

STATE OF MICHIGAN
COURT OF CLAIMS

THE STATE NEWS,

Plaintiff,

v

MICHIGAN STATE UNIVERSITY,

Defendant.

OPINION AND ORDER

Case No. 24-000012-MZ

Hon. Sima G. Patel

ORDER DENYING DEFENDANT’S MOTION FOR SUMMARY DISPOSITION AND
GRANTING SUMMARY DISPOSITION TO PLAINTIFF UNDER MCR 2.116(I)(2)

Defendant, Michigan State University (MSU), seeks summary disposition under MCR 2.116(C)(8) and (10) of a claim filed by plaintiff, The State News, for the disclosure of documents under the Freedom of Information Act (FOIA), MCL 15.231 *et seq.* MSU cannot support its claimed exemption under MCL 15.243(1)(a). Accordingly, MSU’s motion for summary disposition is DENIED, and the Court GRANTS summary disposition in The State News’s favor under MCR 2.116(I)(2).

I. BACKGROUND

The State News is a student-led newspaper at MSU. The State News sought information from MSU’s Office of Institutional Equity (OIE) through FOIA requests on August 21, 2023, and September 13, 2023. Specifically, The State News sought notifications sent by the OIE to “MSU employees with more than one allegation made to the [OIE] with no finding of misconduct.” The OIE “oversees formal investigations into allegations of ‘prohibited conduct,’ ” which is defined as

including sexual harassment, sexual assault, sexual exploitation, relationship violence, stalking, and retaliation. MSU disclosed e-mails meeting the criteria, but redacted the employees' names and e-mail addresses.¹

MCL 15.243(1) provides exemptions from FOIA disclosure provisions. MSU redacted the names of the MSU employees in the disclosed documents under the following MCL 15.243(1) exemptions:

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

* * *

(d) Records or information specifically described and exempted from disclosure by statute.

The individuals' names were withheld for privacy reasons under subsection (a) and because release of the names would violate federal Title IX regulations under subsection (d). MSU now concedes that redaction was not supported under subsection (d).

The State News appealed both denials to MSU's president. It supported its need for the reported employees' names as follows:

We seek these records because they provide insight into the university's handling of sexual misconduct. It's not about the cases as individual matters relating to individual employees, it's about the unusual circumstance of the same people being reported multiple times and then repeatedly being cleared of wrongdoing. As demonstrated by MSU's Larry Nassar, and other predators across the country like Robert Anderson, Jerry Sandusky, and Scott Shaw, cases that start like these are clearly of great public interest. These records, and others like them, would greatly

¹ MSU claimed the e-mail addresses were exempt from disclosure under MCL 15.243(1)(u), (y), and (z). The State News does not challenge the redaction of the e-mail addresses in this suit.

contribute to the public's understanding of what MSU is doing to prevent another case like those.

MSU denied the appeals, reiterating its grounds for redacting the information.

The State News then filed this lawsuit seeking an order for the release of the individuals' names. In lieu of an answer, MSU seeks summary disposition under MCR 2.116(C)(8) and (10).

II. SUMMARY DISPOSITION STANDARDS

MCR 2.116(C)(8) “tests the legal sufficiency of a claim based on the factual allegations in the complaint.” *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019) (emphasis omitted). The Court “must accept all factual allegations as true, deciding the motion on the pleadings alone.” *Id.* at 160. Summary disposition is warranted “when a claim is so clearly unenforceable that no factual development could possibly justify recovery.” *Id.*

MCR 2.116(C)(10), “on the other hand, tests the factual sufficiency of a claim.” *El-Khalil*, 504 Mich at 160 (emphasis omitted). The Court “must consider all evidence submitted by the parties in the light most favorable to the party opposing the motion.” *Id.* Summary disposition is warranted “when there is no genuine issue of material fact,” meaning “the record leaves open an issue upon which reasonable minds might differ.” *Id.* (quotation marks and citations omitted).

“If it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party” under MCR 2.116(I)(2).

