

IN THE COURT OF CLAIMS OF OHIO

LOREN C. SENGSTOCK,	:	CASE NO. 2021-00330PQ
	:	
Requester	:	SPECIAL MASTER JEFF CLARK
	:	
vs.	:	
	:	
CITY OF TWINSBURG,	:	<u>RESPONDENT’S MOTION TO</u>
	:	<u>DISMISS</u>
Respondent	:	

Now comes Respondent, City of Twinsburg, by and through undersigned counsel, and hereby respectfully requests this Honorable Court to dismiss the Public Records Complaint filed by Loren C. Sengstock on June 16, 2021.

On April 22, 2021, Requester, Loren C. Sengstock, (hereafter “Sengstock” or “Requester”) made a public records request seeking the following records:

1. Account Trend (5 yr history) report for all funds both revenue & expenditures for 1/1/2014-12/31/2021;
2. Departmental Payroll Register a of 12/31/2020;
3. RITA Distribution report for 1/1/2018 – 12/31/2020;
4. Capital Assets Listing Report as of 12/31/2020;
5. Vendor Audit Trail Report as of 12/31/2020;
6. Employee Health Insurance Plan Costs Options report as of 12/31/2020.

In two separate responses (May 11, 2021 and May 20, 2021) the City of Twinsburg provided all of the documents requested with minimal redactions. Sengstock filed the instant Complaint seeking the redacted information.

The parties participated in mediation that resolved two of the three matters in dispute. The sole remaining issue before the Court is the Requester's desire to obtain the names of the employees of the City of Twinsburg who are under the age of eighteen and the City's commitment to protecting minor employees' personal identity.

The City of Twinsburg respectfully requests this Court to dismiss Requester's Complaint pursuant to Section 2743.75(E)(2) of the Ohio Revised Code. This Motion is further supported by the Brief attached hereto and incorporated herein.

Respectfully submitted,

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BRIEF IN SUPPORT

Through the mediation process the City has already provided Requester with the employee's individual healthcare deductions so item 3 has been resolved. Additionally, through mediation, the City has already provided the itemized list of personal payroll deductions reflected on the Payroll Register for employee's individual (non-City related) deductions such as wage garnishments, voluntary AFLAC payments, child support, etc. Furthermore, the City has agreed to provide additional clarification of these deductions as sought by the Requester. Therefore, the sole remaining issue before this Court is can the City redact the names of part-time/seasonal employees that are under the age of 18 when providing a copy of the Payroll Register?

Requester asked for a copy of the "Departmental Payroll Register as of 12/31/2020" pursuant to his request of April 22, 2021. [Sengstock e-mail dated April 22, 2021 attached to the Complaint as Exhibit 1 and incorporated herein as Exhibit A.] This document provides the following details:

1. Number of employees in each City Department;
2. Employee's status a full-time, part-time, seasonal, etc.
3. Each employee's hourly rate of pay;
4. Each employee's hours worked in the period;
5. Each employee's gross wages and net deductions;
6. Each employee's individual deductions for OPERS, Local, State and Federal taxes;
7. Starting and termination date of each employee;

The Payroll Register is 229 pages long and contains all of the foregoing information for every employee that worked for the City during that given year. Mr. Sengstock acknowledged

that he has requested this same document for years ending in 2015, 2016, 2017 and 2018. Each and every time the City's Finance Department provided him that same record with names of minor employees redacted. Mr. Sengstock never objected to the redactions in any of the previous years.

The Payroll Register provided to Mr. Sengstock shows that there were 426 individuals that were compensated by the City in 2020 in some employment capacity. Of the 426 individuals the City redacted the names of 37 juveniles. All of these juveniles worked as seasonal lifeguards, PT park employees, camp counselors for the summer or part-time at the golf course. The only employees whose names were redacted are 17 years old or younger. All that being said, even the juvenile employee's rate of pay, gross earnings and net deductions were provided to Mr. Sengstock.

Mr. Sengstock did not ask for a list of each and every employees name and address nor did he ask for personnel files. He asked for the Payroll Register. The principle purpose of the Payroll Register is to reflect the number of employees in each Department of the City and the cost of those employees to the taxpayers. Additionally, the hourly rate, taxes and OPERS deductions of those employees is also reflected on the documents provided to Mr. Sengstock. Finally, he was provided the name of every adult employee that worked in the City. The only information that was withheld was the names of 37 juveniles between the ages of 16-17 that worked as lifeguards and camp counselors. The names of those children do not reflect the activities of the public office nor does redaction invalidate the value of the Payroll Register or decrease the accountability of government that the Public Records Act is designed to protect.

