STATE OF MAINE

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

Law Docket No. CUM-16-381

MICHAEL A. DOYLE

Plaintiff-Appellant

vs.

TOWN OF SCARBOROUGH et al

Defendant-Appellee

ON APPEAL FROM THE SUPERIOR COURT
COUNTY OF CUMBERLAND

APPELLANT'S BRIEF

Submitted By:

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I. SUMMARY

The case arises out of the Appellant's FOAA request for emails between Robert Moulton, Chief of Police, Scarborough, Maine and his administrative coordinator Cathy Chandler, they held their respective positions for a number of years. The FOAA request generated a proposed fee of over $3,500 for 1,372 emails, Bill Shane, Town Manager of Cumberland stated that he could produce a like number of emails in less than an hour for free for the 1,372 emails. Appellant objected to the cost and filed this action that resulted in a hearing, and at that hearing Appellee disclosed that additional emails totaling between 100 and 1,000 existed and they claimed protection for them under the current exemptions provided in the FOAA law. Appellant didn't know the other 1,169 emails existed until after the hearing on the Rule 80b. Complaint. The Appellee produced 2,541emails of which Appellant was allowed to view, by Appellee, 1,372 and 1,169 were withheld and became the subject of this appeal. The withheld emails were discovered upon direct examination of Town Manager, Thomas Hall at the Superior Court hearing. Appellant immediately moved for an *In Camera* review of the withheld emails to ascertain their legal status. The court released 27 of the reviewed emails citing 'protected personnel matters' when in fact the

1,372 previously released emails were rife with personnel comments, such as: "Grover was elected 4th vice-president of the New England Chapter of FBI National Academy Associates, as long as they don't make him treasurer!" Consequently, Appellant is entitled to all withheld emails. As a result of that hearing the Court held that Appellant was not required to pay any amount for the 1,372 emails reviewed and the Superior Court ordered the missing emails to be surrendered to the Court for its review. Subsequently, the Court held that 27 of the 1,169 emails had to be provided to Appellant, the Court held that the balance of 1,142 were protected.

II. THE DECISION FROM WHICH APPEAL IS TAKEN

The Appeal is taken from the Order of the Superior Court Dated July 19, 2016.

III. STATEMENT OF FACTS

1. The Chief of Police was using a Town owned computer on a Town owned email system and the Court allowed protection for nearly half of all emails sent and received during work hours between the Chief

and his coordinator, who earns in excess of $68,000 per year. This is not credible and as such should be reversed. The Court decided they were exempt because they "weren't work related", Appellant finds it impossible to argue which, if any, of the disputed emails are in fact work related, when Appellant can't see the emails in question. Appellee argues that nearly half of all emails between the Chief of Police and his administrative coordinator are non-work related on town owned equipment and town owned Internet service.

2. The Court's decision that emails were not work related; they were done during business hours of the Scarborough Police Dept., on Town equipment, and on Town paid for email service should not exempt them from the FOAA law of Maine.
3. We argue business related emails during business hours are by definition work related not personnel/discipline, which would be protected. These emails in most part are comments about ability not discipline and are related to the transaction of work related to public business. If this is not work related transaction of public business then Moulton and Chandler have used work time and their respective incomes to defraud the taxpayers of Scarborough. The Superior Court has attempted to protect way too many emails by painting with a way

too broad of a brush.

IV. ISSUES PRESENTED

Appellant Doyle submits that the issues now before this Court are as follows:

1. Did the Superior Court err in withholding nearly all of the 1,169 emails that is the subject of this Appeal?
2. Did the Superior Court err in withholding emails based upon 'personnel matters' when many of the previously released 1,372 emails already referred to people engaged in the transaction of police dept. work. As such, that defense was waived by Appellee.

ARGUMENT

Appellant cites Rule 510 (a) General rule. "A person who has a privilege under these rules waivers the privilege if the person or person's predecessor while holding the privilege voluntarily discloses or consents to the disclosure of any significant part of the privileged matter."

Of the 1,372 emails Appellant reviewed approximately 90 were photographed and of those, work matters were clearly discussed, such as a search of Officer Guay's records looking for complaints. This wavier could be attributed to Appellee's incorrect assumption that the emails subject to review would not be understood by Appellant as to their context. For example,

"Meeghan was coming to see you at 1;30, (sic) will you be back to see her?" This was from Chandler to Moulton. The context was Meeghan Sargent started as a Police Explorer around age 16 and was hired as a reserve officer at 18 while carrying on a reported affair with Chief Moulton who was at that time married to wife number three. Sargent was fired due to the reported affair had reached its expiration date and a Sgt. did the actual firing. Sargent came to the meeting crying her eyes out trying to get her job back. Sources reported Sargent came to a funeral that Moulton was at and didn't know

anyone there except Moulton, and it was accepted that Sargent was Moulton's 'date' at the funeral. All this information flowed from that one sentence in one email. Imagine if you will, what other misconduct is hidden in the 1,142 emails that are the subject of this Appeal.

In State of Maine v. Priscilla Ouellette (2006 ME 81) This Court held that she did not voluntarily, knowingly, and intelligently waived her rights to a jury trial. In this case Appellant believes at least two or more law firms had a hand in sorting through the 2,542 emails to release the 1,372 that were previously reviewed. Appellant would assert that the waiver of personnel records contained therein was voluntarily, knowingly, and intelligently waived.

Appellant would also assert that the Appellee knowingly withheld the emails in question when it failed to disclose that it was seeking protection for releasing them under the exemption section of the Maine FOAA law. Appellant contends a wanton effort to fail to comply with one part of a law would waive protection from another part of the same law that was violated. As such all withheld emails should be produced for inspection by Appellant.

A. Standard of Review.

1. Whether the Appellee met its burden of proof establishing that the

emails could be withheld under the FOAA law, while flouting that part of the same law that requires all withheld emails be noted under which exemption they are protected by that very law.

2. Whether Appellant was entitled to inspect the withheld copies of the emails as a matter of law.

B. The Applicable Precedents.

The precedents selected by Appellant as useful for analytical purposes in this appeal is summarized as follows: None were located

C. The Constitutional Issue.

Appellee's failure to abide by the current FOAA law of the State of Maine.

VI. CONCLUSION

This Order should be vacated and the Appellee be ordered to supply all the emails in question undeleted and unredacted.

Dated: Falmouth, Maine
December 7, 2016

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TABLE OF AUTHORITIES

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STATUES