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THE SUPREME COURT OF NEW HAMPSHIRE

Grafton

Case No. 2024-0648

Citation: Town of Hanover v. Valley News, 2026 N.H. 16

TOWN OF HANOVER/HANOVER POLICE DEPARTMENT

v.

VALLEY NEWS

Argued: November 20, 2025

Opinion Issued: April 15, 2026

Gallagher, Callahan & Gartrell, P.C., of Concord (Matthew V. Burrows on the brief and orally), for the plaintiff.

Orr & Reno, P.A., of Concord (William L. Chapman on the brief and orally), for the defendant.

GOULD, J.

[¶1] The defendant, Valley News, appeals an order of the Superior Court (MacLeod, J.) approving the recommendation of the Judicial Referee (Houran, R.) denying its motion to reopen the case to award attorney's fees and costs against the plaintiff, Town of Hanover/Hanover Police Department (Hanover). We reverse and remand for an award of attorney's fees and costs.

[¶2] The following facts are taken from the trial court’s orders in this case or recite the contents of documents in the record before us. In October 2023, two Dartmouth College students were arrested in connection with an incident that occurred in the Town of Hanover. Valley News filed a Right-to-Know request pursuant to RSA chapter 91-A with Hanover to obtain the arrest records for the two students. See RSA ch. 91-A (2023 & Supp. 2025). Hanover, Valley News, and an attorney for the two students engaged in several discussions about the request through emails exchanged between December 2023 and February 2024. At the conclusion of those discussions, Hanover stated that it could not release the records because of the active criminal prosecution of the case even though counsel for the students assented to the disclosure of the records. Valley News, however, maintained that disclosure was required.

[¶3] Hanover then filed this action for declaratory judgment, asking:

Is the Town required by law to release public records of [the two students’] arrest (whether redacted or in full) pursuant to Valley News’s Right-to-Know request in light of the pending criminal prosecution of [the students]?

(Bolding omitted.) Valley News counterclaimed, requesting the court to “order [Hanover] to release the arrest records subject to redacting the students[’] personal identifying information.” Following a hearing, the trial court ordered Hanover to release the records and granted Valley News’s request for costs and attorney’s fees.

[¶4] Hanover filed a motion to reconsider. On August 14, 2024, the court denied the motion with respect to the previous order to disclose the records but granted the motion with respect to the award of costs and attorney’s fees. The court noted that Hanover had contended that the arrest records fell within certain exemptions from disclosure that this court adopted in Murray v. New Hampshire Division of State Police, 154 N.H. 579 (2006). The so-called Murray exemptions are not found in RSA chapter 91-A; rather, they replicate the exemptions set forth in 5 U.S.C. § 552(b)(7). We have described our incorporation of an exemption from the federal Freedom of Information Act into New Hampshire’s statutory scheme as “for the guidance of our judges” as “a good standard to effectuate the balance of interests required by RSA ch. 91-A with regard to police investigatory files” given “the absence of legislative standards for such files” in New Hampshire’s Right-to-Know Law. Lodge v. Knowlton, 118 N.H. 574, 577 (1978); see Montenegro v. City of Dover, 162 N.H. 641, 646 (2011) (clarifying that in Murray, we intended to adopt the test set out in 5 U.S.C. § 552(b)(7) as amended after Lodge). Neither party has challenged the soundness of Murray’s reasoning.

[¶5] The Murray exemptions permit an agency to withhold from disclosure “records or information compiled for law enforcement purposes” under conditions set forth in six specific circumstances denominated (A) through (F). Murray, 154 N.H. at 582 (quotation omitted). Here, Hanover invoked Murray exemptions (A) and (B), which apply to:

records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, [or] (B) would deprive a person of a right to a fair trial or an impartial adjudication.