The Ohio Supreme Court recognized exceptions to the Public Records laws in *State ex rel. McCleary v. Roberts*, 88 Ohio St.3d 365, 725 N.E.2d 1144 (2000) when they acknowledged

the United States Supreme Court's decision in *United States Dept. of Justice v. Reporters Comm. for Freedom of the Press* (1989), 489 U.S. 749, 109 S.Ct. 1468, 103 L.Ed.2d 774, the United States Supreme Court held that "as a categorical matter * * * a third party's request for law enforcement records or *information about a private citizen* can reasonably be expected to invade that citizen's privacy * * *." In *State ex rel. Keller v. Cox* (1999), 85 Ohio St.3d 279, 282, 707 N.E.2d 931, 934, the Ohio Supreme Court relied on *Kallstrom v. Columbus* (C.A.6, 1998) 136 F.3d 1055 and exempted essentially identical information from disclosure. In *Kallstrom*, the federal court determined that disclosure of the information sought would do nothing to further the public's knowledge of the internal workings of governmental agencies. Thus, the *Kallstrom* court concluded that the release of the information to any member of the public did not serve the important public interest of ensuring government accountability. *Id.* at 1065.

The Court in *McCleary* continued by stating "In *State ex rel. Keller v. Cox, supra*, we recognized a constitutional right of privacy in certain personal information contained in the personnel files of law enforcement officers. *Keller* involved a public records request whereby an Assistant Federal Public Defender sought access to all personnel and internal affairs records relating to a Miami County Sheriff's Detective. We noted in *Keller* that this information should be protected not only by the constitutional right of privacy, but, also, that there should be a "good sense" rule when such information is sought. In reaching our conclusion, we reasoned that personnel files containing the names of police officers' children, spouses, parents, home addresses, telephone numbers, medical information, and similar information should not be available to anyone "who might use the information to achieve nefarious ends." *Id.*, 85 Ohio St.3d at 282, 707 N.E.2d at 934. (emphasis added)

Good sense should be a goal of everyone when evaluating if children's personal information should be released without any safeguards. Placing logic on its ruling the Ohio Supreme Court defended its decision to prohibit the release of children's names and likeness in *McCleary* by stating:

“Furthermore, any perceived threat that would likely follow the release of such information, no matter how attenuated, cannot be discounted. We live in a time that has commonly been referred to as The Information Age. Technological advances have made many aspects our lives easier and more enjoyable but have also made it possible to generate and collect vast amounts of personal, identifying information through everyday transactions such as credit card purchases and cellular telephone use. The advent of the Internet and its proliferation of users has dramatically increased, almost beyond comprehension, our ability to collect, analyze, exchange, and transmit data, including personal information.

In that regard, it is not beyond the realm of possibility that the information at issue herein might be posted on the Internet and transmitted to millions of people. Access to the Internet presents no difficulty. Anyone with a personal computer can transmit and receive information on line via the Internet. This court has long recognized that children possess certain fundamental rights, among which are the right “to be free from physical, sexual and other abuses.” *In re Schmidt* (1986), 25 Ohio St.3d 331, 335, 25 OBR 386, 390, 496 N.E.2d 952, 956. Because, unfortunately, we live in a society where children all too often fall victim to abuse, it is necessary to take precautions to prevent, or at least limit, any opportunities for victimization.”

“The case now before us is no different. Because of the inherent vulnerability of children, release of personal information of this nature creates an unacceptable risk that a child could be victimized. We cannot in good conscience take that chance.”

The City of Twinsburg is simply attempting to apply good sense to the notion that protecting the names of juveniles that are simply trying to earn a few dollars by working at a summer day camp or lifeguarding at a community pool is logical and does not create the destruction of open records and accountable government. Without question, limiting the public exposure of these names reduces the risk of their victimization. What is the more pressing role of government...protecting children from potential victimization or providing Requester, Loren Sengstock with the name of the 16 year old lifeguard at the community pool?

WHEREFORE, for the reasons set forth herein the City of Twinsburg respectfully requests this Honorable Court to dismiss the Complaint filed by the Requester with prejudice and enter judgment in favor of the City.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Motion to Dismiss was filed electronically on September 1, 2021. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. A copy was also sent by e-mail to Loren Sengstock, Requester in this matter.

/s/ David M. Maistros

David M. Maistros (0047390)

Attorney for Respondent