

Washington Superior Court Considers Public Records Request

In May 2010, the Town of St. Johnsbury initiated a search for a new town manager and contracted with VLCT to advertise the position and screen the applications. After applications were received and the initial screening and review were conducted, VLCT forwarded the 45 applications to the Town. In September, Ralph Nelson was selected for the position. The Caledonian-Record filed a public records request seeking all documentation concerning applications of the three finalists. The Town refused to disclose names and application materials for candidates who were not selected for the position. It also withheld a spreadsheet prepared by VLCT that listed all of the 45 applicants with a brief summary of each applicant's education and experience.

The Caledonian-Record appealed the Town's denial of the request to the Washington Superior Court. *Caledonian-Record Publishing Co. v. Town of St. Johnsbury*, 689-9-10 Wcnv. The Town cited 1 V.S.A. § 317(c)(7) as grounds for withholding the information sought by the paper. This provision – recognized as the “personal documents” exception to the Vermont Public Records Act – has been held by the Vermont Supreme Court to allow public records custodians to withhold information contained in a public record or document that would reveal “intimate details of a person's life, including any information that might subject a person to embarrassment, harassment, disgrace or loss of employment or friends.” However, information must be disclosed if the public interest in disclosure outweighs the potential harm to the individual. *Trombley v. Bellows Falls Union High School*, 160 Vt. 101 (1993).

After hearing testimony from the parties and reviewing the documents in question, Judge Crawford ordered the Town to produce the requested documents after redaction of the unsuccessful applicants' names and “information which would identify the individual applicant such as a prior position as mayor or town manager of another community.” Judge Crawford noted that disclosure of applicants who are considering leaving their current positions could damage relations with their present employers, and that by redacting identifying information, “the individual applicants will receive protection from embarrassment or adverse consequences at their current place of work.” The Town was ordered to produce Mr. Nelson's full resume and application material as it was “no secret that he had been hired by the Town” and none of these interests remained.

When responding to a public records request, balancing of competing public and private interests is rarely an easy task. As the Vermont Public Record Act's statement of policy notes, “Officers of government are trustees and servants of the people and it is in the public interest to enable any person to review and criticize their decisions even though such examination may cause inconvenience or embarrassment. All people, however, have a right to privacy in their personal or economic pursuits, which ought to be protected unless specific action is needed to review the action of a governmental officer.” 1 V.S.A. § 315. As Judge Crawford noted, the public has a strong interest in knowing how a selectboard conducts a search for a new manager and whether the search has been conducted in an objective, even-handed manner. At the same time, applicants seeking a position with the municipality have a personal interest in protection against adverse employment consequences at their current place of work.

Redaction of the names and identifiable information of applicants strikes an appropriate balance between these two competing interests, allowing citizens to review the decisions of their elected officials while protecting the economic concerns of those seeking employment with a municipality. This protection of applicants' identities also serves an important third interest not addressed by the court – broadening the pool of qualified applicants and thereby increasing the likelihood that a municipality will be able to select the individual most qualified for the job, not just those who are presently unemployed or who have no fear of damaging their relationship with their present employer. Judge Crawford's decision provides welcome guidance and clarification to this important municipal issue.

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