Id. (quotation omitted). The trial court noted in its order on reconsideration, among other things, that “the core issues [Hanover] faced concerned the extent of the Murray (B) exemption and the necessary burden to show its applicability,” which, “in New Hampshire, are unsettled areas of law.” The court concluded that Hanover “made a good faith effort to navigate a complex and unsettled area of the Right-to-Know Law and the court’s [previous] conclusion that [Hanover] should have known it was violating the Right to Know Law was erroneous.” The court then reversed its prior order awarding Valley News attorney’s fees and costs.¹ Neither party sought reconsideration of, or appealed, the August 14 order.

[¶6] On September 18, 2024, Hanover released the arrest records to Valley News. Valley News then filed, on October 7, 2024, a motion to reopen the case and to award attorney’s fees and costs. Valley News argued that “given the content of the records,” Hanover knew or should have known that its withholding of those records was in violation of the Right-to-Know Law. Hanover objected, challenging both the timeliness and the substantive merits of Valley News’s motion. The trial court assumed without deciding that the motion was not procedurally barred and concluded that nothing in Valley News’s arguments, “or in the disclosed records upon which those arguments rely, persuades the Court that its decision upon reconsideration that Hanover neither knew nor should have known that it was violating the Right to Know Law was in error.” This appeal followed.

[¶7] We first address whether this appeal is untimely, as Hanover argues for affirmance on this alternative ground. Hanover first argues that because a question presented in Valley News’s brief asks whether “the trial court’s August [1]4 ruling that [Hanover] did not know or should not have known it had violated the Right-to-Know Law by withholding each of the five arrest records

¹ Although neither party mentions the distinction on appeal, we note that the “knew or should have known” finding “is required for an award of legal fees, but not for costs.” ATV Watch v. N.H. Dep’t of Resources & Econ. Dev., 155 N.H. 434, 439 (2007). Thus, the trial court’s reversal of its “knew or should have known” determination should not have affected its prior award of costs.

[at issue is] an unsustainable exercise of discretion,” this appeal filed on November 15, 2024, is untimely. See Sup. Ct. R. 7(1)(A) (requiring that an appeal be filed “within 30 days from the date on the clerk’s written notice of the decision on the merits”). In response, Valley News argues that it is appealing the trial court’s November 5 order on the motion to reopen which, without explanation, “reaffirmed that portion of [the] August 14th ruling that reversed the award of attorney’s fees and costs.” We agree with Valley News that its reference to “the trial court’s August [1]4 ruling” in one of its questions presented on appeal does not mean that this appeal is taken from the court’s August 14 order and is therefore untimely.

[¶8] Hanover nevertheless contends that this appeal is untimely because, even though the trial court considered the merits of Valley News’s motion to reopen, it did not waive the untimeliness of that motion. See Sup. Ct. R. 7(1)(C) (providing, in pertinent part, that “[i]n the absence of an express waiver of the untimeliness made by the trial court within the appeal period, the appeal period is not extended even if the trial court rules on the merits of an untimely filed post-decision motion”). We disagree. Although Hanover’s argument rests upon the premise that Valley News’s motion to reopen — “filed . . . 51 days after the trial court’s order” — was untimely, Hanover cites no filing deadline in the Superior Court Rules that Valley News failed to meet. This is not a case in which the trial court treated the motion to reopen as a motion for reconsideration, which would be subject to the 10-day filing deadline in Superior Court Rule 12(e). See Riverbend Condo Ass’n v. Groundhog Landscaping & Prop. Maint., 173 N.H. 372, 376 (2020). Hanover has failed to persuade us that Valley News’s motion was anything other than what it purported to be: a motion to reopen. Valley News asserts that “the first time [it] could meaningfully raise whether Hanover knew or should have known it had violated the Right-to-Know Law was not until it received the records on September 18, 2024 at 11:00 PM.” We agree and therefore conclude that the motion was timely.

[¶9] We now consider whether the trial court erred by failing to award Valley News its reasonable attorney’s fees and costs. The Right-to-Know Law “provides that fees shall be awarded if the trial court finds that the lawsuit was necessary to make the requested information available and that the public body knew or should have known that its conduct violated the statute.” Colquhoun v. City of Nashua, 175 N.H. 474, 478-79 (2022); see RSA 91-A:8, I (2023).

