

The STATE OF NEW HAMPSIRE
Rockingham, SS. SUPERIOR COURT

Docket #

Donna M. Green, pro se

V.

School Administrative Unit #55, Earl. F. Metzler II
Timberlane Regional School District, Nancy Steenson

PETITION UNDER R.S.A. 91-A, THE RIGHT TO KNOW

Now Comes Plaintiff, Donna M. Green, pro se to place this motion before the Honorable Court for just disposition on two 91-A violations and to make known the following facts.

I do hereby attest to the following facts with respect to 91-A:4 violation ONE:

1. Donna Green is a duly elected member of the Timberlane Regional School Board at the time of this filing and was such during the time of events in this petition. She is the author of a blog on Timberlane issues called TimberlaneandSandown.wordpress.com. School Administrative Unit #55 (SAU 55) 30 Greenough Rd., Plaistow, NH. administers the Timberlane Regional School District and the Hampstead School District.
2. Earl F. Metzler II is the superintendent of SAU 55.
3. Nancy Steenson is the Chairman of the Timberlane Regional School Board at the time of this filing and was such during the time of events in this petition except where otherwise stated.

4. Ms. Cathleen (Cathy) Belcher is the Executive Assistant to Superintendent Metzler.
5. On January 21, 2015 Green sent an email to Steenson requesting

“the administration provide me and the school board with the financial system's salary detail output for the 2014-2015 budget. I similarly request the same for the proposed 2015-2016 budget as per that which is given the Hampstead Budget Committee as attached. Both requests are to include all district staff. The information is to include the full code for each staff member, FTE information and all else included in Hampstead's attached salary detail.”

This was the beginning of the email chain the relevant portions of which are excerpted below in order of their receipt. (Emails are attached as Exhibit One. A sample of the Hampstead budget information is Exhibit Two.)

6. On Jan. 22, 2015 Steeson replied:

“If you feel that board members would be interested in this report, please make a motion to request it on behalf of the board during other business tonight. The Hampstead and Timberlane districts may share SAU administration, but are run completely separately, as you know. We have done many things differently for many years. Nobody at the SAU is depriving the Timberlane board of documents; the reports you reference have not been requested nor needed by the Timberlane board in the past. Perhaps you'd like to briefly explain why they would be of use for the benefit of the rest of the board tonight.”

7. On Jan. 23, 2015 Green replied:

“Obviously this is a direct violation of RSA 91-A:4

'IV. Each public body or agency shall, upon request for any governmental record reasonably described, make available for inspection and copying any such governmental record within its files when such records are immediately available for such release. If a public body or agency is unable to make a governmental record available for immediate inspection and copying, it shall, within 5 business days of request, make such record available, deny the request in writing with reasons, or furnish written acknowledgment of the receipt of the request and a statement of the time reasonably necessary to determine whether the request shall be granted or denied. If a computer, photocopying machine, or other device maintained for use by a public body or agency is used by the public body or agency to copy the governmental record requested, the person requesting the copy may be charged the actual cost of providing the copy, which cost may be collected by the public body or agency. Nothing

in this section shall exempt any person from paying fees otherwise established by law for obtaining copies of governmental records or documents, but if such fee is established for the copy, no additional costs or fees shall be charged.'

As a school board member I am entitled to these documents at any time they are available - without charge, as they are part of my duty to examine if I feel the need.

I do not have to explain to anyone why I want to review and copy any document within the parameters of my position as an elected official of the Timberlane Board or a citizen.

These documents are clearly not exempt under RSA 91-A:5 and there is no reasonable explanation as to why the school would withhold them.”

9. On Jan. 26, 2015 Ms. Steenson replied:

“I have been away since Friday. You may make an appointment with Mr. Stokinger if you’d like, to see the documents you request. Please note that I advised you to bring this up at last week’s board meeting, so that we could see if there was interest from other board members. You apparently decided not to do so. I am not authorizing hundreds of pages of documents to be distributed to all board members at your request. That would be a tremendous waste of district resources. These are documents much more relevant to the Budget Committee, and no one on the School Board has needed or wanted them in the past. As such, they are available if requested, but are not automatically distributed. We don’t have a paper mill at our disposal. Copies cost a lot of money in labor and supplies. I would think you would know that.”

