

STATE OF MICHIGAN
COURT OF APPEALS

DETROIT FREE PRESS, INC.,
Plaintiff-Appellee,

v

CITY OF SOUTHFIELD,
Defendant-Appellant,

and

CITY OF SOUTHFIELD FIRE AND POLICE
RETIREMENT SYSTEM, CITY OF ANN ARBOR
EMPLOYEES' RETIREMENT SYSTEM, CITY
OF TAYLOR POLICE AND FIRE RETIREMENT
FUND BOARD, and CITY OF WESTLAND
POLICE AND FIRE RETIREMENT BOARD,

Defendants.

FOR PUBLICATION
December 20, 2005
9:05 a.m.

No. 260083
Wayne Circuit Court
LC No. 04-417402-CZ

DETROIT FREE PRESS, INC.,
Plaintiff-Appellee,

v

CITY OF SOUTHFIELD FIRE AND POLICE
RETIREMENT SYSTEM, CITY OF ANN
ARBOR EMPLOYEES' RETIREMENT
SYSTEM, CITY OF TAYLOR POLICE AND
FIRE RETIREMENT FUND BOARD, and CITY
OF WESTLAND POLICE AND FIRE
RETIREMENT BOARD,

Defendants-Appellants,

and

No. 260639
Wayne Circuit Court
LC No. 04-417402-CZ

Official Reported Version

CITY OF SOUTHFIELD,

Defendant.

Before: Whitbeck, C.J., and Saad and O'Connell, JJ.

SAAD, J. (*dissenting*).

I respectfully dissent. While, under the Freedom of Information Act, MCL 15.231 *et seq.*, the public has the right to documents that show how much public money was spent on pensions for public employees, the request here exceeds that right. The FOIA does not require the defendant boards to disclose documents that reveal how much any specifically identified individual receives in annual pension payments. And, because the majority's holding goes too far, I dissent.

During oral argument, counsel for the boards pointed out, without contradiction or rebuttal, that the majority of the money used to pay the pensions of the retired police officers and firefighters is *earned* by the retirement funds, not contributed by the public. That is, the money ultimately used to pay pensions comes from three distinct sources: (1) public contributions, (2) employee contributions, including employee investment decisions (such as "buying years of service" or using accumulated sick leave), and (3) earnings achieved through investment decisions by the board. The majority incorrectly characterizes pension payments as "more comparable to public salaries than to private assets." *Ante*, p _____. To the contrary, a salary is paid with current government funds, while the pension payments at issue are, in large part, comprised of money other than the amount originally paid into the retirement system. Thus, the amount of taxpayer dollars the government previously contributed into the retirement system should be disclosed, not how much individual retirees or their families receive as a result of personal investment decisions.

If, for example, the purpose of the FOIA request is to discover how much Southfield contributed to the "top twenty retirees," then the only information the board is required to disclose is the money Southfield contributed to the retirement system, not the amounts received by retirees now, which includes employee contributions and investment-produced accumulations. The purpose of the FOIA is to show how government operates—in this instance, how government spends public funds on pensions. Again, this is accomplished by showing the amount of tax dollars the government entity contributed, not the amount now paid to select retirees.

Furthermore, the pension payments to any specific individual retiree or the retiree's spouse or child is personal financial information and disclosure would constitute a clearly unwarranted invasion of privacy. Indeed, unless the public interest in disclosure outweighs the public interest in nondisclosure, the identities of law enforcement officers and relatives of active or retired law enforcement officers are exempt from FOIA. MCL 15.243(1)(s)(iv). Moreover, the FOIA exempts from disclosure personnel records of law enforcement agencies and makes no distinction between the records of active or retired officers. MCL 15.243(1)(s)(ix). Michigan case law has protected personal financial information of citizens from disclosure on the grounds

of privacy, and we should do so here as well. *Stone Street Capital, Inc v Bureau of State Lottery*, 263 Mich App 683, 693; 689 NW2d 541 (2004).

Key to our analysis under the FOIA is that whatever information we hold to be subject to FOIA disclosure serves the interest of the FOIA—to inform citizens about how the government operates. *Mager v Dep't of State Police*, 460 Mich 134, 145-146; 595 NW2d 142 (1999). And, therefore, here, the only amount that shows how the government operates—i.e., what it spends for pensions, is the amount the government contributes, not the amount the private citizen/retiree receives in pension payments. Moreover, because the individual retiree has a privacy interest in his or her personal financial information, we, as an appellate court, must ask the ultimate policy question: Does the public interest in disclosure here outweigh the retiree's privacy interest? The answer is that the individual retiree's privacy interests clearly outweigh whatever public interest there may be in disclosure of any specific individual's pension payments. The reasons for this conclusion are clear. The retiree's personal financial information, including decisions whether to designate a spouse or child to receive the pension, is and should remain private. And, because the public's interest in knowing how its government operates can be accomplished by showing what the government *contributed* rather than what the retiree receives, a more limited ruling serves both the interests of the public and privacy.

Therefore, I would respectfully disagree with the majority and instead hold that the retirement boards must disclose what the respective governmental entities paid into the retirement system for the "top twenty," not what any individual in the "top twenty" receives on an annual basis. Accordingly, I would reverse the trial court decision and hold that the pension boards have fully¹ complied with the FOIA by supplying the information regarding the job category, amount and method of computation for the "top twenty" retirees.

/s/ Henry William Saad

¹ Indeed, because the boards produced documents that show how much the "top twenty" received, the boards have provided more than the FOIA requires because the FOIA only requires a disclosure of what the public *contributed* to these pensions.