[¶10] Valley News challenges the trial court’s conclusion that Hanover neither knew nor should have known that its conduct violated the Right-to-Know Law. Hanover responds that “[g]iven the unsettled nature of the law associated with [the] Murray Exemption (B), the trial court properly concluded that Hanover did not know (and could not have known) that withholding the challenged records would violate RSA [chapter] 91-A.” Hanover asserts that

this court “has never fully examined the contours of [the] Murray (B) exemption” and that “it remains unclear whether this Court would adopt the federal test for assessing [the] Murray (B) exemption or whether it would impose a standard that is more favorable to the rights of the accused in a criminal matter.”

[¶11] “Although it is true that our case law has not specifically” addressed the Murray (B) exemption, “we need not resolve that issue today to determine whether [Hanover] should have known that it was violating the Right-to-Know Law when it denied [Valley News’s] request.” Colquhoun, 175 N.H. at 479. Valley News contends that Hanover “knew, or should have known, its blanket denial violated the Right-to-Know Law.” In other words, Valley News argues that Hanover knew or should have known that at least some of the material in the arrest records sought was not exempt from disclosure and was therefore subject to release, even if other material may have been exempt and subject to redaction.

[¶12] Valley News points to, among other things, “two arrest reports prepared by Lieutenant Schibuola on November 3 and 29, 2023 [which] consisted of publicly available records: the Dartmouth College president’s message to the community about the arrest of the students; Dartmouth conduct policies available online; and two student position statements also available online.” Valley News argues that “[t]he public records obtained by Lieutenant Schibuola are governmental records that the Valley News was entitled to inspect.” We agree. The Right-to-Know Law “requires public bodies and agencies to make . . . governmental records available upon request,” “except as otherwise prohibited by statute or RSA 91-A:5.” Michaud v. Town of Campton Police Dep’t, 176 N.H. 542, 546 (2024), 2024 N.H. 19, ¶9. The statute defines “[g]overnmental records” to mean “any information created, accepted, or obtained by, or on behalf of, any public body, or a quorum or majority thereof, or any public agency in furtherance of its official function.” RSA 91-A:1-a, III (2023) (emphasis added). Thus, Hanover knew or should have known that, at a minimum, the publicly-available information contained in the reports prepared by Schibuola were governmental records subject to disclosure under the Right-to-Know Law.

[¶13] Hanover nevertheless disagrees that the public availability of these documents compels the conclusion that Hanover is chargeable with knowledge that the Right-to-Know Law required their disclosure. It argues:

By their very nature, the challenged documents were compiled by law enforcement in the course of their investigation into criminal conduct committed by the two students at issue. The content of the challenged records and the fact that they were compiled by law enforcement provide an insight into areas of exploration with respect to the underlying criminal matter—whether such areas

are ultimately viable for trial or abandoned. The fact that such information could be obtained through other channels does not undermine Hanover's concerns regarding their disclosure, particularly given the import of [the] Murray (B) exemption under these circumstances.

(Citation omitted.) We are not persuaded. We have reviewed the documents that were otherwise publicly available and fail to see how they provide any "insight" that might satisfy either of the conditions necessary to warrant exemption under the Murray categories claimed by Hanover, namely interference with enforcement proceedings or deprivation of a right to a fair trial or impartial adjudication. See Murray, 154 N.H. at 582; see also 38 Endicott St. N. v. State Fire Marshal, 163 N.H. 656, 661 (2012) (describing two-part inquiry applicable to the Murray exemption as a threshold inquiry into whether the material was "compiled for law enforcement purposes" followed by an inquiry into whether the consequences of releasing the material would meet one of the six enumerated criteria (quotation omitted)). Two of the documents, in particular, are statements of generally-applicable college policies regarding student conduct and the use of areas on the college campus. As Valley News argues, "Hanover had to know that neither Dartmouth record, which applies to all students, had any relevance to the Murray (A) and/or (B) exemption." Hanover cites no plausible reason for uncertainty about whether the Right-to-Know Law required the release of these documents, at a minimum.

