

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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In the Matter of the Application of
WESTCHESTER ROCKLAND NEWSPAPERS, INC.,

Petitioner,

- against -

MARIE S. DONOHUE, Clerk; VINCENT R.
RIPPA, Mayor; C. SAMUEL KISSINGER,
City Manager, and THE CITY COUNCIL
OF THE CITY OF NEW ROCHELLE, for
Judgment under CPLR Article 78,

Respondents.
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D E C I S I O N

Index No. 14773/76

Not. Cal: 10/14/76
29

DICKINSON, J.

Petitioner brings this proceeding pursuant to Public Officers Law for access to certain information withheld by the respondents.

In June 1976, the Director of Finance of the City of New Rochelle published a legal notice in the newspaper known as the Standard Star advertising the public sale of \$165,000.00 in 6 month, 5 per cent bond anticipation notes to be issued on June 15, 1976. The advertisement was published on June 7th, 8th, 9th, 10th and 11th and called for the submission of applications, which applications were to be accepted in the order in which they were received. Four bidders responded to the legal advertisement and bearer notes were issued to them.

The respondent states that they are under no obligation to disclose this information, respondent Board feeling that this

would be the revelation of an item of a personal nature which would result in economic or personal hardship to the person whose name would be revealed (Public Officers Law § 88(3)e). Respondents do not demonstrate in what way economic or personal hardship would or could result.

Respondent further urges that the information they have in their possession was not relevant or essential to the ordinary work of the municipality; that they were under no obligation to collect the information since the bearer notes are by their very definition unregistered and no record of the purchasers need be kept by the municipality. Respondent herein however, chose to keep a record and by keeping such a record they became official records of the municipality under the General Municipal Law § 51.

In adopting the so-called "Freedom of Information Law" the legislature expressed its intent in Section 85 and stated inter alia:

"The people's right to know the process of government decision-making and the documents and statistics leading to determinations is basic to our society. Access to such information should not be thwarted by shrouding it with the cloak of secrecy or confidentiality."

The legislature therefore declares that government is the public's business and that the public, individually and collectively and represented by a free news media should have unimpaired access to the records of government."

The affect of this statement of policy, is to place the affirmative burden squarely on the municipality to demonstrate why matters should not be disclosed.

In Dunlea v. Goldmarks, 85 Misc.2d 198, 380 N.Y.S.2d 496, the respondent, a state agency, was required to "come forward and show that the public interest would indeed be jeopardized by a disclosure of the information". The Court of Appeals in Cirale v. 80 Pine Street Corporation, 35 N.Y.2d 113, (cited by the Court in Dunlea, supra) set the standard:

"By our decision today, we do not hold that all governmental information is privileged or that such information may be withheld by a mere assertion of privilege. There must be specific support for the claim of privilege. Public interest is a flexible term and what constitutes sufficient potential harm to the public interest so as to render the privilege operable must of necessity be determined on the facts of each case. Such a determination is a judicial one and requires that the governmental agency come forward and show that the public interest would indeed be jeopardized by a disclosure of the information. Otherwise, the privilege could be easily abused, serving as a cloak for official misconduct. ..."

The respondent herein has failed to demonstrate that the public interest would be jeopardized by the requested disclosures. Absent such a demonstration, petitioner's request must be granted in full.

Submit Order on Notice.

S/Fred A. Dickinson

Dated: Carmel, New York
January 19, 1977

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