

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, ss

**HILLSBOROUGH SUPERIOR COURT
NORTHERN DISTRICT**

216-2021-CV-00404

JOSEPH KELLY LEVASSEUR
119 West Merrimack Street, Manchester, NH

v.

MANCHESTER POLICE DEPARTMENT
405 Valley Street, Manchester, NH

**PETITION OF ALDERMAN JOSEPH KELLY LEVASSEUR FOR ACCESS TO
PUBLIC RECORDS**

NOW COMES alderman Joseph Levasseur, Esq., petitioning for relief pursuant to the Constitution of New Hampshire, Part I, Article 8, the Constitution of the United States, First Amendment, and provisions of R.S.A. 91-A against the Manchester Police Department, (hereinafter "MPD"): in support thereof states as follows:

BRIEF DESCRIPTION OF ISSUE BEFORE THE HONORABLE COURT

On January 26, 2021, Petitioner received an illicit parking ticket from city parking attendant (Robin Dunmyer). A month later Petitioner learned MPD was asked to investigate the incident by the parking attendant's boss. Petitioner was never told about an investigation nor asked for his side of the story so the police report contained only the parking attendants' absurd fabrications. Subsequent to the police report's release to the Press, Petitioner learned the parking attendant is the sister of a former police officer Petitioner had a hand in getting released from employment at the MPD. Suspicious to the motives of the parking attendant and others involved in a ticket the Petitioner had paid without complaint, Petitioner filed a 91a request. Most of the information concerning the incident (emails and a bus video capturing the incident) were given to Petitioner but (MPD) refused to release the video statement made by the former city employee. Dunmyer's statement just happened to be was taken by police with a body camera at police headquarters - even though interview rooms with cameras are available. MPD stated: release of the body cam footage 'violates NH RSA 91a: V...invasion of privacy.' Petitioner argues the use of body cams in this instance is not one contemplated by the state legislature, and MPD's "privacy" excuse cannot be deemed legitimate simply because the statement was taken by body camera.

1. Petitioner is an Aldermen for the City of Manchester. Respondent is a public agency existing pursuant to Constitutional and statutory laws of New Hampshire and subject to the provisions of NH RSA 91a – and federal and state Constitutions.

2. On January 26, 2021, Robin Dunmyer, a then part-time parking attendant employed by Manchester, issued Petitioner a parking ticket. Alderman Levasseur had parked in a "bus zone" that had been turned into a 30-minute parking location to help restaurants get more pick-up business. Levasseur parked in the newly created zone to meet with a constituent and attempt to purchase something to eat. He placed his city issued parking placard in his windshield - clearly visible to the parking attendant. (Ex. 1).
3. Petitioner asked why he was getting a ticket and was told "I gave you a ticket for parking in a bus zone." Petitioner pointed to his city issued parking placard, which was inches from the ticket, and calmly stated he was doing constituent work. Dunmyer again responded: "you are parked here illegally".
4. Petitioner took the ticket out of the wiper three inches from where his parking placard was and said great "50 bucks", shook his head and put it in his pocket. (The ticket was never mentioned again during the rest of the brief interaction, and the ticket was paid the next day without ANY complaint to anyone).
5. Petitioner then pointed to a very obvious sign that stated cars can park in the bus zone for 30 minutes when picking up food. Again, Dunmyer stated "you are parked here illegally **"and I don't know anything about placards or that you are an alderman."**
6. Petitioner did not know who the parking attendant was. He thought she was either a new employee unfamiliar with placards or who the aldermen were - or she knew who he was and was giving him a ticket out of spite. Petitioner asked her name. She refused to tell him and when pressed again, still refused - which seemed disingenuous. After being asked again, she stated M-1 then changed it to M-5. In the meantime, a bus pulled up. Petitioner got into his car and drove back to work.
7. For one brief moment, the alderman thought he should call her boss and let her know the parking attendant stated she had no clue about placards, aldermen or food pickup signs - but decided against it for fear the parking attendant would either receive a

reprimand or worse. Later that evening he asked his wife to pay the ticket right away - in his mind that was the end of the matter.

8. Approximately one month later, Petitioner found out the parking attendant filed an incident report by email to her supervisor. From emails generated from a 91a request, it appears Dunmyer was being coached and pushed to go to the police. Her original email about the incident was changed three days later to add harsher language. 16 days after the incident, Dunmyer appeared at the MPD on February 10, 2021.
9. From information and belief garnered by Petitioner, Dunmyer did not wish to make any public statements to the police or Press unless guaranteed anonymity. It seems the MPD found a circuitous way to take her statement by body camera so a police report could be generated and given to the Press, while also keeping Dunmyer's name redacted and her video statement suppressed from a 91a request.
10. On February 10, 2021, Sgt. Lovejoy, after taking Dunmyer's statement by use of his body camera, published a summarized narrative report regarding the interaction between the parking attendant and Petitioner. Petitioner was never told about an investigation or questioned for his side of the non-incident. (Ex. 2)
11. In his report Lovejoy wrote "The interview was captured on my department issued BWC and the reporting party was advised that our interview would be audio and video recorded. This interview was conducted in the interview room in the MPD lobby."
12. The initials "BWC" stand for body worn camera. Such audio and videotape recordings constitute governmental records, also known as public records, as defined by NH RSA 91-A:1, a, III. N.H. R.S.A. chapter 91-A:5 Exemptions, paragraph X reads as follows:

Video and audio recordings made by a law enforcement officer using a body-worn camera pursuant to RSA 105-D except where such recordings depict any of the following:
(a) Any restraint or use of force by a law enforcement officer; provided, however, that this exemption shall not include

those portions of recordings which constitute an invasion of privacy of any person or which are otherwise exempt from disclosure.