[¶14] Hanover's reasoning appears to be that because the law regarding the Murray (B) exemption is unsettled, it was entitled to withhold the requested records in their entirety, even those portions that do not plausibly implicate the Murray (B) exemption. We rejected similar reasoning in Colquhoun, and we do so here. See Colquhoun, 175 N.H. at 483 (noting that City's categorical denial on unduly burdensome grounds was "based upon its assumption that if it would be unduly burdensome for the City to search for and locate all of the requested documents, then it was entitled to refuse to undertake any search by simply denying the request as unduly burdensome"). As in Colquhoun, "the record demonstrates that [Hanover] knew or should have known that its blanket denial violated the Right-to-Know Law," and we conclude that the trial court erred in ruling otherwise. Id. at 484.

[¶15] Hanover also appears to contend that another prerequisite for an award of attorney's fees is absent in this case, namely that the "lawsuit was necessary in order to enforce compliance with the provisions of this chapter or to address a purposeful violation of this chapter." RSA 91-A:8, I. Hanover argues:

[T]he counterclaim brought by Valley News was unnecessary because this is not a case where Valley News was forced to file a complaint with the trial court. Instead, after back and forth

between the parties, Hanover proactively sought the assistance of the trial court in recognition of the competing interests and unsettled area of the law associated with [the] Murray (B) exemption.

[¶16] As Valley News points out, however, the trial court made a contrary finding which Hanover did not ask the court to reconsider. Specifically, the trial court found:

Here, it has taken over six months for [Valley News] to gain access to records which it has a right to access. Although [Hanover] initiated the legal proceedings, that does not negate a finding that the proceedings were necessary to make the arrest records available. It was [Hanover's] actions that led to [Valley News's] obtaining an attorney to secure access to the arrest records.

Accordingly, to the extent Hanover contends that the “necessity of the lawsuit” prerequisite to an award of attorney’s fees is absent here, we accept the trial court’s unchallenged finding to the contrary and reject that argument. Cf. ATV Watch, 155 N.H. at 442 (construing prior version of the statute and concluding that its plain language “indicates that the legislature intended for a petitioning party to recover attorney’s fees when retention of legal counsel is necessary to secure access to public documents”).

[¶17] Finally, to the extent Hanover contends that an award of attorney’s fees and costs is unwarranted in light of its “good faith efforts . . . to navigate an unsettled area of the law,” we are not persuaded. As Hanover notes, we have “encourage[d] all public bodies, and members of the public making Right-to-Know requests, to embrace th[e] spirit [of collaboration], and work together to efficiently and effectively resolve disputes involving RSA chapter 91-A.” Salcetti v. City of Keene, No. 2019-0217 (non-precedential order at 13), 2020 WL 3167669, at *10 (N.H. June 3, 2020). That encouragement of cooperation, however, does not give a public body license to engage in conduct that it knows or should know violates the Right-to-Know Law. We are constrained by the language of RSA 91-A:8, I, and that language is clear: a public body or public agency that violates any provision of the Right-to-Know Law “shall be liable for . . . costs incurred in a lawsuit under” that statute if “the court finds that such lawsuit was necessary in order to enforce compliance with the provisions of [the statute] or to address a purposeful violation of [the statute]” and “shall be liable for reasonable attorney’s fees” if the court additionally “finds that the public body, public agency, or person knew or should have known that the conduct engaged in was in violation of” the statute. RSA 91-A:8, I (emphases added). Having concluded that this lawsuit was necessary to enforce compliance with the Right-to-Know Law and that Hanover knew or should have known that its blanket denial violated that law, we necessarily conclude that

Valley News is entitled to an award of reasonable attorney's fees and costs under RSA 91-A:8, I. Accordingly, we reverse and remand for an award of attorney's fees and costs.

Reversed and remanded.

DONOVAN and COUNTWAY, JJ., concurred.