

OPINION

Editorial

Next circuit judge should know the Sunshine Law

by Holly Nelson

If we were endorsing candidates this year, which we are not, we would definitely not endorse Nichol Palumbo for 23rd Circuit judge.

Accountability and transparency are important components of a democracy – in our view, the most important.

Under Michigan law, government at all levels – be it a township board, a police agency, a school district or a county prosecutor – are accountable to the public. State laws have been enacted to ensure this, including the Freedom of Information Act (FOIA).

FOIA is an important tool, used by citizens and the press to hold government accountable. A few years ago, when a Detroit mayor was running amuck, it was a news organization's use of FOIA and its appeal process which uncovered the criminal behavior.

There are thousands of examples of citizens using FOIA to shine the light on matters which public agencies would rather sweep under the rug, including FOIA requests made by the *Oscoda Press* and *Iosco County News-Herald* which led to disclosure of lawsuit settlements, governmental contamination, government acting in secrecy to award contracts, bias in hiring practices and many others.

So how does this relate to Palumbo? Well, when a public agency is alleged to have violated FOIA, it is the circuit judge who hears the case.

This newspaper recently made a FOIA request of Palumbo in her capacity as the Iosco County prosecuting attorney. It was for the report of the Michigan State Police investigation – an investigation requested by Palumbo and subsequently used by her to charge the county deputy treasurer, Cathy Anderson, with one count of embezzlement by a county official.

She provided a report which, in our opinion and that of our attorney, violated the letter and spirit of this important Sunshine Law. It had been extensively redacted. Dozens of pages were completely blank.

The middle name of the complainant was blacked out, with the explanation that it was a violation of privacy, however, later on the same page, the middle name was there.

We had the opportunity to look at a complete police report – it turns out the blacked-out name was misspelled. How is a middle name or a misspelled name protected by the privacy exemption? Can't seem to find this in either the law or the many court opinions on FOIA.

The first line of the detective's summary states that, "On May 5th, 2016 I met with Iosco County Prosecuting Attorney-Nichol Palumbo..." The next three words are blacked out, with a note added to justify this redaction in that release of the information would interfere with law enforcement proceedings or deprive a person of the right to a fair trial.

The blacked out three words are "at her office."

We are scratching our heads. How does the fact that the detective met with Palumbo at her office interfere with law enforcement proceedings or deprive a person of a fair trial?

Another example was the redaction of "filing" in the phrase, "to pay a \$1 filing fee." Again, she used interference with law enforcement as the reason for deleting the word.

The ridiculous redactions are too many to list.

Seventy-six pages of the 128-page report have been totally blacked out, except for the header and footer identifying these pages as being as part of a state police report and the page number.

When we compared the redacted material to the complete police report, we found that much of the information deleted by Palumbo either cast a poor light on the complainant or was favorable to the defendant. Some of the redactions seem to be just plain arbitrary.

Palumbo phoned the day her staff was faxing the redacted report. I questioned the widespread redactions. She said she could only release information which was part of the public record. I told her a police report was a public record, to which she replied that, under court rules, she could only release information which was part of the public court record.

Even if we bought this – which we don't – a comparison of the redactions to the preliminary hearing transcript found plenty of material which was redacted from the report but disclosed in the courtroom.

"A public body must segregate exempt from non-exempt; the wholesale redaction of the entirety of the text does not comport with this requirement. There is obviously excessive redaction here – whole pages (apart from headers and footers), as well as whole paragraphs. Surely, there are articles (a, the), pronouns (he, she) and other matters in the text that are not exempt from disclosure and that should have been provided," stated Robin Luce-Herrmann, attorney for the Michigan Press Association and an expert in FOIA.

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"Moreover, that the fact that the MSP officer met with the prosecutor 'at her office' on the basis that this information would: "(i) Interfere with law enforcement proceedings" or "(ii) Deprive a person of the right to a fair trial or impartial administrative adjudication" calls into question all of the exemptions claimed," Luce-Herrmann added.

"Similarly, the fact that information is routinely redacted on the basis both that it would '(i) Interfere with law enforcement proceedings' and that it would '(ii) Deprive a person of the right to a fair trial or impartial administrative adjudication' suggests that the proper consideration is not being given to the exemptions, which are to be construed narrowly. These exemptions are not interchangeable, as their invocation here suggests.

