

STATE OF MICHIGAN
COURT OF APPEALS

BRADLEY CHRISTOPHER RICHMAN,

Plaintiff-Appellant,

v

INGHAM COUNTY,

Defendant-Appellee.

UNPUBLISHED

November 18, 2021

No. 356147

Ingham Circuit Court

LC No. 20-000495-CZ

Before: MARKEY, P.J., and BECKERING and BOONSTRA, JJ.

PER CURIAM.

Plaintiff appeals by right the trial court’s order denying his motion for summary disposition under MCR 2.116(C)(10) and granting summary disposition in favor of defendant under MCR 2.116(I)(2). We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

Plaintiff requested information from defendant under Michigan’s Freedom of Information Act (FOIA), MCL 15.231 *et seq.*, seeking records relating to a complaint against two Ingham County 911 dispatchers for alleged misuse of the Computer Assisted Dispatch (CAD) system.¹ Defendant provided records concerning the complaint and disciplinary actions taken, but redacted the complainant’s name, address, and phone number.

Plaintiff filed a complaint with the trial court alleging that defendant had violated FOIA by redacting the complainant’s name and address. Defendant answered, asserting in relevant part that the information was exempt under FOIA. Plaintiff moved for summary disposition under MCR 2.116(C)(10). After a hearing on plaintiff’s motion, the trial court granted summary

¹ The complaint against the two dispatchers involved their entry of the phrase “Black Lives Matter” into the CAD system during what the Ingham County 911 Central Dispatch Director termed “an incident of civil unrest” in May 2020. The dispatchers were disciplined for misuse of the CAD system.

disposition in favor of defendant under MCR 2.116(I)(2), determining that the redacted information was properly withheld under FOIA's privacy exemption, MCL 15.243(1)(a).

This appeal followed.

II. STANDARD OF REVIEW

In evaluating a motion for summary disposition brought under MCR 2.116(C)(10), a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the party opposing the motion. Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. [*Detroit Free Press, Inc v Dep't of Consumer & Indus Servs*, 246 Mich App 311, 314; 631 NW2d 769 (2001) (quotation marks and citation omitted).]

This Court reviews de novo whether the trial court properly interpreted and applied FOIA. See *ESPN, Inc v Mich State Univ*, 311 Mich App 662, 664; 876 NW2d 593 (2015). We also review de novo whether a public record is exempt from disclosure under FOIA. *King v Mich State Police Dep't*, 303 Mich App 162, 174; 841 NW2d 914 (2013). We review for clear error the trial court's factual findings underlying its application of FOIA. *Id.* A finding is clearly erroneous if, after reviewing the entire evidence, this Court is left with a definite and firm conviction that a mistake was made. *Id.*

III. ANALYSIS

Plaintiff argues that the trial court erred by determining that the name of the complainant² was exempt from disclosure under FOIA. We disagree.

In *Rataj v Romulus*, 306 Mich App 735, 748-749; 858 NW2d 116 (2014), this Court described FOIA as follows:

FOIA is a manifestation of this state's public policy favoring public access to government information, recognizing the need that citizens be informed as they participate in democratic governance, and the need that public officials be held accountable for the manner in which they perform their duties. Our Supreme Court has repeatedly described FOIA as a "prodisclosure statute," and this Court has held that FOIA's disclosure provisions must be interpreted broadly to ensure public access. While it is true that FOIA contains several exceptions to the duty to disclose, these exemptions must be construed narrowly, and the burden of proof rests with the party asserting an exemption. Under FOIA, a public body must

² Plaintiff does not argue on appeal that the complainant's address and phone number were improperly withheld.

disclose all public records that are not specifically exempt under the act. [Quotation marks and citations omitted.]

FOIA provides several ways in which information in public records may be exempt from disclosure. *Id.* at 753. The privacy exemption, MCL 15.243, provides in pertinent part:

(1) A public body may exempt from disclosure as a public record under this act any of the following:

(a) Information of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy.

As our Supreme Court has explained, the privacy exemption has two prongs: "First, the information must be 'of a personal nature.' Second, it must be the case that the public disclosure of that information 'would constitute a clearly unwarranted invasion of an individual's privacy.'" *Mich Federation of Teachers & Sch Related Personnel v Univ of Mich*, 481 Mich 657, 675; 753 NW2d 28 (2008). The Court specified that "embarrassing, intimate, private, or confidential" details of an individual are "of a personal nature." *Id.* at 676 (quotation marks and citations omitted, emphasis removed). Accordingly, our Supreme Court held that public employees' home addresses and telephone numbers are exempt under the privacy exemption. *Id.* However, this Court has held that the names of private citizens and government employees, "[i]n the absence of special circumstances," are not "[i]nformation of a personal nature," and are not exempt from disclosure. *Rataj*, 306 Mich App at 753-754, quoting MCL 15.243(1)(a).

If the requested information is of a personal nature, a court must "determine whether disclosure of the information at issue would constitute a clearly unwarranted invasion of an individual's privacy." *Mich Federation of Teachers*, 481 Mich at 681-682. This analysis invokes the "core-purpose" test developed in *Mager v Dep't of State Police*, 460 Mich 134, 145-146; 595 NW2d 142 (1999).

Under that test, a court must balance the public interest in disclosure against the interest Congress intended the exemption to protect, and the only relevant public interest in disclosure to be weighed in this balance is the extent to which disclosure would serve the core purposes of the FOIA, which is contributing significantly to public understanding of the operations or activities of the government. [*Mich Federation of Teachers*, 481 Mich at 673 (quotation marks and citations omitted).]