10. On Jan. 26, 2015 Mrs. Green replied:

“Well, in that case, give me the file electronically and we will all save money and time. I await receipt of the file.”

11. On Jan. 26, 2015 Ms. Steenson replied:

“I responded to your request. I’m sure Mr. Stokinger will be most helpful. “

12. On Jan. 26, 2015 Green replied to Steenson:

“In fact, you did not respond to my request. My request is for an electronic file of the salary detail - or a paper report, whichever suits the district. I am not making an appointment with Mr. Stokinger - and even more so given tomorrow all offices will be closed.”

13. On Jan. 26, 2015 Green replied again to Steenson:

“The proper response to a Right to Know request is to hand over what is in the

immediate control of the person in charge of the documents. All the documents requested could have been emailed or copied in the time it has taken to answer these excuses for not providing a school board member with documents.

This isn't that difficult. The NH AG's Office and Secretary of State respond to 91-A requests all the time in a timely fashion. It is beyond reason as to why this office can not do so.

As per RSA 91-A a citizen or school board member is to receive a written explanation as to why an electronic copy was not simply emailed - as it is a document readily at hand."

14. On Jan. 26, 2015 Ms. Belcher replied:

"Thank you for your email dated January 25th regarding your request to inspect and possibly copy salary information for the years 2014-15 and 2015-16. This information is available for public inspection immediately; however, we ask that as a courtesy to the operations of this office, you call for an appointment."

15. On Jan. 27, 2015 Green replied to Belcher:

"How is the salary information stored? Does it have a separate access and function code?"

Are you going to print it so it can be inspected? That seems obviously counter productive.

Please emails me an electronic copy when the office reopens. If you will not comply with this request, I require the specific provision in the law by which you are refusing to provide this information. The people of Sandown, whom I represent, expect your office to do everything possible to facilitate my requests for public information."

16. On Jan. 29, 2015 Belcher replied:

"Thank you for your email response regarding the District's notification to you that the salary information you requested is available for public inspection. As indicated in my email dated January 26th, the information you requested is immediately available for public inspection."

17. On Jan. 29, 2015 Green responded:

"Allow me to draw your attention to the following NH Supreme Court decision: *Menge v. Manchester*, 113 N.H. 533, 311 A.2d 116 (1973) which you can find here

Please provide the electronic file associated with this information via email today. This is public information and should be given to me in whatever output file format is

supported by your financial software; e.g; pdf, export to spreadsheet, export to .c.s.v
If you will not comply with this request, I require the specific provision in the law by which you are refusing to provide this information. The people of Sandown, whom I represent, expect your office to do everything possible to facilitate my requests for public information.”

18. On Jan. 29, 2015 Dr. Metzler responded to Green evidently intending to reply to

Belcher:

“Send her the same reply and leave it at that.”

19. The information Green requests is freely given to the Hampstead School Budget Committee and generated by SAU 55 with the same financial software as used for Timberlane School District.

Assertions for Violation One:

The Plaintiff asserts a violation of 91-A:4 I and IV

1. The Plaintiff requires this information immediately in order to understanding the staffing levels built into the school district's proposed budget going to voters on March 10, 2015.
2. The Plaintiff also requires the salary budget details in order to confirm the accuracy of reports submitted to the NH Department of Education. It is her duty as an elected member of the school board to ensure the accuracy of information given to the public and the state.
3. By not making voluminous budget salary detail financial information available in electronic form, SAU 55 is not complying with the spirit of 91-A which is to provide access to governmental records. Access that is unnecessarily, even deliberately burdensome or expensive to the public is access denied. SAU 55 could easily provide a pdf file to the Plaintiff and refuses to do so in order to thwart her attempts to learn about the staffing levels in the school district.
4. Timberlane Regional School District has a history of refusing to disclose staffing

information to Green as evidenced by the following time line in which the school board violated RSA 91-A:4, IV by refusing to make readily available information available within five business days of request (Exhibit Three: email chain summarized below):

Dec. 9, 2013: staffing information requested of Timberlane Budget Committee Chairman. Request ignored and information was not forthcoming.

