

STATE OF MAINE
CUMBERLAND, SS

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CLERK OF SUPERIOR COURT
CUMBERLAND, SS

SUPERIOR COURT
DOCKET NO. AP-05-026

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RE: CIVIL - 9/05 ✓

SOUTH PORTLAND POLICE
PATROLMAN'S ASSOCIATION
and POLICE COMMAND AND
SUPERVISORY UNIT,

Petitioners

vs.

ORDER ON 80B APPEAL

CITY OF SOUTH PORTLAND

OCT 31 2005

Respondent

Before the court is Respondent City of South Portland's (the "City") motion for Summary Judgment on an appeal brought by Petitioners South Portland Police Patrolman's Association and the Police Command and Supervisory Unit, (the "Associations") pursuant to M.R.Civ.P. 80B.

The Associations appeal the City's denial of access to a report (the "Report") produced in March of 2005 by City of South Portland Human Resource Director Beth Drennan-Bates. This report is the product of an internal affairs investigation. The Associations claim, on information and belief, that the Report includes matters relating to management practices within the police department as a whole, which are discoverable under Maine's Freedom of Access Act, 1 M.R.S.A. § 401 et seq. ("FOAA").

The parties agree that the legal issue in this matter is whether the Report is a public document accessible under the Freedom of Access Act, 1 M.R.S.A. § 401 et seq. ("FOAA") or whether it falls within the personnel records exemption to the FOAA, 30-A M.R.S.A. § 2702. The City has produced a copy of the Report for

the court's inspection, and argues that in camera review of this document is all that is needed for the court to render summary judgment in this matter. The court agrees that this matter is ripe for summary judgment, and that the Associations are able to, and have capably responded to the City's legal argument that the Report is protected from access under the personnel records exemption to the FOAA.

I. Is the Report Protected Under the Personnel Records Exemption to the FOAA?

The FOAA states in part, "Public proceedings exist to aid in the conduct of the people's business. It is the intent of the Legislature that. . . the records of their actions be open to public inspection." 1 M.R.S.A. § 401. § 402 of the FOAA further states,

'public records' means any written. . . matter. . . that is in the possession or custody of an agency or public official of this State or any of its political subdivisions. . . and has been received or prepared for use in connection with the transaction of public or governmental business. . . except: (A) Records that have been designated confidential by statute.

30-A M.R.S.A. § 2702 states, with explicit reference to the FOAA, that

municipal records pertaining to an identifiable employee. . . contain[ing] [c]omplaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action [are] . . . confidential. . . If disciplinary action is taken, the final written decision relating to that action is no longer confidential after the decision is completed if it imposes or upholds discipline.

The Law Court has interpreted the purpose of this exemption as a protection for municipal employees from public disclosure of any of their personnel records except the final written report of any disciplinary action taken against them. *Lewiston Daily Sun v. City of Lewiston*, 596 A.2d 619. Thus, to the extent the Report contains information concerning complaints against a specific employee,

it is exempted from disclosure under § 2702. *See id.* Additionally, even if the investigation resulted in disciplinary action, the statute allows access only to a final written decision relating to that action. The Report is itself *not* the “final written decision” which imposes discipline, thus, to the extent it is confidential, it remains so under § 2702, even if discipline has been imposed.

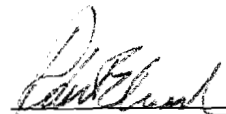
A different question arises with respect to information in the Report not directly related to an identifiable employee. The Law Court has stated that the FOAA mandates a liberal construction of its terms, and that courts therefore are required to interpret strictly any statutory exceptions to its requirements. *Bangor Pub. Co. v. City of Bangor*, 544 A.2d 733, 736 (ME 1988). § 2702 by its terms only exempts from the FOAA records pertaining to an identifiable employee. The Report is a mixed product of employee critique and recommendations involving the whole department. Therefore, the information that is not employee-specific should be made available to the Associations under the FOAA. *See id.* Accordingly, the court has redacted those portions of the Report that are confidential under FOAA.

A copy of this order with the redacted Report is to be provided to Respondent and a copy of this order without the redacted Report is to be provided to Petitioners. If no timely appeal is taken from this order by Respondent, then the redacted Report shall be provided to Petitioners. If this order is timely appealed by Respondent, the redacted Report will remain impounded pending resolution of the appeal.

The entry is:

Respondent's motion for summary judgment is GRANTED. The redacted Report is to be released to Petitioners upon expiration of the appeal period.

Dated at Portland, Maine this 30th day of September, 2005.



Robert E. Crowley
Justice, Superior Court