In *Detroit Free Press*, this Court considered "whether information contained in consumer complaint files and the database [of complaints] is information of a personal nature." *Id.*, 246 Mich App at 317. The Court concluded that it was, because the requested information included "sensitive details pertaining to people's personal lives." *Id.* at 318. However, the Court concluded that the information generally was not protected from disclosure because it would "contribute significantly to public understanding of how defendant investigates consumer complaints." *Id.* at 320. Nonetheless, the Court determined that disclosure of the names and addresses of private citizens who file complaints did not serve that purpose and that the complainants' names and addresses were therefore exempt from disclosure under FOIA:

We do not believe, however, that disclosing the names and addresses of private citizens who file complaints would likewise illuminate the public's understanding of defendant's functions. In our opinion, disclosing the names and addresses of private citizens would not further the knowledge of the public concerning how their government operates. Unlike the information in the complaint files and the database, which could potentially shed light on why defendant chooses to investigate some complaints over others, plaintiff's request for the names and addresses of private individuals is unrelated to how well defendant is complying with its statutory functions. [*Id.* at 320-321 (quotation marks and citation omitted).]

We conclude that the complainant's name falls within the privacy exemption. As to the first prong of the test, as in *Detroit Free Press*, we decline to simply consider whether the name of the complainant, in a vacuum, constitutes personal information; rather, our task is to consider whether that name is personal information in the context of the filing of a complaint with a government agency. See *Mager*, 460 Mich at 143 (declining to consider in a vacuum whether the names and addresses of registered gun owners were personal information, but instead considering whether gun ownership and registration was information of a personal nature). We conclude, under these circumstances, that the name of the complainant is personal information. Although all of the concerns noted in *Detroit Free Press* may not be implicated in this case, the complainant made his or her complaint under the promise of confidentiality, presumably wishing to keep the information both private and confidential. *Mich Federation of Teachers*, 481 Mich at 676. We conclude that the first prong of the *Mich Federation of Teachers* test has been satisfied.

As to the second prong, disclosure of the complainant's name would appear to do little to advance FOIA's core purpose. See *Detroit Free Press*, 246 Mich App at 320-321. Rather, as defendant points out, the name of the complainant, whose complaint was independently investigated, would not appear to shed light on defendant's performance of its public function. *Id.* Notably, the non-redacted information in the documents provided in response to plaintiff's request *does* speak to this function: it illustrates what the complaint was, how it was investigated, and the ultimate disposition. Plaintiff does not explain how disclosure of the complainant's name would provide additional relevant information when the complainant's identity was "unrelated to how well defendant is complying" with its public function. *Id.* We conclude that redaction of the complainant's name strikes the right "balance between preserving the informative value of the records sought and protecting the individual's right to privacy." *Id.* at 321 (quotation marks and citation omitted).

Plaintiff offers no argument to the contrary, but merely argues that the trial court erroneously considered potential reasons that this plaintiff could desire the redacted information. Plaintiff is correct that "initial as well as future uses of information requested under FOIA are irrelevant in determining whether the information falls within exemption, as is the identity of the person seeking the information." *Rataj*, 306 Mich App at 752 (quotation marks and citation omitted). Nonetheless, the trial court's statements regarding the possible uses of this information does not render invalid its conclusion that the privacy exemption applies.

Further, redaction of the complainant's name is in the public interest. In *Kent Co Deputy Sheriffs' Ass'n v Kent Co Sheriff*, 463 Mich 353; 616 NW2d 677 (2000), the plaintiff sought

records pertaining to disciplinary decisions that the defendant public body made concerning its employees. *Id.* at 355-356. The defendant appears to have argued that certain records it withheld pertained to internal investigations and were, therefore, exempt from disclosure. See *id.* at 365. A representative of the defendant stated in an affidavit:

1. Internal investigations are inherently difficult because employees are reluctant to give statements about the actions of fellow employees.
2. If their statements would be a matter of public knowledge they might refuse to give any statements at all or be less than totally forthcoming and candid.
3. Also, disclosure could be detrimental to some employees.
4. Public disclosure of records relating to internal investigations into possible employee misconduct would destroy or severely diminish the Sheriff's Department's ability to effectively conduct such investigation. [*Id.* at 365-366.]

Our Supreme Court affirmed this Court's decision upholding the defendant's nondisclosure because "these reasons soundly establish that the public interest favors nondisclosure of these records." *Id.* at 366.

In this case, the Ingham County 911 Central Dispatch Director made similar statements via affidavit, stating that defendant had conducted an internal investigation into a complaint of employee misconduct and needed to protect its ability to earn full and candid cooperation from its employees during such investigations. We find the reasoning of *Kent Co Deputy Sheriffs' Ass'n* persuasive.³

Affirmed.⁴

/s/ Jane E. Markey
/s/ Jane M. Beckering
/s/ Mark T. Boonstra

³ Plaintiff argues that he was not required to support his motion for summary disposition with affidavits because he appeared *in propria persona* and argued in person on his own behalf. Plaintiff cites no authority for the proposition that a party appearing in propria persona is not held to the standard of the court rules governing summary disposition motions. Regardless, we affirm the trial court for the reasons stated.

⁴ Because we affirm under the privacy exemption, we need not address defendant's alternative arguments.