STATE OF MICHIGAN

COURT OF APPEALS

DETROIT NEWS,

Plaintiff-Appellee,

v

COUNTY OF WAYNE,

Defendant-Appellant.

UNPUBLISHED
March 15, 2002

No. 235831
Wayne Circuit Court
LC No. 01-118800-CZ

Before: Talbot, P.J., and Smolenski and Wilder, JJ.

PER CURIAM.

Plaintiff brought this action alleging defendant violated Michigan's Freedom of Information Act, MCL 15.231 *et seq.* ("FOIA") by refusing to disclose certain employee information about Wayne County employees. The trial court determined that the requested information was not exempt from disclosure and ordered defendant to produce the requested records. Defendant appeals by right. We affirm.

Pursuant to the FOIA, plaintiff requested the following information from defendant: (1) the name, job title, and salary or hourly pay rate for all Wayne County officials and employees for the calendar years 2000 and 2001, (2) the names of all employees who received longevity pay, and the amount of each payment for the calendar years 1999 and 2000, (3) the names of all employees who received pay for annual leave, accumulative leave, and the amount of leave pay each received for the calendar years 1999 and 2000, (4) the names of all employees who received pay for accumulated sick leave and the amount of sick pay each received during the calendar years 1999 and 2000, (5) the names of all employees who received flat rate mileage reimbursements and the monthly amount each received as of April 2, 2001, and (6) the names of all employees who had a county vehicle assigned to them as of April 2, 2001, and the year, make and model of each assigned vehicle.

Defendant denied plaintiff's request. Defendant relied on MCL 15.243(1)(d) of the FOIA, which provides that "[r]ecords or information specifically described and exempted from disclosure by statute" may be exempted from disclosure as a public record under the FOIA. Defendant maintained that the records plaintiff sought were part of the records of the Department of Personnel/Human Resources, a division created under the Wayne County Charter ("The Charter"). Defendant asserted that the Charter is controlled by the Civil Service Act, MCL 38.401 *et seq.*, which provides that "employees' records shall be confidential and not open for public inspection." MCL 38.412(g).

Plaintiff filed a complaint against defendant for an alleged FOIA violation along with a motion for an expedited order to show cause. The trial court proceeded on the assumption that the Civil Service Act governs the Charter, but the court concluded that the requested records did not fall within the exemptions of MCL 38.412(g), and ordered defendant to produce the records.

Defendant's appeal raises two legal issues: (1) Does the County Employees Civil Service Act ("Civil Service Act"), MCL 38.412(g), exempt the requested information from FOIA disclosure, and (2) can a negative inference be made that the Legislature intended to protect from disclosure other public employee salaries when it amended the FOIA, Section 13a, MCL 15.243a, to expressly provide for the disclosure of the salaries of public education employees? We conclude that the Civil Service Act does not exempt the requested information from FOIA disclosure, and that the Legislature, by amending the FOIA, did not intend to bar the FOIA disclosure of public employee salaries.

I

Section 13 of the FOIA, MCL 15.243(1)(d), provides that "[r]ecords or information specifically described and exempted from disclosure by statute" may be exempted from disclosure as a public record. Defendant contends that MCL 38.412(g), of the Civil Service Act exempts the requested information from disclosure. We conclude that MCL 38.412(g) is inapplicable to the requested records.

A determination whether a public record is exempt from disclosure under the FOIA is a mixed question of law and fact. *Schroeder v City of Detroit*, 221 Mich App 364, 366; 561 NW2d 497 (1997). We review the trial court's factual findings for clear error and review the questions of law de novo on appeal. *Id*. Statutory interpretation is a question of law that is also subject to review de novo on appeal. *Oakland Co Bd of Co Rd Comm'rs v Michigan Property & Casualty Guaranty Ass'n*, 456 Mich 590, 610; 575 NW2d 751 (1998).

The trial court did not rule on the question whether the Civil Service Act governs the current civil service system in Wayne County, in light of the Wayne County Charter and Reorganization Plan ("Charter"), adopted by the electorate on November 3, 1981, effective January 1, 1983.[1] However, even assuming arguendo, as did the trial court in this case, that the Civil Service Act applies, a reading of the plain language of MCL 38.412(g) shows that it does

[1] At the request of the trial court, the parties orally argued the issue of whether the Civil Service Act governed the Charter, but the trial court did not decide the issue, and it proceeded under the assumption that the Civil Service Act applied. Because the argument was not decided by the court, it is not preserved for appeal. *Swickard v Wayne Co Medical Examiner*, 438 Mich 536, 562; 475 NW2d 304 (1991); *Herald Co, Inc, v Ann Arbor Public Schools*, 224 Mich App 266, 278; 568 NW2d 411 (1997). Further, defendant failed to brief, and plaintiff did not fully brief, this issue in the trial court, and both parties have not fully briefed this question on appeal, giving their arguments only cursory attention. We decline to address the issue when the record relating to it is not fully developed and when the issue is unnecessary for this Court's review. *Kent Co Deputy Sheriff's Ass'n v Kent Co Sheriff*, 463 Mich 353, 356 n7; 616 NW2d 677 (2000).

not exclude the requested records from FOIA disclosure. Section 13 of the Civil Service Act, MCL 38.412, provides that the Civil Service Commission:

> (g) . . . Shall have such other powers and perform such other duties as may be necessary to carry out the provisions hereof.
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> * * *
>
> **Service records**. It shall cause to be kept in each department and division thereof, records of the service of each employee, known as "service records". These records shall contain fact statements on all matters relating to the character and quality of the work done and the attitude of the individual to his work.
>
> **Service records; armed services records; confidential records.** It shall keep a roster of the employees of the county, together with a record of service, military or naval experience and such other matters as may have a bearing on promotion, transfer or discharge. *All such "service records" and employees' records shall be confidential and not open for public inspection.* [Emphasis added.]

