

DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
BINGHAM COUNTY

2012 DEC -7 AM 11:25

SARA STUBBS CLERK
[Signature] DEPUTY

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM

JOYCE BINGHAM,
Plaintiff,
v.
BLACKFOOT SCHOOL DISTRICT No. 55,
Defendant/Respondent.

THE POST COMPANY, INC. dba The Post Register,
Intervenor/Petitioner.

Case No. CV-2012-0002123

JUDGMENT

Hon. David C. Nye

On December 7, 2012, this Court entered a Decision in favor of Plaintiff Joyce Bingham and Intervenor/Petitioner The Post Company, Inc. dba The Post Register and against Defendant/Respondent Blackfoot School District No. 55. Now, this Court enters judgment in favor of Bingham and the Post Register and against the School District. The District must provide the requested records under the Idaho Public Records Act. Costs and attorney fees, if any, will be decided pursuant to Idaho statutes and rules following the submission of proper documentation. The parties have 42 days to appeal the decision.

IT IS SO ORDERED.

DATED: December 7, 2012.

[Signature]
DAVID C. NYE
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7 day of December, 2012, I served a true and correct copy of the foregoing document upon each of the following individuals in the manner indicated.

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2012 DEC -7 AM 11:08

SARA STAUB CLERK

BY _____ DEPUTY

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THE POST COMPANY, INC. dba The Post Register,

Intervenor/Petitioner.

Case No. CV-2012-0002123

**DECISION REGARDING
DISCLOSURE OF RECORDS**

Hon. David C. Nye

Plaintiff, Joyce Bingham, on October 15, 2012, filed a Complaint against the Blackfoot School District No. 55 seeking the production of records under the Idaho Public Records Act. The Court signed an Order to Show Cause setting a hearing for Friday, November 30, 2012. Plaintiff filed an Amended Complaint on November 7, 2012. The School District filed an Answer to Amended Complaint on November 26, 2012. The Post Register filed its Petition for Public Writings on November 28, 2012, against the School District also seeking records and information under the Idaho Public Records Act.

Both Bingham's Complaint and the Post Register's Petition came on for hearing on November 30, 2012. Jared Harris appeared with and in behalf of Joyce Bingham. Steven Wright appeared in behalf of the Post Register. Dale Storer appeared in behalf of the School District, along with the interim

superintendent Chad Struhs. The Court heard oral argument from all counsel, received the July 2, 2012 contract for an *in camera* inspection, and took the matter under advisement. Now, the Court issues this decision.

BACKGROUND

The parties acknowledge that this is a case under the Idaho Public Records Act (the “Act”).¹ The Act allows public examination of government records to ensure the government's activities are transparent to the public it represents and to facilitate public scrutiny of the conduct of public officers. The clear purpose of the Act is to open the doors of government to public scrutiny – to prevent the government from secreting its decision-making activities from the public, on whose behalf it has a duty to act. Yet, everything about this case smacks of a public agency trying to hide its decision-making from the public.

In the Minutes of the Board of Trustees’ Special Meeting held on April 24, 2012, it shows that the Board recessed into executive session to “consider hiring a public officer, employee, staff member or individual agent.”² In addition to the Board members, Superintendent Scott L. Crane and Deputy Clerk Margaret Condor attended the executive session. The Board’s minutes for the executive session show “that the agreement between the board and Employee B-2012 has been executed.”³ The minutes do not identify the identity of Employee B-2012. Immediately after the Board came out of the executive session and back into the Special Meeting, Superintendent Scott L. Crane “in other business” announced his retirement.⁴

¹ I.C. § 9-337 to I.C. § 9-347. *See also*, Bingham’s Amended Complaint, pg. 4, Prayer for Relief ¶ 2; Post Register’s Brief in Support of Petition for Public Writings Pursuant to Idaho Code § 9-343, pg. 2; and the School District’s Memorandum Brief in Response to Amended Order to Show Cause, pg. 1.

² *See*, Plaintiff’s Exhibit G, which was substituted at the hearing for Ex. H attached to Bingham’s Amended Complaint.

