STATE OF MICHIGAN

COURT OF APPEALS

HURON RESTORATION, INC.,

Plaintiff/Appellant/Cross-Appellee,

v

BOARD OF CONTROL OF EASTERN MICHIGAN UNIVERSITY,

Defendant/Appellee/Cross-Appellant.

UNPUBLISHED
January 22, 1999

No. 203719
Washtenaw Circuit Court
LC No. 96-007698 CZ

Before: Saad, P.J., and Kelly and Bandstra, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment partially denying plaintiff's requests for information from defendant pursuant to the Freedom of Information Act ("FOIA"), MCL 15.231 *et seq.*; MSA 4.1801(1) *et seq*. Defendant cross-appeals from the same judgment. We affirm in part, reverse in part and remand to the trial court for additional findings.

Plaintiff first argues that it was entitled to inspect a settlement agreement which defendant entered into to resolve certain lawsuits brought by one of defendant's faculty members. We agree. A determination as to whether a public record is exempt from disclosure under the FOIA is a mixed question of fact and law. This Court reviews the trial court's factual findings for clear error and reviews questions of law de novo. *Schroeder v Detroit*, 221 Mich App 364, 366; 561 NW2d 497 (1997). The trial court erred by failing to require defendant to produce the settlement agreement.

There is no specific FOIA exemption for settlement agreements. See MCL 15.243; MSA 4.1801(13). Further, a public institution cannot avoid a duty to disclose information by contracting to maintain the confidentiality of that information. *Bradley v Saranac Community Schools Bd of Ed*, 455 Mich 285, 303; 565 NW2d 650 (1997). Although *Bradley*, *supra*, involved an agreement between a school district and a union to keep evaluations confidential, rather than a settlement agreement, the difference is not legally significant. A public institution cannot prevent disclosure by contracting away the public's rights under the FOIA. *Id*. Although there are sound public policy reasons for maintaining the confidentiality of private settlement agreements, there is no precedent to support defendant's

argument that those policy considerations outweigh the similarly strong public policy in favor of FOIA disclosures.

The settlement agreement was also not exempt from disclosure because it contained "[i]nformation of a personal nature where the public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy." MCL 15.243(1)(a); MSA 4.1801(13)(1)(a). At the motion hearing, the faculty member's attorney represented that his client would waive his rights under the agreement, and plaintiff subsequently submitted a written waiver from the faculty member. While defendant might have had a justification for denying disclosure under the privacy exemption prior to receipt of that waiver, defendant cannot maintain an individual's privacy rights as a justification for nondisclosure where that individual has expressly waived any such rights. Therefore, under the limited facts of this case, we conclude that the settlement agreement should be disclosed.

Plaintiff next argues that it was entitled to inspect defendant's itemized legal bills for a specified period of time because defendant failed to establish that the bills were protected by the attorney-client privilege. We conclude that the trial court failed to properly rule on defendant's claim of privilege. Therefore, this issue is remanded to the trial court for additional findings.

Information subject to the attorney-client privilege is exempt from FOIA disclosure. MCL 15.243(1)(h); MSA 4.1801(13)(1)(h). The privilege attaches to "communications made by a client to an attorney acting as a legal adviser and made for the purpose of obtaining legal advice." *Herald Co, Inc v Ann Arbor Public Schools*, 224 Mich App 266, 279; 568 NW2d 411 (1997). The privilege also typically attaches to communications from an attorney to his client, including confidential information that was obtained from the client and the attorney's legal opinions regarding that information. *Hubka v Pennfield Twp*, 197 Mich App 117, 121-122; 494 NW2d 800 (1992), rev'd in part on other grounds 443 Mich 864 (1993). A document may not automatically be withheld because it was the product of an attorney-client relationship. *Id.*, 121. Therefore, a bill for legal services, as a standard product of an attorney-client relationship, is only protected to the extent that it contains confidential client information or the opinions of counsel.

The trial court stated on the record that there might be information in the bills that could arguably be subject to the attorney-client privilege, but never actually ruled on plaintiff's request to inspect the complete itemized bills. Instead, the trial court attempted to implement a compromise where defendant would provide plaintiff with a summary of its legal costs. Such a compromise ruling was not permissible in a FOIA case. See MCL 15.240(4); MSA 4.1801(10)(4) (the circuit court is to determine by de novo review whether disclosure should be compelled); *Post-Newsweek Stations v Detroit*, 179 Mich App 331, 335; 445 NW2d 529 (1989) (to prevent disclosure, the court must find that particular portions of the public record are exempt for specific reasons). As the trial court failed to rule on this issue, and given the lack of information in the record to permit this Court to review the issue, we remand this issue to the trial court for additional findings and further direct the trial court to follow the FOIA review process described in *Post-Newsweek Stations, supra* at 335-338 (requiring a particularized justification for the claim of privilege and an in camera review if necessary).