Defendant argues that the requested information qualifies as a "service record," defined by MCL 38.412(g) as those records that "contain fact statements on all matters relating to the character and quality of the work done and the attitude of the individual to his work." In support of its argument, defendant merely offers a generalized statement that "[c]ompensation and benefit information include facts related to the employee's work and attitude."[2]

The exemptions in the FOIA are to be narrowly construed, and the burden of proving their applicability rests with the public body. *Booth Newspapers, Inc v Univ of Michigan Bd of Regents*, 444 Mich 211, 232; 507 NW2d 422 (1993). To meet the burden of proving that public records are exempt from disclosure, the public body claiming the exemption should provide complete particularized justification, rather than simply repeat statutory language. *Hyson v Dep't of Corrections*, 205 Mich App 422, 424; 521 NW2d 841 (1994). Because defendant failed to support its claim with a complete particularized justification, it failed to carry its burden of showing that the requested records qualify as "service records."

Defendant also argues that MCL 38.412(g) does not define the term "employees' records" and that the plain meaning of the term encompasses the requested records. We disagree. A plain reading of the language of the statute shows that it does point to the definition of the term "employees' records" and excludes the requested records from its statutory exemption.

The primary goal of judicial interpretation of statutes is to give effect to the intent of the Legislature. *Farrington v Total Petroleum, Inc*, 442 Mich 201, 212; 501 NW2d 76 (1993). The first criterion in determining intent is the specific language of the statute. *Indenbaum v Michigan*

[2] We note that during oral argument, defense counsel conceded that the statute adequately defines the term "service records."

Bd of Medicine (After Remand), 213 Mich App 263, 270; 539 NW2d 574 (1995). The Legislature is presumed to have intended the meaning it plainly expressed. *Id*. In determining legislative intent, we look first at the words of the statute. *Id*. The words of the statute must be given their ordinary and plain meaning; only if the language is ambiguous may the courts look beyond the statute to determine the intent of the Legislature. *DiBenedetto v West Shore Hosp*, 461 Mich 394, 402; 605 NW2d 300 (2000). When statutory language is clear and unambiguous, this Court must honor the legislative intent as clearly indicated in that language. *Western Michigan Univ Bd of Control v Michigan*, 455 Mich 531, 538; 565 NW2d 828 (1997). No further construction is required or permitted. *Id*.

The statutory language at issue is the following sentence: "All such 'service records' and employees' records shall be confidential and not open for public inspection." MCL 38.412(g). Plaintiff argues that the word "such" modifies the term "employees' records." Defendant argues that it does not. The only logical conclusion that can be drawn from a reading of the sentence is that the word "such" modifies the term "employees' records" because of the absence of a separating comma after the term "service records" and before the connective word "and." Punctuation is an important factor in determining legislative intent, and the rules of grammar are presumed to have been known to the Legislature. *Kizer v Livingston Co Board of Comm'rs*, 38 Mich App 239, 251; 195 NW2d 884 (1972). Therefore, the absence of a separating comma before the connective conjunction suggests that the word "such" was intended to modify the term "employees' records."

The word "such" is not defined in the statute. Therefore, we look to the dictionary definition for its ordinary and plain meaning. *DiBenedetto, supra* at 402. The relevant dictionary definitions of the adjective "such" include "of the kind, character, degree . . . indicated or implied" or "being the . . . things indicated." *Random House Webster's College Dictionary* (1997). The word "such" is properly used as an adjective when reference has previously been made to a category of persons or things, meaning "of that kind." *Garner, A Dictionary of Modern American Usage* (Oxford University Press, 1998). Furthermore, "such" is a pointing word that must refer to a clear antecedent. *Id*. A pointing word should always have an identifiable referent. *Id*. A "pointing word" is a word like *this*, *that*, *these*, *those*, and *it*, which points directly to an antecedent. *Id*. An "antecedent" is a word, phrase, or clause that is replaced later by a pronoun or other substitute. *Random House Webster's College Dictionary* (1997). A reading of the sentence in question points directly to two antecedents: the "service records" in the immediately preceding paragraph, and the "roster of the employees of the county, together with a record of service, military or naval experience and such other matters as may have a bearing on promotion, transfer or discharge" in the immediately preceding sentence. Because it is clear that the term "service records" in the sentence at issue refers to the "service records" defined in the preceding paragraph in the statute, the only conclusion to be made is that the term "employees' records" in the sentence at issue is the term that the Legislature chose to describe the second antecedent. Contrary to defendant's contention that the term "employees' records" was not defined in the statute, we conclude that a plain reading of the statute shows that it is defined, albeit indirectly.