³ *Id.*

⁴ *Id.*

In its Fiscal Year 2013 Expenditure Summary for the month of July 2012, the School District showed a payment on July 2, 2012, to "Zions Bank" in Salt Lake City, Utah for \$105,428.00.⁵ The description of the payment is "AP CONTRACT SERVICES".⁶ There is no indication that the payment was for Dr. Crane or for Employee B-2012.

On August 23, 2012, Joyce Bingham requested a copy of the contract upon which the July 2 payment was based.⁷ On September 7, 2012, the School District denied Bingham's request.⁸ Bingham hired an attorney, Jared Harris, and on September 25, 2012, Harris requested certain documents from the School District:

Any and all documents and materials related to Scott Crane's employment history, classification, pay grade and step, longevity, gross salary, salary history, including what Mr. Crane has been paid for each of the last ten (10) years he has been an employee with the School District and his current status.⁹

At the same time, Harris requested these documents from the District:

Any and all reports, documents, orders, citations, and materials related to all contracts which form the basis for the payments made as follows:

January 20, 2012, for \$10,743.91;
February 17, 2012, for \$11,347.07;
March 20, 2012, for \$11,372.55;
April 20, 2012, for \$11,694.25;
May 18, 2012, for \$18,399.67;
June 20, 2012, for \$4,346.36; and
July 2, 2012, for \$105,428.00.¹⁰

The District responded on October 12, 2012, by providing some of the requested documents but not all of them. Specifically, the District refused to provide any contracts paid on July 2, 2012, claiming such

⁵ See, Plaintiff's Exhibit A, which was substituted at the hearing for Exhibit A attached to Bingham's Amended Complaint.

⁶ *Id.*

⁷ See, Plaintiff's Exhibit B attached to Bingham's Amended Complaint.

⁸ See, Plaintiff's Exhibit C attached to Bingham's Amended Complaint.

⁹ See, Plaintiff's Exhibit D attached to Bingham's Amended Complaint.

¹⁰ See, Plaintiff's Exhibit E attached to Bingham's Amended Complaint.

contracts were personnel in nature.¹¹ The District did inform Ms. Bingham that she could appeal its decision to District Court.

On October 15, 2012, Bingham filed her Complaint seeking a copy of the AP Contract Services contract, among other documents. On October 17, 2012, attorney Harris sent a second request to the District, seeking these documents in an attempt to learn the identity of Employee B-2012:

The name, employment history, classification, pay grade and step, longevity, gross salary, salary history, for each of the last ten (10) years, and the current status of employee identified as Employee B-2012 as identified in the April 24, 2012 Board of Trustees' Special Meeting, including any and all agreements between the Board of Trustees and Employee B-2012 agreed to on April 24, 2012.¹²

On November 1, 2012, the District identified Employee B-2012 as Dr. Scott Crane but refused to provide a copy of any contracts entered on July 2, 2012, because they are a part of Dr. Crane's personnel file.¹³ Bingham filed her Amended Complaint on November 7, 2012, to also seek a copy of any B-2012 Contract.

The District's Answer to Bingham's Amended Complaint basically admits that Ms. Bingham has a right to a copy of all requested documents except for the AP Contract Services contract that underlies the \$105,428.00 payment to Dr. Crane. Additionally, the District filed the Affidavit of Chad Struhs, interim superintendent for the District. Attached to the affidavit are all documents that the District previously provided to Bingham pursuant to her various document requests. Struhs states that the District will not provide the B-2012 contract because it is part of Crane's personnel file and was undertaken in conjunction with Crane's separation of employment with the District. Finally, Struhs states that he contacted Crane and urged him to allow the District to turn the contract over to Bingham, but Crane declined to do so.

¹¹ See, Plaintiff's Exhibit F attached to Bingham's Amended Complaint.

¹² See, Plaintiff's Exhibit H attached to Bingham's Amended Complaint.

¹³ See, Plaintiff's Exhibit I attached to Bingham's Amended Complaint.

