

**IN THE CIRCUIT COURT OF WASHINGTON COUNTY, ARKANSAS
CIVIL DIVISION**

JANE DOE

PLAINTIFF

v. CASE NO.: _____

**FAYETTEVILLE PUBLIC SCHOOLS
a/k/a FAYETTEVILLE SCHOOL
DISTRICT**

DEFENDANT

COMPLAINT

COMES NOW, Plaintiff JANE DOE, by and through her attorneys, Clark Law Firm, PLLC, and for her Complaint for Declaratory Judgment and Injunctive Relief states as follows:

Parties and Jurisdiction

1. Plaintiff, JANE DOE (hereinafter “Jane Doe”) is a resident of Washington County, Arkansas. Plaintiff asserts her claim under the pseudonym Jane Doe, because this matter involves substantial privacy interests and failure to disclose her identity imposes no prejudice on the Defendant.

2. Defendant Fayetteville Public Schools a/k/ Fayetteville School District (hereinafter “FPS”) is a public school district located in Washington County, Arkansas.

3. This Court has jurisdiction over the subject matter, the parties, and venue is proper in this Court.

Factual Background

4. Jane Doe, a FPS employee, notified FPS through counsel on or about March 14, 2018 that she was being sexually harassed by the FPS Superintendent (hereinafter “Superintendent”).

5. When her complaint was made, she provided text messages and voice recordings evidencing the complaint.

6. FPS conducted an investigation into Jane Doe’s claim.

7. The Superintendent was terminated on June 18, 2018 by vote of the FPS Board of Education.

8. FPS is the custodian of records regarding Jane Doe’s sexual harassment claim and the Superintendent’s termination.

9. On or about June 29, 2018, Plaintiff’s counsel received correspondence from FPS regarding two Arkansas’ Freedom of Information Act Requests (hereinafter “FOIA”) seeking information related to the investigation and termination of Superintendent, such as recordings, text messages, and other information.

10. On information and belief, FPS has received additional FOIA requests for the information.

11. The requested information includes personnel records for Jane Doe, as she was the complainant and a party to the recordings and text messages related to the investigation and termination of Superintendent.

12. FPS determined that the requested information is a “job performance record” with respect to the Superintendent and therefore should be released pursuant to FOIA.

13. The Plaintiff sought an Attorney's General opinion on the disclosure, and based on the limited information provided, General Rutledge determined the records were subject to disclosure.

14. Plaintiff now seeks relief from the Court pursuant to Ark. Code Ann. § 25-19-105(c)(3)(C).

Declaratory Judgment and Injunctive Relief

15. Plaintiff incorporates each preceding paragraph of its Complaint as if set forth fully herein.

16. Under Ark. Code Ann. § 16-111-101, *et seq.*, this Court has the power to hear a party whose rights, status, or other legal relations are affected by a statute to determine any question of construction or validity arising under the statute, and to issue a judgment declaring the legal effect of such rights, status, or other legal relations.

17. Declaratory relief is possible where there exists (1) a justiciable controversy (2) between adverse parties (3) with a legal interest in the controversy, and (4) the issue involved are ripe for decisions. *Baptist Health Sys. V. Rutledge*, 2016 Ark. 121, 488 S.W.3d 507.

18. There is a justiciable controversy between the Plaintiff and Defendant, which have adverse interest, in the issues that are ripe for decision, and Plaintiff has a legal interest in the controversy because of her individual privacy interests.

19. Under Arkansas' Freedom of Information Act ("FOIA"), records kept in the scope of employment are presumed to be public record. Ark. Code Ann. § 25-19-103(7)(A)(2018). However, even if a record is considered to be a public record, it may be exempt from disclosure under FOIA. *Young v. Rice*, 308 Ark. 593, 596, 826 S.W.2d 252, 254 (1992).

20. FOIA provides that personnel records “shall not be deemed to be made open to the public under the provisions of this chapter . . . to the extent that disclosure would constitute a clearly unwarranted invasion of personal privacy.” Ark. Code Ann. §25-19-105(b)(12). This Section requires that the public’s right to knowledge of the records be weighed against an individual’s right to privacy. *Young*, 308 Ark. at 598.

21. When the public’s interest is substantial, it will usually outweigh any individual privacy interest and disclosure will be favored; however, the Arkansas Supreme Court has found that a substantial individual privacy interest outweighs the public’s interest in “records revealing the intimate details of a person’s life, including any information that might subject the person to embarrassment, harassment, disgrace, or loss of employment or friends.” *Young*, 308 Ark. at 598.

22. To release records containing information that “touches on the intimate details of the [petitioners’] lives . . . would therefore result in a clearly unwarranted invasion of personal privacy.” *Young*, 308 Ark. at 598 (citing *Brown v. FBI*, 658 F.2d 71 (2d Cir. 1981)(applying Arkansas FOIA law)).

23. The records to be disclosed contain graphic text messages that are exceptionally personal in nature. Such information would subject the Plaintiff and her family to embarrassment, harassment, and could impact her employment and relationships with friends. Therefore, under *Young*, releasing the records would unquestionably result in an unwarranted invasion of Jane Doe’s personal privacy.

24. It is important to note that the records to be disclosed do not deal with Jane Doe’s discipline or termination, but with her role as the victim of sexual harassment. Because her complaint involved the Superintendent, whose discipline is made public, her children have already had to face questions and comments at school about their mother.

25. Though the Superintendent's termination is unquestionably a matter of public concern, the competing interest of the Plaintiff's personal privacy should be protected by FPS.

26. Because the contents of subject records contain inflammatory information that "touches on the intimate details" of Jane Doe's life, which will subject her and her family to "embarrassment, harassment, disgrace, or loss of employment or friends," the Plaintiff respectfully requests that this Court declare that documents, identified by FPS for disclosure, constitute a clearly unwarranted invasion of privacy and enjoin FPS from releasing the records.

WHEREFORE, Plaintiff, JANE DOE, respectfully requests the Court Grant her Motion for Declaratory Judgment, enjoin FPS from releasing the records identified by FPS, for her costs and attorney's fees and for all other relief to which she may be entitled.

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