ever further as it is a publicly regulated entity that receives oversight and scrutiny from the Vermont Public Utility Commission. As such, the actions or inactions of a public utility carry consequences beyond the governance of the Village and may involve state regulatory authority. This facet bolsters Plaintiff’s argument by elevating the public interest, at least partially, to the level of state issue.

become unsustainable. Neither statute nor caselaw lay out how this burden is to be sustained or abandoned as each exemption and citation thereof is likely to be fact specific. In the present case, the Village determined that the resignation letter fell into the Personal Exemption because it contained Mr. Dolan's personal opinions and could, if released, arguably create a public record that would cause him to lose friends or future employment opportunities. While the Court has found this reasoning insufficient in-light of the circumstances, it is not without merit in its assertion.

Plaintiff's primary issue is really one of timing. 1 V.S.A. § 319(b) requires the Court to give precedence to public records requests over other portions of its docket. Such process normally involves setting a status conference early in an appeal. In the present case, it appears that the case was filed at the beginning of April. The Village filed an answer within 30 days followed by Plaintiff's Motion for Access. The sole delay appears to be on the Court's part in not setting a status conference early in this process to have the parties determine whether the issue warranted briefing, *in camera* review, or further discussion between the parties to narrow the documents and issues. Instead, Plaintiffs filed a motion, parties fully briefed the issue, then it went before the Court in late July where it was determined that *in camera* review was warranted. This decision followed within a week of the hearing.

While there was some delay, the process largely worked as established. The purpose of Public Records law, in part, is to provide quick, responsive exchanges of information. When a request is initially delivered, the agency has a limited amount of time to respond. The language of 1 V.S.A. § 318(d) obligates the agency to work in a cooperative manner with the requesting party to assist in the review and identification of documents. If an exemption is asserted, the agency must make a brief and succinct statement explaining its basis. If there is continued disagreement, it is appealed internally within the agency, giving it another opportunity to alter or to clarify and respond. Only then does the process come to Court, where the statute calls for an expedited process. While there is an adversarial nature to this process, there is also language encouraging parties to communicate and requiring the public agency to continue to look closely at the documents and asserted exemptions. Such examination should not end with the release or denial of such documents, but it should continue as the agency continues to refine its position and collect information. The agency's examination is not limited to the statutory language of the

Public Records Act but should be informed by the light of caselaw and the nuance that the courts have adopted in applying this Act to the numerous appeals and challenges. These cases have, as in the case of the present exemption, provided a detailed analysis that a public agency should be applying at the outset and need not wait for the trial court to apply.

Based on the current record, the Court does not find any bad faith or arbitrary or capricious behavior on the part of the Village in withholding the resignation letter. 1 V.S.A. § 320. Nevertheless, Plaintiff is entitled to reasonable attorney's fees under 1 V.S.A. § 320(a) as the Court's decision is that the resignation letter was improperly withheld. Plaintiff shall submit an affidavit and supporting documents for this award.

ORDER

Based on the foregoing, the Village of Johnson is directed to release the Dolan Resignation Letter no later than Monday, August 8, 2022 to the News & Citizen as requested. Counsel for News & Citizen shall prepare a filing in support of its proposed attorney's fees and costs under 1 V.S.A. § 320(a).

Electronically signed on 8/2/2022 1:19 PM pursuant to V.R.E.F. 9(d)

A handwritten signature in black ink, appearing to read "D. Richardson", is written over a light blue rectangular background. Below the signature is a solid black horizontal line.

Daniel Richardson
Superior Court Judge