Two days prior to the hearing on Bingham's Amended Complaint, a local newspaper, the Post Register, decided to get involved in the litigation and filed its own Petition for Public Writings. Apparently, this decision was based upon the Post Register's earlier attempts to obtain information regarding the July 2 contract services payment of \$105,428.00. On October 1, 2012, the Post Register submitted a request for public records to the District seeking:

- (1) The identity of Employee B-2012, referred to in the board minutes from April 24, 2012.
- (2) Details regarding contract services paid by District 55 on July 2 in the amount of \$105,428.00. Who received this payment? What services did District 55 receive for the said amount?¹⁴

On October 3, 2012, the District declined to reveal the identity of Employee B-2012 to the Post Register and declined to provide a copy of the contract paid out on July 2, 2012, "due to the personnel nature."¹⁵

The parties stipulated to allow the Post Register to intervene in Bingham's litigation.

DISCUSSION

There is a lot the parties agree upon in this case. They agree that this is an action under the Idaho Public Records Act. They agree that the District is a public agency subject to the provisions of the Act. They agree that both Bingham and the Post Register made requests for production and disclosure of a contract dated April 24, 2012, by and between the School District and Dr. Crane (Employee B-2012). They agree that the District did not produce that contract due to its claim that it is a personnel record. The only real issues in disagreement are whether that contract is a public record and whether it is a personnel record.

In general, a court addressing a claim under the Idaho Public Records Act must first determine if a requested record is a public record. If the court determines it is a public record, then the court must decide whether the public record is exempt from disclosure pursuant to the Act.¹⁶ When considering the

¹⁴ See, Exhibit A attached to the Post Register's Petition.

¹⁵ See, Exhibit B attached to the Post Register's Petition.

¹⁶ *Ward v. Portneuf Medical Center, Inc.*, 150 Idaho 501, 248 P.3d 1236 (2011).

question of exemption, a court must start with the presumption that “all public records are open to disclosure and that all exemptions are narrowly construed.”¹⁷ Pursuant to this analysis, the Idaho Supreme Court recently narrowly construed the category of personnel records exempted by I.C. § 9-340C(1) in determining that a county hospital must disclose the names of all employees with a salary in excess of fifty-thousand dollars because employee names were not specifically excluded under the exemption. Specifically, the Supreme Court stated: “We conclude that had the legislature intended to exempt employees' names from disclosure, it would have expressly so provided.” In other words, the presumption of transparency and disclosure is only overcome by a specific demonstration that an exemption applies to the record being requested.¹⁸

I.C. § 9-337(13) states that “public record” includes any writing containing information relating to the conduct or administration of the public’s business prepared, owned, used or retained by any state agency, independent public body corporate and politic or local agency regardless of physical form or characteristics. I.C. § 9-337(8) states that a school district is a local agency. Therefore, any document retained by the school district containing information relating to the conduct or administration of the public’s business is a public record. The School District has admitted that the contract was undertaken in conjunction with Crane’s separation of employment with the District. The hiring or separation of a school district’s superintendent clearly relates to the conduct or administration of public business. The District appears to be aware of this since it did disclose Crane’s employment contracts for 2010 and 2011. This Court has reviewed the separation contract and it is undisputedly a public record.

I.C. § 9-338 states that every person has the right to examine and copy any public record. I.C. § 9-337(9) states that a person is any natural person, corporation, partnership, firm, association, joint venture, state or local agency or any other recognized legal entity. Therefore, Bingham and the Post

¹⁷ *Id.*, quoting *Cowles Publishing Co. v. Kootenai County Bd. of County Comm'rs*, 144 Idaho 259, 264, 159 P.3d 896, 901 (2007).

¹⁸ *Ward*, footnote no. 3.

Register are persons who have the right to examine and copy any public record held by the school district. I.C. § 9-338(1) further states that there is a presumption that all public records are open and available for inspection. Both Bingham and the Post Register made a proper request to see the contract.

