STATE OF MICHIGAN

COURT OF APPEALS

RONALD KENDALL and MARY KENDALL, Plaintiffs-Appellants,	UNPUBLISHED December 28, 2006
v	No. 270115 Van Buren Circuit Court
PAW PAW TOWNSHIP, Defendant-Appellee.	LC No. 05-053481-CZ

Before: Murphy, P.J., and Smolenski and Kelly, JJ.

PER CURIAM.

Plaintiffs appeal as of right from a circuit court order granting defendant's motion for summary disposition in this action brought under the Freedom of Information Act (FOIA), MCL 15.231 *et seq*. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). Statutory interpretation is a question of law which is also reviewed de novo. *In re MCI Telecommunications Complaint*, 460 Mich 396, 413; 596 NW2d 164 (1999).

The trial court granted defendant's motion in part pursuant to MCL 15.233(3), opining that, based on the sheer number of requests for information submitted to defendant, plaintiffs had abused their rights under the statute.

The FOIA permits a public body to "make reasonable rules necessary to protect its public records and to prevent excessive and unreasonable interference with the discharge of its functions." MCL 15.233(3). "The express purpose of this rule-making authority is to *protect* records and prevent *interference* with the discharge of the public body's functions." *Cashel v Smith*, 117 Mich App 405, 411; 324 NW2d 336 (1982) (emphasis in original). It does not authorize the public body to deny otherwise valid requests simply because it questions the requester's motives. *Id.* at 411-412. Further, the FOIA does not impose a good-faith limitation on the right to seek access to public records, and a court cannot read into a statute anything "that is not within the manifest intent of the Legislature as gathered from the act itself." *In re S R*, 229 Mich App 310, 314; 581 NW2d 291 (1998). The only limitations imposed by the FOIA are that the requester not be incarcerated, that the document requested be a public record, that the request be in writing, and that the request describe the record sufficiently to enable the public body to

find it. MCL 15.231(2); MCL 15.233(1). Thus, the trial court's belief that plaintiffs had abused their right to obtain documents under the FOIA was not a proper basis for granting defendant's motion.

The trial court also granted defendant's motion, in part, by finding that the fees charged were reasonable. Defendant was entitled to charge up to the hourly wage of its lowest paid employee for the cost of labor involved in fulfilling certain requests. MCL 15.234(3). However, plaintiffs' claim was based in part on the allegation that defendant charged a fee in circumstances not permitted by MCL 15.234 and the policy defendant adopted pursuant to that statute. Although a public body may, but is not required to charge a fee for searching for and providing records, if it chooses to do so, it must "comply with the legislative directive on how to charge." *Tallman v Cheboygan Area Schools*, 183 Mich App 123, 130; 454 NW2d 171 (1990). "A public body is not at liberty to simply 'choose' how much it will charge for records." *Id*.

Defendant's policy provided that it would impose fees for finding records and making them available for viewing, but only "when the failure to charge such a fee would result in an unreasonably high cost to the township." An unreasonably high cost was deemed to result from the work when the estimated time involved exceeded 60 minutes. Defendant granted several requests, but demanded that plaintiffs pay $11.50 in advance for each.

The submitted evidence did not show that there was no genuine issue of material fact that defendant charged the fee in compliance with the statute and with its policy. Defendant failed to show that the work involved in satisfying the requests actually exceeded 60 minutes. If the work involved did not exceed 60 minutes, responding to the request would not result in an unreasonably high cost and thus a fee for searching for, examining, and redacting documents could not be imposed. Therefore, defendant failed to show that it was entitled to judgment with respect to Count I of plaintiffs' complaint.

The trial court also granted defendant's motion in part on the ground that it had properly withheld salary information on one of its employees under MCL 15.243. "The exemptions in the FOIA are narrowly construed, and the party asserting the exemption bears the burden of proving that the exemption's applicability is consonant with the purpose of the FOIA." *Detroit Free Press, Inc v Dep't of Consumer & Industry Services*, 246 Mich App 311, 315; 631 NW2d 769 (2001).

Exempt records include those that contain "[i]nformation of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy." MCL 15.243(1)(a). "Information is of a personal nature if it 'reveals intimate or embarrassing details of an individual's private life' according to the moral standards, customs, and views of the community." *Detroit Free Press, Inc v City of Southfield*, 269 Mich App 275, 282; 713 NW2d 28 (2005), quoting *Bradley v Saranac Community Schools Bd of Ed*, 455 Mich 285, 293; 565 NW2d 650 (1997). The names and salaries of employees are not exempt from disclosure under MCL 15.243(1)(a). *Id.* at 282-285; *Penokie v Michigan Technological Univ*, 93 Mich App 650, 663-664; 287 NW2d 304 (1979). Assuming that sensitive information apart from salary is exempt, that alone does not warrant nondisclosure. If a public record contains both exempt and nonexempt material, "the public body shall separate the exempt and nonexempt material and make the nonexempt material available for examination and copying." MCL 15.244(1). Thus, the court may order disclosure of a public record that has been redacted to

conceal the exempt material. *Manning v City of East Tawas*, 234 Mich App 244, 249-250; 593 NW2d 649 (1999). Therefore, the trial court erred in ruling that the requested information was wholly exempt from disclosure.

The trial court also granted defendant's motion, in part, on the ground that defendant's responses to other requests were appropriate without further explanation. We note that with respect to plaintiffs' requests for certain "resolutions," defendant denied the requests solely because the actions were taken by motion rather than by resolution, but failed to show that the record requested was not sufficiently described to enable it to comply with the request. MCL 15.235(4)(b); *Cashel, supra* at 412. Defendant withheld proof of a contractor's insurance solely because it was not a "public document" without showing that the document was not a "public record" as defined by MCL 15.232(e) or that it was not sufficiently described to enable defendant to comply with the request. Further, the fact that defendant later provided the document through discovery may have rendered any request for disclosure moot, but did not preclude consideration of plaintiffs' requests for costs, attorney fees, and punitive damages for defendant's violation if the violation is proved. *Walloon Lake Water Sys, Inc v Melrose Twp*, 163 Mich App 726, 733; 415 NW2d 292 (1987). With respect to plaintiffs' request for a subscription pursuant to MCL 15.233(1), the record shows that defendant granted the request but subsequently failed to comply. Assuming without deciding that a request, once granted, need not be honored if it were granted in error, defendant failed to present any evidence that the request was granted in error.

For these reasons, the trial court erred in granting defendant's motion for summary disposition.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William B. Murphy
/s/ Michael R. Smolenski
/s/ Kirsten Frank Kelly