"Another indication that there has been excessive and unnecessary redaction is the fact that the state (and the town) of a witness was redacted. It's quite clear from other, unredacted information, that this witness lives in the state of Michigan and it is likely the city where a public official resides is common knowledge," Luce-Herrmann added.

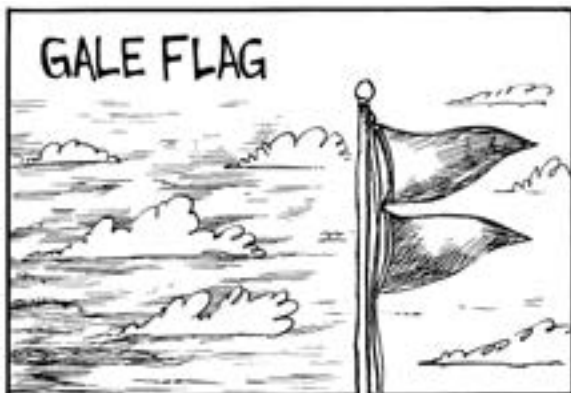
A copy of the redacted police report was also provided to the deputy treasurer's defense team.

"She denied the public, through its media outlet, information that most definitely exonerates Cathy Anderson of a crime," was attorney Michael Nichols response, citing numerous examples.

"As a former reporter and now a lawyer, I think the redactions are over the top and not in compliance with the sunshine act and it's really disappointing. It's just poor judgment. She might as well have just denied your FOIA and let you gone to court over it."

As a side note, since we had already viewed the police report by the time Palumbo responded to our FOIA request, we did not appeal what we believe to be a clear violation of FOIA. It would have simply been a waste of the court's time.

FOIA is one of the most important tools citizens have when governmental agencies and agents act irresponsibly or simply do not want to be held accountable for their actions. So we get a bit perturbed when someone – especially a judicial candidate – does not seem to understand this law.



Who needs who?

Editor,

It's impossible to imagine anyone could explain their plan in 30 seconds or an hour. Yet this is the question asked of and by political candidates. I, for one, am very tired of the small childish talk of politicians. What's your plan? What a dumb question!

Here is a question regarding the constitution, "What's your plan to keep the U.S. Constitution the center of our society?" The whole political process is designed to trip up an opponent, it's not about being honest.

One Communist has said: "Don't worry about the educated or the sophisticated, they will believe anything they are told. It's the fellow who comes home from work everyday, opens the newspaper to the sports section, he cares not for the front page. This is the guy we worry about, he is an independent thinker and sees things as they really are. This guy is a great danger to us and the party."

This is why the sophisticates are a part of and love unions so much, to control the masses.

In the end, politicians say, "You need us." The common man says, "We don't need you."

I heard a joke that was full of reality, the politician speaking "You need me to help you." The listener saying, "I don't need you, I will be fine doing for myself." The politician says, "Look, I am a Democrat, Democrats are here to help, so you need me and I am your helper, don't make me repeat myself."

It would be interesting to know how many people want politicians to do nothing more than leave people alone, we don't need their help, look where their help has got us. As sung by Tennessee Ernie Ford, it is "Another day older and deeper in debt! I owe my soul to the government store."

—Ken Clouse
Glennie

Does not respect Obama, Clinton

Editor,

Why do I have to sacrifice my life to satisfy a two-bit politician's unearned quest for fame and unimaginable riches? This sacrifice starts with a man who does not deserve to be called a POTUS.

I give respect where respect is due and God knows, Barack Hussein Obama has taken the Presidency to new heights with his [alleged] lawless immigration antics. He has continued to allow thousands of people of questionable motives to enter this country

without any sort of proof of their backgrounds. Obama has also ordered that citizenship be rewarded to 1,930 immigrants without any part of administered process of vetting. Obama needs these votes for a Hillarious victory.

There will be more of this to come and we sit idly by waiting.

The sad part of this anarchism is that many Americans agree with these attacks of anarchy. I wonder if they will ever admit to their children and grandchildren that, by supporting Hillary Clin-

ton, who agrees with Obama's policies, they endangered many American lives.

Support of a woman who is [allegedly] a liar, as proved by the FBI and the Congress of the USA, will probably get someone killed.

Think about that on election day. I hope that you won't sacrifice your life so that two political anarchists can live a glorious life.

—Ed Koneczny
Oscoda

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