

RECORD REVIEW

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— Robert Freeman, executive director of New York State’s Committee on Open Government

Town refuses request for ‘confidential’ retirement settlement

By ABBY LUBY

Last summer, veteran Bedford Police Officer William Jones faced disciplinary charges for taking excessive sick days. By November the charges had been dropped by newly appointed Bedford Police Chief Chris Menzel. Last month Officer Jones retired. According to Bedford town attorney Lance Klein, meetings were held in January and February between the town and Mr. Jones’s counsel, attorney Jonathan Lovett, to discuss the terms of a settlement agreement as part of Mr. Jones’s retirement.

“I can tell you the settlement agreement between Officer Jones and the town was basically a confidential agreement between those parties and would not be subject to disclosure,” he said.

Mr. Klein added that only Mr. Jones could reveal the terms of the settlement agreement. Mr. Jones could not be reached for comment.

After a settlement agreement was reached, Mr. Jones retired, said Mr. Klein.

“Communications took place in the form of meetings in person, communications by phone, and communications in writing between counsel,” he said. “It wasn’t the town really, just between counsel.”

When The Record-Review requested to see the settlement agreement, Mr. Klein said the records were confidential. But according to case law cited by Robert Freeman, executive director of New York State’s Committee on Open Government, a 2003 appellate division decision upheld the right of the Democrat & Chronicle, a Rochester-based newspaper, to apply FOIL to obtain records of a settlement agreement between a chief of police who was retiring and the village of Brockport.

“This case dealt squarely with this issue,” said Mr. Freeman, citing from the case known as the Village of Brockport v. Calandra.

“It involved a settlement agreement involving separation from service between a village and its police chief,” said Mr. Freeman. “And, as in this situation, part of the settlement was a confidentiality clause prohibiting the disclosure of the agreement itself. That court and others have found over the course of years that government agencies cannot agree to keep records confidential unless the law authorizes them to do so. In short, government agencies cannot create exceptions from disclosure that do not exist in the law.”

Based on that information, The Record-Review filed a Freedom of Information application with the Town of Bedford on April 12 for the settlement agreement between the town and Officer Jones. Mr. Klein neglected to respond within the five days allotted by FOIL. More than a week later, on April 21, Mr. Klein faxed a denial of the request to

The Record-Review, saying that there were “no documents that would match your request.”

In a conversation following the denial, Mr. Klein said that there was a settlement agreement between the town and Officer Jones. The Record-Review informally requested to see the agreement for a second time, citing the case of the Village of Brockport v. Calandra, on Wednesday, April 25.

To date there has been no response from the town or its attorney, Lance Klein.

Mr. Freeman said that settlement agreements involving a person who had served as a police officer and the agency that employed him or her would be anything but confidential. “On the contrary, that kind of record has been found to be accessible to the public,” said Mr. Freeman. “The public has a right to know about the contents of any contract, and that’s what a settlement agreement is, a contract.”

When the Democrat & Chronicle finally received the settlement agreement records from the Village of Brockport, it revealed that the village had agreed to pay the former police chief \$24,241.90 in a settlement that led to his retirement. It was also clear from the settlement agreement that the funds paid to the police chief were to smooth over any potential disciplinary action that the village might have taken against him.

“Embarrassment is not one of the grounds for withholding records under the Freedom of Information Law,” said Mr. Freeman about the Brockport case. “If indeed the government fails to respect the public, the taxpayers, the capacity of the government to function well diminishes. People lose faith and confidence in the government, especially when the issue involves money.”