There are certain statutory exemptions that make certain records exempt from disclosure. The burden is on the School District to prove that this particular record fits within a statutory exemption. The District relies only upon the exemption in I.C. § 9-340C(1).¹⁹ That exemption states that certain records are exempt from disclosure:

Except as provided in this subsection, all personnel records of a current or former public official other than the public official's public service or employment history, classification, pay grade and step, longevity, gross salary and salary history, status, workplace and employing agency. All other personnel information relating to a public employee or applicant including but not limited to, information regarding sex, race, marital status, birth date, home address and telephone number, applications, testing and scoring materials, grievances, correspondence and performance evaluations, shall not be disclosed to the public without the employee's or applicant's written consent. . . .²⁰

ARE PUBLIC
NOT PUBLIC

The plain language of this exemption does not allow the public agency to disclose personnel records of a current or former public official except for certain limited information without the consent of the public official. The issue, then, is whether the contract is a personnel record exempt from disclosure.

★ There is no definition of personnel records or personnel information in the public records law.²¹ ★

However, the Idaho Supreme Court has suggested that when a record is more a product of a public official or employee's job rather than an evaluation of an employee's performance, it is not a personnel record.²² Here, the contract is certainly not an evaluation of any type. It is simply a separation agreement. Because it is not obvious that the contract is a personnel record or personnel information, a

¹⁹ See, Defendant's Memorandum Brief in Response to Amended Order to Show Cause, filed on November 26, 2012, at page 3.

²⁰ The balance of this statutory provision is clearly not applicable to this case.

²¹ *Federated Publications, Inc. v. Boise City*, 128 Idaho 459, 915 P.2d 21 (1996).

²² *Id.*

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narrow construction of the exemptions causes this Court to conclude that the contract is not a personnel record.²³

This position, that the contract is not a personnel record, is bolstered in this case by the fact that Idaho law does define personnel files in regards to school district employees. I.C. § 33-518 states:

The board of trustees of each school district, including any specially chartered district, shall provide for the establishment and maintenance of a personnel file for each employee of the school district. Each personnel file shall contain any and all material relevant to the evaluation of the employee. The employee shall be provided timely notice of all materials placed in the personnel file and shall be afforded the opportunity to attach a rebuttal to any such materials. Personnel files are declared to be confidential and excepted from public access under any provision of the Idaho Code, including, but not limited to, sections 9-301 [repealed] and 59-1009 [repealed], Idaho Code, provided that each employee or designated representative shall be given access to his own personnel file upon request and shall be provided copies of materials contained therein, with the exception of recommendation letters, in a timely manner upon request.

School district employee files are to contain material relevant to evaluations of the employee. Nowhere in this statute does it state that a personnel file can contain other material not relevant to evaluations. The district argues that this language merely means that the file must contain all evaluative materials but that it does not mean that other non-evaluative material cannot also be placed in the file. The district may be correct; however, the non-evaluative material would not be exempt from disclosure if it fits within the list of exceptions to the personnel file exemption. That list of exceptions is “the public official’s public service or employment history, classification, pay grade and step, longevity, gross salary and salary history, status, workplace and employing agency.” Here, the Court has carefully reviewed the contract at issue. It is material to the superintendent’s public service or employment history, gross salary and salary history and his status as a district employee. Compensation issues of public officials would not generally fall under the personnel file exemption. The only significant difference between Crane’s employment contracts and his separation contract is that the separation contract contains express language declaring that it is to be put in Crane’s personnel file and the District is to protect it from

²³ See, *Cowles Pub. Co. v. Kootenai Co. Bd. Of County Com’rs*, 144 Idaho 259, 159 P.3d 896 (2007).

disclosure efforts made under the Idaho Public Records Act. Parties cannot exempt a public record from disclosure and hide it from the public simply by placing it in a personnel file and declaring the personnel file exemption to be applicable to it. Using the Court's discretion, it is convinced the contract is more akin to the list of exceptions provided in I.C. § 9-340(C), rather than being materially relevant to evaluations. I.C. § 9-340C(1) does not make the contract exempt from disclosure.

CONCLUSION

Both Bingham and the Post Register properly sought a public record under the Idaho Public Records Act. That record is not exempt from disclosure. The District must turn it over to Bingham and the Post Register within 3 days of receipt of this decision by giving the requested record to the lawyers for each requesting party.

IT IS SO ORDERED.

DATED: December 7, 2012.


DAVID C. NYE
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7 day of December, 2012, I served a true and correct copy of the foregoing document upon each of the following individuals in the manner indicated.

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