We reject defendant's argument that had the Legislature intended to restrict "employees' records" to the items described in the preceding sentence, the Act would have read "these records shall be confidential" or "the foregoing records shall be confidential." Defendant does not

explain the basis of its conclusion that the above sentence structures are the only syntax usages that the Legislature employs or should employ.

We find no ambiguity in the language of MCL 38.412(g), and therefore we may not look beyond the statute to determine the intent of the Legislature. *DiBenedetto, supra* at 402. Thus, an "employee record" as defined by MCL 38.412(g) is a record that contains "a record of service, military or naval experience and such other matters as may have a bearing on promotion, transfer or discharge." Defendant failed to show that the requested records of employee job title, salary, paid or used sick and annual leave, mileage reimbursement or the use of assigned county vehicles, have "a bearing on promotion, transfer or discharge." Therefore, the requested records do not fall within the definition of "employees' records" pursuant to MCL 38.412(g), and are not exempt from FOIA disclosure.[3]

II

Defendant next argues that when the Legislature amended the FOIA, section 13a, MCL 15.243a,[4] to expressly require only the disclosure of the salaries of public education employees, it did not expressly include the disclosure of other public employee salaries, and, consequently, a negative inference may be made that the Legislature did not intend that the salaries of other government employees be disclosed to the public. We disagree.

The FOIA is an act requiring full disclosure of public records unless a statutory exemption precludes the disclosure of information. *Messenger v Consumer & Industry Services*, 238 Mich App 524, 531; 606 NW2d 38 (1999); MCL 15.243(1)(d). Rather than specifying which records would be subject to disclosure, the Legislature chose to provide that, unless expressly exempt under Section 13 of the FOIA, all public records are subject to public disclosure. *Penokie v Michigan Technological Univ*, 93 Mich App 650, 657; 287 NW2d 304 (1979).

Here, it is undisputed that salary information of Wayne County employees are public records. However, defendant cites no statutory exemption that expressly exempts the release of

[3] We do not address here the issue whether the disclosure of the requested information would constitute an invasion of individual privacy, subsection 13(1)(a) of the FOIA, MCL 15.243(1)(a), because defendant does not raise it on appeal. We note, however, that defense counsel alluded to the question during oral argument.

[4] Section 13a of MCL 15.243a reads as follows:

> Notwithstanding section 13, an institution of higher education established under section 5, 6, or 7 of article 8 of the state constitution of 1963; a school district as defined in section 6 of Act No. 451 of the Public Acts of 1976, being section 380.6 of the Michigan Compiled Laws; an intermediate school district as defined in section 4 of Act No. 451 of the Public Acts of 1976, being section 380.4 of the Michigan Compiled Laws; or a community college established under Act No. 331 of the Public Acts of 1966, as amended, being sections 389.1 to 389.195 of the Michigan Compiled Laws shall upon request make available to the public the salary records of an employee or other official of the institution of higher education, school district, intermediate school district, or community college. [Footnote omitted.]

the Wayne County employee salaries, other than MCL 38.412(g), which, as previously discussed, is inapplicable. In construing a statute, a court may consider a variety of factors and apply principles of statutory construction, but should not ignore common sense. *Marquis v Hartford Accident & Indemnity (After Remand)*, 444 Mich 638, 644; 513 NW2d 799 (1994). Common sense dictates that the manner in which Wayne County allocates taxpayer monies in the form of salaries is "information regarding the affairs of government and the official acts of those who represent [the people] as public officials and public employees." MCL 15.231(2).

The Legislature enacted 1979 PA 130, effective October 26, 1979, which amended the FOIA by adding Section 13a, MCL 15.243a. *Penokie, supra* at 664 n 7. The addition mandates the disclosure of the salary records of employees of institutions of higher education, school districts, intermediate school districts and community colleges. MCL 15.243a. In *Penokie*, this Court noted that MCL 15.432a represents a clarification of, rather than a substantive change in, prior law.[5] *Id*. at 664 n 7. The legislative history of the amendment indicates that the purpose of the amendment was to remove from the public educational institutions the discretion whether to disclose salary information, and make the disclosure mandatory pursuant to the FOIA. As noted in the House Legislative Analysis Section regarding the release of school salary information, the proponents of the bill argued that because other public employee salary information was available, there was no reason to provide an exemption for the disclosure of school teacher salaries. Thus, because the FOIA does not expressly exempt the disclosure of records of public employee salaries, defendant's argument is without merit.

Affirmed.

/s/ Michael J. Talbot
/s/ Michael R. Smolenski
/s/ Kurtis T. Wilder

[5] It must be noted here that the Legislature enacted MCL 15.234a subsequently to the decision in *Penokie*, but prior to the release date of the opinion. *Penokie, supra* at 664 n 7. The issue in *Penokie* was the disclosure of salary records of university employees pursuant to the privacy provision of FOIA, MCL 15.243(1)(a).