III. ANALYSIS

“FOIA must be broadly interpreted to allow public access to the records held by public bodies,” and its “exemptions must be narrowly construed to serve the policy of open access to public records.” *Mich Open Carry, Inc v Dep’t of State Police*, 330 Mich App 614, 625; 950 NW2d 484 (2019). To exempt information from disclosure under the privacy exemption of MCL 15.243(1)(a), a public body must satisfy two prongs: (1) “[T]he information must be of a personal nature”; and (2) “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, AFT, AFL-CIO v Univ of Mich*, 481 Mich 657, 675; 753 NW2d 28 (2008). The first prong is satisfied by “private or confidential information relating to a person, in addition to embarrassing or intimate details.” *Id.* at 676. The second prong involves a balancing test: The Court must balance the public’s interest in disclosure to promote “public understanding of the operations or activities of the government” against the need for privacy. *Mager v Dep’t of State Police*, 460 Mich 134, 145; 595 NW2d 142 (1999) (quotation marks and citations omitted). “Official information that sheds light on an agency’s performance of its statutory duties falls squarely within that statutory purpose. That purpose, however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency’s own conduct.” *Id.*

In *ESPN v Mich State Univ*, 311 Mich App 662, 663; 876 NW2d 593 (2015), ESPN sought “incident reports involving a list of student-athletes over a specific period of time.” MSU provided the records “but redacted the names and identifying information of the suspects, victims, and witnesses,” citing, in part, the privacy exemption of MCL 15.243(1)(a). *ESPN*, 311 Mich App at 663. The Court of Appeals noted that a name, standing alone, is not exempted private information.

Id. at 666. The Court must consider “whether the revelation of the names when coupled with the information in the reports constitutes information of a personal nature and, if so, whether the method for protecting the private information was minimally sufficient to avoid an unwarranted invasion of privacy.” *Id.* at 667. “[B]eing linked with a criminal incident is information of a personal nature: People linked with a crime, whether as a perpetrator, witness, or victim, have an interest in not sharing this information with the public.” *Id.* at 667-668 (quotation marks, citation, and alteration omitted). The Court of Appeals noted a heightened interest in privacy if the reports involved investigations into sexual offenses, as such reports often contain “intimate details of the suspect’s sex life.” *Id.* at 668.

The names of MSU employees who have been reported on more than one occasion for sexual harassment, sexual assault, or other similar prohibited misconduct is clearly private information. Linking a person’s name to such accusations is private, intimate, and would be embarrassing if released. Accordingly, the first prong to support exemption is met.

In *ESPN*, 311 Mich App at 669-670, however, the Court of Appeals held that the need to protect the individuals’ privacy was not outweighed by the public’s interest in government accountability:

The disclosure of the names of the student-athletes who were identified as suspects in the reports serves the public understanding of the operation of the University’s police department. ESPN seeks the information to learn whether policing standards are consistent and uniform at a public institution of higher learning. The disclosure of the names is necessary to this purpose. In order to determine whether the student-athletes were treated differently from the general student population or from each other on the basis of the student-athlete’s participation in a particular sport or the renown of the student-athlete, it is necessary to know the student-athlete’s name and the nature of the allegations involved in the investigation. Only then can ESPN compare and contrast the information within the requested reports to both other incident reports and other cases disclosed via news media. Further, ESPN requires the student-athletes’ names in order to

facilitate further investigation into whether other governmental agencies agreed with the University's handling of a particular student-athlete's case. Consequently, even if revealing the names of the student-athletes in the context of the reports amounts to the revelation of information of a personal nature, that revelation is not unwarranted. MCL 15.243(1)(a). Under the circumstances, the public's interest in government accountability must prevail over an individual's, or a group of individuals, expectation of privacy. [Quotation marks and second citation omitted.]

The media investigation in the current case is very similar to that in *ESPN*. The State News seeks the names of MSU employees who have been reported to the OIE on more than one occasion for offenses like sexual harassment or assault, but who have always been cleared of the reported conduct. With the names redacted from the notifications, The State News cannot determine how many times any particular individual was cleared. The State News cannot compare the information to other sources of sexual misconduct reports to determine if MSU correctly dismissed the complaints. Like in *ESPN*, "[t]he disclosure of the names is necessary to" The State News' purpose. Further, like in *ESPN*, the public has an interest in MSU's accountability for holding its employees liable for sexual harassment and misconduct in order to protect students and others. Accordingly, MSU cannot rely on the privacy exemption to redact the names from the documents presented. It was required to provide the requested documents and reveal the employees' names. And The State News was entitled to disclosure under FOIA.

IT IS ORDERED:

1. MSU's motion for summary disposition under MCR 2.116(C)(8) and (10) is denied.
2. Summary disposition is granted in favor of The State News under MCR 2.116(I)(2).
3. This is a final opinion and order resolving all issues in this case.

Date: August 8, 2024



Sima G. Patel
Judge, Court of Claims