Plaintiff next argues that it should not have been required to pay defendant $636.80 for the summary of defendant's legal bills. We agree. The trial court erred by requiring plaintiff to pay the costs for redacting the legal bills where the trial court did not permit plaintiff to inspect the redacted bills. However, this issue must be remanded pending additional findings on the legal bill issue. In the event that the trial court determines that plaintiff is entitled to review redacted copies of the legal bills, the court may consider whether a fee can be imposed as a reasonable limit on plaintiff's FOIA rights. See MCL 15.233(3); MSA 4.1801(3)(3); *Cashel v Regents of the University of Michigan*, 141 Mich App 541, 549-550; 367 NW2d 841 (1985).

Defendant argues that it should not have been required to disclose the names and addresses of its alumni residing in Washtenaw County. We disagree. The trial court did not err by requiring defendant to produce the names and addresses of its alumni.

The addresses of defendant's alumni were not exempt from FOIA disclosure for privacy reasons. MCL 15.243(1)(a); MSA 4.1801(13)(1)(a). "[I]nformation is of a personal nature if it reveals intimate or embarrassing details of an individual's private life" when evaluated in light of "the customs, mores or ordinary views of the community." *Bradley, supra,* 455 Mich at 294. A home address may be "personal," but it is not considered to be intimate or embarrassing. Further, a person's status as a university alumnus is also not considered to be an intimate or embarrassing detail about an individual's private life. This information is of the type which is commonly held out to the public, and therefore, it is not "personal" in the sense that is referred to by the FOIA privacy exemption. See *Herald Co v Bay City,* 228 Mich App 268, 289; 577 NW2d 696 (1998). In fact, prior case law has approved of the disclosure of the home addresses of certain state employees. See *MSEA v Dep't of Mgmt & Budget*, 428 Mich 104, 123-129; 404 NW2d 606 (1987). The case cited by defendant is distinguishable because it dealt with the addresses of a university's charitable donors, and an individual's charitable contribution is customarily considered to be a private detail that is not necessarily held out as public information in the same manner as alumni status. *See Clerical-Technical Union v Bd of Trustees of Michigan State Univ*, 190 Mich App 300, 302-304; 475 NW2d 373 (1991).

Defendant also argues that it should not have been required to disclose certain licensing agreements concerning the Huron mark and logo because of related ongoing litigation with plaintiff. It is not necessary to address this issue because defendant voluntarily agreed to produce the requested licensing agreements. While this Court may review an issue that is no longer in controversy if a question of public significance is involved that could continue to evade judicial review, *Meyers v Patchkowski*, 216 Mich App 513, 519; 549 NW2d 602 (1996), we decline to review this issue because current legislation resolves the question by exempting information related to a civil action from disclosure where the requester is a party to that litigation. MCL 15.243(1)(w); MSA 4.1801(13)(1)(w) (as amended by 1996 PA 553).

Plaintiff also argues that it was entitled to receive $500 in statutory damages due to defendant's allegedly delayed FOIA response. We disagree. The trial court did not err by declining to award plaintiff punitive damages because there was no evidence that defendant "arbitrarily and capriciously" violated the provisions of FOIA. MCL 15.240(7); MSA 4.1801(10)(7).

Both parties object to the trial court's determination of the attorney fee to be awarded to plaintiff.[1] The amount of attorney fees that should be awarded is a matter for the discretion of the trial court. *Booth Newspapers v Kalamazoo School District*, 181 Mich App 752, 759; 450 NW2d 286 (1989). This discretionary determination should be upheld absent an abuse of discretion. *Michigan Tax Management Services Co v Warren*, 437 Mich 506, 510; 473 NW2d 263 (1991). While we conclude that the trial court's award was not an abuse of discretion, the trial court may elect to alter its award given the conclusions reached by this Court and any new determinations that are made with respect to the legal bills on remand.

Affirmed in part, reversed in part and remanded to the trial court for additional findings. We do not retain jurisdiction.

/s/ Henry William Saad
/s/ Michael J. Kelly
/s/ Richard A. Bandstra

[1] The trial court, by order dated May 14, 1997, instructed defendant to pay the sum of $6,808.93 to plaintiff. the sum was calculated based on 2/5's of 76.80 hours billed at the rate of $215 per hour plus costs of $204.13. Defendant was entitled to a deduction for copy and redaction costs in the amount of $636.80. Plaintiff acknowledged defendant's payment of $6,172.13.