

STATE OF MICHIGAN
COURT OF APPEALS

FEDERATED PUBLICATIONS, INC., d/b/a
LANSING STATE JOURNAL, and DETROIT
FREE PRESS, INC.,

UNPUBLISHED
June 18, 1999

Plaintiffs-Appellees,

v

MICHIGAN DEPARTMENT OF CONSUMER &
INDUSTRY SERVICES,

No. 210335
Ingham Circuit Court
LC No. 98-087674 AZ

Defendant-Appellant.

Before: Neff, P.J., and Hood and Murphy, JJ.

PER CURIAM.

Defendant appeals as of right from an order of summary disposition in favor of plaintiffs pursuant to MCR 2.116(C)(10). The trial court ruled that call logs, related to long distance telephone calls made by members of the Liquor Control Commission and paid for by the state of Michigan, were not exempt from disclosure under either the privacy or the law enforcement exclusions of the Michigan Freedom of Information Act (FOIA). MCL 15.231 *et seq.*; MSA 4.1801(1) *et seq.* The court further determined that defendant had acted arbitrarily and capriciously when it refused to release the logs, and thus awarded each plaintiff \$500 in punitive damages. We affirm in part and reverse in part.

I

Initially, defendant argues that the trial court erred in finding that the calls logs were not exempt from disclosure under the FOIA's privacy and law enforcement exemptions. We disagree.¹

The declared public policy of Michigan, as expressed by the FOIA, is to give all people access to information about governmental affairs and thus enable them to fully participate in the political process. MCL 15.231(2); MSA 4.1801(1)(2). To this end, the FOIA mandates full disclosure of all public records which are not specifically exempted under the Act. MCL 15.233(1); MSA 4.1801(3)(1). These exemptions are to be narrowly construed, and the burden of proving the need for a

particular exemption rests on the public body asserting it. *Booth Newspapers, Inc v University of Michigan Bd of Regents*, 444 Mich 211, 232; 507 NW2d 422 (1993).

A

The privacy exemption contained in MCL 243(1)(a); MSA 4.1801(13)(1)(a) consists of two elements, both of which must be present for the exemption to apply. First, the requested information must be of a “personal nature.” Second, the disclosure of such information must be a “clearly unwarranted invasion of privacy.” *Bradley v Saranac Community Schools Bd of Ed*, 455 Mich 285, 294; 565 NW2d 650 (1997). The call logs at issue here, which contained telephone numbers of persons called by LCC commissioners, do not satisfy the first element of this test.

Information is of a “personal nature” for purposes of the privacy exception of the FOIA “if it reveals intimate or embarrassing details of an individual's private life.” *Id.* at 294. In making this determination, we must consider “the ‘customs, mores, or ordinary views of the community.’” *Id.*, quoting *Swickard v Wayne Co Medical Examiner*, 438 Mich 536, 543; 475 NW2d 304 (1991). Names and telephone numbers do not meet this requirement and thus are not of a “personal nature.” See *Tobin v Michigan Civil Service Comm*, 416 Mich 661, 672-673; *Oakland Press v Pontiac Stadium Building Authority*, 173 Mich App 41, 45; 433 NW2d 317 (1988). Therefore, it is unnecessary for us to consider the whether the release of the call logs is a “clearly unwarranted invasion” of privacy. The trial court did not err in rejecting plaintiff’s assertion of the privacy exemption.²

B

Likewise, the trial court properly determined that the law enforcement exemption to the FOIA did not apply to plaintiffs’ requests.³ This exemption permits nondisclosure of “investigating records compiled for law enforcement purposes.” MCL 15.243(1)(b); MSA 4.1801(13)(b). It is without question that the call logs of the LCC were not compiled for the purpose of any investigation, but rather for normal office record-keeping purposes. The fact that the LCC may have some law enforcement responsibilities does not change this result.

II

Next, defendant argues that the trial court erred when it did not allow it to separate and redact exempt from nonexempt information from the logs. Defendant’s argument puts the cart before the horse. Redaction is appropriate only where a valid exemption applies to a portion of the requested public records. MCL 15.244(1); MSA 4.1801(14)(1); *Bradley, supra* at 304. Because defendant was unable to meet its burden of proving that disclosure of the call logs was discretionary, there was no reason to proceed to redaction.

III

Defendant's final challenge is to the trial court's award of punitive damages, costs, and attorney fees. Because plaintiffs prevailed in their FOIA action, they were entitled to costs and reasonable attorney fees. MCL 15.240(6); MSA 4.1801(10)(6).⁴

However, we find clear error in the trial court's award of punitive damages pursuant to MCL 15.240(7); MSA 4.1801(10)(7). Although unsuccessful, defendant's assertion of the privacy exemption was not "arbitrary and capricious," as those terms have been defined in relation to the FOIA. See *Tallman v Cheboygan Area Schools*, 183 Mich App 123, 126; 454 NW2d 171 (1990); *Williams v Martinucci*, 88 Mich App 198, 201-202; 276 NW2d 876 (1979). Accordingly, we reverse this portion of the trial court's order.

Affirmed in part and reversed in part.

/s/ Janet T. Neff

/s/ Harold Hood

/s/ William B. Murphy

¹ Because the call logs have already been disclosed, the substance of the dispute is technically moot. *Herald Co, v Ann Arbor Public Schools*, 224 Mich App 266, 275; 568 NW2d 411 (1997). We address the substance of the trial court's ruling regarding disclosure, however, because it is relevant to other issues raised by defendant on appeal.

² We note defendant's request that this Court adopt the "core purpose" test in which federal courts balance the extent to which disclosure would serve the "core purpose" of the FOIA against the privacy interest at stake. *United States Dep't of Defense v Federal Labor Relations Authority*, 510 US 487, 495; 114 S Ct 1006; 127 L Ed 2d 325 (1994). We decline to do so, noting that the justices of our Supreme Court have disagreed on this issue. See, e.g., *Swickard, supra* at 569-570 (Levin, J.).

³ Defendant asserts that the trial court barred it from raising the law enforcement exemption to disclosure. However, the record before us clearly demonstrates that defendant was allowed to argue the law enforcement exemption, and that during oral argument, both defendant and the trial court agreed that defendant's stronger argument was the privacy exemption. Moreover, in light of our determination that the law enforcement exemption does not apply, any resultant error would be harmless.

⁴ Defendant does not challenge the amount of attorney fees awarded.