Dec. 20, 2013: official Right to Know request was made to TRSB Chairman at that time, Robert Collins.

Jan. 3, 2014 (eight business days): request refused on on the grounds that the “information is not available.”

Jan. 17, 2014: slightly reworded request submitted.

Jan. 17, 2014: request again denied on the basis that the “information is not available.”

Jan. 17, 2014: Green threatens to take the issue up with the Attorney General's office.

Jan. 20, 2014: Collins replies that information will “become available in the next several weeks.”

Jan. 21, 2014: Green replies “several weeks” is an unacceptable time frame for information obviously at hand. Demands information be provided by end of business Jan. 22.

Jan. 23, 2014 Staffing information received as filed with Department of Education. 8 business days from Dec. 20th request. Deadline for DOE filing of this information was Oct. 15, 2013. (DOE filing deadline information Exhibit Four.)

3. The staffing information from “2” above became the foundation for a withering attack by Green on the staffing levels in the Timberlane School District at the School Deliberative Session in Feb. 2014 where a motion promulgated by Green to lower the budget by

millions had wide support.

4. In this most recent violation, Green first requested the salary information from the School Board chairman in conformity with school board protocol that all information requests be addressed to the chairman. (Exhibit Five: School Board Rules, specifically #6)
5. There is no question salaries are public information as per *Mans v. Lebanon School Board, 112 N.H. 160 (1972)*.
6. The school board chairman disingenuously proposed putting Green's staffing information request before the board knowing that the board would vote it down as has been done to all of Green's previous information requests.
7. Although the original request was not a formal Right to Know request, the state's disclosure laws nevertheless apply. RSA 91-A does not require approval from a board or explanation to a board for the release of information.
8. Upon receiving Steenson's constructive refusal to make the information available, Green then made a formal Right to Know request of the School Board chairman to determine if the information would be released at all; hence, the request to inspect and copy.
9. Upon knowledge that the SAU was prepared to allow inspection of the documents and knowing that the documents in question were voluminous, Green then requested the information in electronic form in order to expedite her work and save herself copying costs. Without an electronic file, Green would be required to spend hours at the SAU office scanning the documents into her scanner, or pay 50 cents a page from the district to receive this information at the likely cost of well over \$100. The district's Right to

Know policy imposes a charge of 50 cents a page for copies. Green has paid this fee many times in the past for previous Right to Know requests for district documents while she was a Timberlane Budget Committee member and also as a school board member. (Timberlane's Right to Know Policy is Exhibit Six)

10. SAU 55, in keeping with its Right to Know policy which was never approved by the Timberlane School Board, is constructively refusing to provide an electronic file for Green's use.

11. The ruling in *Menge v. City of Manchester*, 113 N.H. 533 (1973) finds in favor of the plaintiff who sought to obtain computer records in their stored form. The judgment states:

"The ease and minimal cost of the tape reproduction as compared to the expense and labor involved in abstracting the information from the field cards are a common sense argument in favor of the former. [RSA 91-A:4](#) (Supp. 1972) provides that every citizen may "make memoranda abstracts, photographic or photostatic copies" of public records. "Taking into account the practical realities of the situation, we believe it not only possible, but in accord with our law and what seems to be its basic philosophy, to so construe the statute as to permit" plaintiff to have the reproduced tapes at his expense."

I do hereby attest to the following facts with respect to 91-A:4 I and IV violation TWO:

1. On July 24, 2014 Green had a verbal disagreement with Catherine Belcher, Executive Assistant to Superintendent Metzler at the SAU #55 offices, the subject of which is not material to this petition.
2. The disagreement occurred at the front reception desk and was fully videotaped by security cameras.
3. On July 25, 2014 Superintendent Metzler notified Donna Green via email:

“Mrs Green - Today it was reported to me that you were both disrespectful and harassing to several employees. Of course I will investigate this report and if validated I will need to limit your access to the SAU. This is both disturbing and unfortunate. I will also be consulting with both the Plaistow Police Department and district council.” (Exhibit Seven).