(b) The discharge of a firearm, provided that this exemption shall not include those portions of recordings which constitute an invasion of privacy of any person or which are otherwise exempt from disclosure.

(c) An encounter that results in an arrest for a felony-level offense, provided, however, that this exemption shall not apply to recordings or portions thereof that constitute an **invasion of privacy** or which are otherwise exempt from disclosure. (Emphasis added).

13. After a one-sided police report was generated and the story went viral, Petitioner asked for emails from city officials. Those emails led to even more questions. On April 8, 2021, Petitioner made a further written request to MPD in accordance with the provisions of N.H. R.S.A. 91-A. That request stated in pertinent part:

Pursuant to NH RSA 91-A could you ask your staff to please collect and make available for review, collection and/or otherwise, all inter-office documents, communications and correspondence, whether they be electronic or otherwise concerning anything to do with the above cited case. This 91-a request seeks correspondence, evidence collected and stored/maintained within the Manchester Police Department's control or knowledge; whether it be electronic, photo's, video's, interviews, notes and reports generated by investigating officers, employee's or staff; emails, inventory lists, telephone contents, messages, pictures, video or texts. In particular please provide an evidence sheet.

I am also interested in any recordings or notes taken from a call to MPD by Kevin Kincaid as noted in a string of emails I did receive a few weeks ago.

I also would like the copy of any recording whether tape recorded or video taped of the complainant or any other person interviewed.

I have the video(s) and will ask Traffic Violations for the pictures taken by said complainant - but if your Department

has them please include. The request is attached hereto. (Ex 3).

14. On April 12, 2021, Captain Peter Marr issued a letter to Petitioner that stated in pertinent part:

Sgt. Lovejoy interviewed the complainant in this case and there is a recording of that interview via his body camera. However, body camera footage can only be released when there is a restraint/use of force issue, the discharge of a firearm, or a felony level arrest. Furthermore, releasing this information would constitute an invasion of privacy.

Captain Marr's denial of the request made by Petitioner is attached hereto as (Ex. 4)

15. The "invasion of privacy" exception stated by the MPD fails for obvious reasons: Dunmyer was a city employee; drafted an email to her boss with her name in the email; the email was sent to the mayor's office within 15 minutes of it being sent to Dunmyer's boss; the email was then sent from the mayor herself to one of her staff members- it was also sent two sitting aldermen, each time the email was sent it contained Dunmyer's name. The police report also contains her name.

16. After the initial email, Dunmyer's email was sent out by city employees to other departments. All city employees knew about the "incident" from the email sent out by Dunmyer's aggressive boss, Denise Boutelier (Ex 4. email chain).

17. Further, after a few requests the City finally gave Petitioner a copy of a video from the Manchester Transit Authority (MTA) that clearly shows Petitioner and Dunmyer having a conversation about the ticket. She is clearly seen in the video, and those that know her, would know who she is.

18. A video statement made by a city employee (parking attendant); concerning a public official (Petitioner) to other city employees when a police report summarizing the interview was generated for wide public abuse cannot seriously be considered an "invasion of privacy".

19. "The court found that the benefits of disclosing the report to the public "are quite substantial" because the report, which was funded by taxpayer money, constituted an investigation of alleged "official misconduct by individuals holding publicly-

elected positions." The court found that the public's interest in disclosure is "particularly high" because the chair of the SAU board stated in public session that the investigator had found the allegations to lack merit." *Hampstead School Board v. School Administrative Unit No. 55, 2020-0268*.

20. Since the police report was made public and supposedly summarized from the body cam video and the story went viral, the disclosure of the video cannot be considered a privacy issue. The MPD allowed Dunmire a privacy exception even though she made the event public with her intentional misrepresentations of the incident.
21. The parking attendant, Robin Dunmyer alleged misconduct of an elected official - conduct the Petitioner vehemently denies - and is backed up by video garnered from the Manchester Transit Authority.
22. "Accordingly, determining whether material is exempt from disclosure under RSA 91-A:5, IV requires a two-part analysis: (1) whether the information sought meets the category at issue, meaning whether it pertains to an "internal personnel practice" or constitutes "confidential, commercial or financial information" or is within another statutorily-defined category claimed by the party resisting disclosure; and (2) whether disclosure of the information constitutes an invasion of privacy." (inner citations and quotes omitted) *Hampstead School Board v. School Administrative Unit No. 55, 2020-0268*.
23. The release of the video clearly falls within the two-part test established by precedent stated in *Hampstead id*. The video is not an internal personnel practice nor constitutes confidential, commercial or financial information. The person making the statement is a city employee who was allegedly performing her parking attendant duties and getting paid by taxpayers to do so. She was also falsely alleging misconduct of an elected official.
24. In this case there is no valid privacy interest to be asserted. No party in interest to this case can present any overriding consideration, special circumstance, or compelling interest to outweigh Petitioner's or the public's right of access to the requested information.

25. The provisions of N.H. R.S.A. 91-A, X are violative of Part I Article 8 of the New Hampshire Constitution. The provisions of N.H. R.S.A. 91-A, X are violative of Part I Article 8 of the New Hampshire Constitution as applied to the facts of this case.

WHEREFORE, Petitioner respectfully requests that this Honorable Court:

- A) hold an expedited hearing on this matter;
- B) grant the relief requested herein by ordering that Petitioner and the public have access to all the documents, video(s) and records requested;
- C) issue an Order awarding to Petitioner reimbursement by MPD for the filing and service fees incurred in bringing this action, pursuant to the provisions of R.S.A. 91-A:8; and
- D) grant such further and other relief as the Court deems just and proper.

Respectfully Submitted,
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/s/ Joseph Kelly Levasseur
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Dated: 06-30-2021
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