

The State of New Hampshire

JUDICIAL BRANCH

MERRIMACK COUNTY

SUPERIOR COURT

No. 217-2020-CV-491

Clerk's Notice of Decision
Document Sent to Parties
on 01/20/2021

JOSEPH ANDERSON

v.

DEPARTMENT OF SAFETY

ORDER

*Re: Plaintiff's Motion to Reconsider
(doc. no. 14)*

The motion is to reconsider the dismissal of Joseph Anderson's Right to Know Law request for scene photographs generated by law enforcement in a missing person investigation. The ruling relied on the exemption applicable to law enforcement records where production "could reasonably be expected to interfere with enforcement proceedings." *Murray v. Division of State Police*, 154 N.H. 579, 582 (2006). Mr. Anderson provided additional information in support of reconsideration, which the Department addresses in its objection and that I have considered. See *Lillie-Putz Trust v. DownEast Energy Corp.*, 160 N.H. 716, 726 (2010) (court has discretion to consider added evidence on motion for reconsideration).

His first argument is that a prior statement of the lead investigator, Charles West ("the more we give the more they are going to want and the more they pick apart,"

[Larkin Aff. ¶ 18]), suggests a trivial reason for withholding the photographs and thus bad faith in asserting as he did in this case that releasing them could be expected to interfere with the investigation. Assuming without deciding that West's statement is materially different from all of the reasons offered in his affidavit supporting denial of the request for the photographs, I based my ruling on the substantive grounds presented by Associate Attorney General Strelzin and him. Those statements are identified in the order.

The second basis for reconsideration is that the Department failed to meet its burden to show the investigation is ongoing, with enforcement proceedings "reasonably anticipated." In their affidavits opposing disclosure, both state officials averred the investigation is open and ongoing, with a possible criminal case in mind.

The circumstances of the disappearance are susceptible of a construction of foul play, even if no obvious evidence of a crime was detected at the scene. The possible criminal offenses include homicide for which there is no statute of limitations. While the limitations period does not set the time for which an investigation is considered open, under these circumstances it is reasonable to expect enforcement proceedings depending on what the investigation develops. "At best, plaintiff has put forth evidence of a stalled, not inactive, investigation. Documents that would interfere with a lengthy or delayed investigation that may still lead to a prospective law enforcement proceeding still

fall within the protective ambit of [the exemption.]" *Africa Fund v. Mosbacher*, No. 92 CIV. 289 (JFK), 1993 WL 183736, at *4 (S.D.N.Y. May 26, 1993).

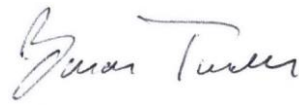
Next, Mr. Anderson argues the Department made an inadequate showing that disclosure would interfere with enforcement proceedings. The order describes how disclosure could affect the investigation and I adhere to that finding.

The final argument is that there is a strong policy argument in favor of disclosure due to the public's interest in how the investigation has been conducted. The photographs would not provide specific insight on that issue, but necessarily I weighed the Right to Know Law's policy in favor of disclosure in considering the exemption advanced by the Department.

The motion for reconsideration is *denied*.

SO ORDERED.

DATE: JANUARY 19, 2021



JUDGE BRIAN T. TUCKER

Clerk's Notice of Decision
Document Sent to Parties
on 01/20/2021