5. On July 25, 2014 Green submitted a Right to Know request under 91-A :4 (I) seeking to view and copy the surveillance recording at the SAU office. (Exhibit Eight)
6. On July 25, 2014 Steenson responded directing Green to submit the RTK request to the SAU which spurred an email exchange between the two in which Green argued the video should be released to her at once while the SAU argued that they were under police instructions to withhold it without providing evidence of such instruction. The police would be going beyond the law to make such an instruction. (Exhibit Nine)
7. On July 27, 2014 Steenson notified Green via email:

“Mrs. Green,

It has been reported to me that an investigation is being conducted by the Superintendent’s office concerning your interactions with an SAU staff member on July 24, 2014. Until such time as the investigation is complete, you are hereby barred from entering upon the SAU #55 premises without the expressed written permission of the Superintendent of Schools. Dr. Metzler will make appropriate arrangements for you to conduct your duties as a school board member.” (Exhibit Ten)

8. Green, understanding the July 27th communication from Steenson as a constructive no trespass order, obtained the legal services of Richard J. Lehmann of Douglas, Leonard & Garvey, P.C. to dispute the “no trespass order” and to obtain the surveillance video tape. The cost of Mr. Lehmann's service was \$3,000. (All Mr. Lehmann's letters on Green's behalf are Exhibit Eleven)
9. September 26, 2014 SAU 55 released the surveillance tape to Green in an electronic file format that was not readable by standard software. Green posted the video file on

her blog inviting others to put it in a readable form. Due to the efforts of a blog reader, the video was made readable and posted on September 27, 2014 on blog site TimberlaneandSandown.wordpress.com.

10. On October 22, 2014 Attorney Lehmann sent a followup letter to the Plaistow Police. They closed their investigation that day. It had been open for approximately eleven weeks.

Assertions to Violation Two:

1. Green believes that the superintendent's report to the Plaistow police was politically motivated to intimidate and discredit a public critic. Green believes the surveillance tapes exonerated her and its delayed release harmed to her reputation.
2. Green asserts that the intervention of Attorney Lehmann was necessary to obtain the video tape. (Legal Letters: Exhibit Eleven)
3. The delay in releasing the surveillance tape was in violation of 91-A 4 (IV) and inexcusable and malicious.
4. Green further asserts that Attorney Lehmann was instrumental in "clarifying" the no trespass order so that Green could continue in the performance of her elected duties with respect to viewing invoices and other documents housed at the SAU office

Desired Redress for both violations:

Donna Green respectfully requests the following remedy from the Honorable Court:

1. SAU 55 be instructed to immediately provide an electronic file in a mutually agreeable format of the Timberlane 2014-2015 budget salary details and the Timberlane 2015-2016 proposed and default budget salary details with the same information content as provided in Exhibit Two from the Hampstead School District budget report.

2. SAU 55 be compelled to pay Donna Green \$3,000 in reimbursement of her legal fees as provided by under 91-A:8 (I) for the necessary engagement of Attorney Lehmann to obtain her rights to government information.
3. SAU 55 and the Timberlane Regional School District be instructed to stop withholding public information from elected school district officials.
4. SAU 55 and the Timberlane Regional School District be instructed to stop charging school district elected officials for public information.
5. SAU 55 and the Timberlane Regional School District be required to pay Donna Green the associated copying, filing and serving costs for this petition to the court and all past Right to Know fees collected from her.
6. SAU 55 and Timberlane Regional School District be required to disgorge all Right to Know fees collected by them from elected officials of the school district or SAU.

AND any other relief the Honorable Court should find on behalf of the Plaintiff.

I, Donna M. Green, the undersigned do hereby attest that the above stated facts are true and correct to the best of my knowledge.

_____ Dated: February_____, 2015.

Donna M. Green
3 Cranberry Meadow Rd.
Sandown, NH 03873
603-974-0758
STATE OF NEW HAMPSHIRE

Personally appeared before me this ____day of February, in the year 2015, Donna

M. Green, and took this oath that the foregoing statements are correct and true to the best of her knowledge and belief.

Dated: February _____, 2015
Notary Public/Justice of the Peace

My commission expires: _____