THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS. | **SUPERIOR COURT**
SOUTHERN DISTRICT | **No. 226-2012-CV-0134**

United Steelworkers, AFL-CIO, CLC on behalf of Local 8938

v.

Nashua Telegraph; Pennichuck Corporation; and Pennichuck Water Works, Inc.

ORDER

The petitioner, United Steelworkers, AFL-CIO, CLC on behalf of Local 8938, filed this petition requesting temporary and permanent injunctive relief, and attorney's fees and costs. In particular, the petitioner seeks to prevent the respondents, Pennichuck Corporation ("Pennichuck"), Pennichuck Water Works, Inc. ("Water Works"), and the Nashua Telegraph[1] (the "Telegraph") (collectively, the "respondents"), from distributing, receiving and/or publishing salary information of the employees of Pennichuck and Water Works. The Court granted the petitioner's *ex parte* motion for temporary injunctive relief on February 2, 2012. In its February 28, 2012 order, the Court extended the temporary injunction pending final resolution of this matter on the merits as to Pennichuck and Water Works, but found it unnecessary to further enjoin the Telegraph. The Telegraph has filed a cross-claim against Pennichuck and Water Works, seeking the disclosure of requested information pursuant to RSA 91-A:7, as well as an award of attorney's fees and costs and an injunction preventing future violations of RSA 91-A. Currently pending before the Court are the parties' requests for final findings of fact and rulings of law. For the reasons set forth herein, the Court finds and rules as follows.

---

[1] The Telegraph Publishing Company has filed an appearance on behalf of the Nashua Telegraph.

Findings of Fact

The Court finds the following relevant facts from the record before it. On January 26, 2012, the City of Nashua (the "City") purchased all outstanding shares of Pennichuck, a corporation formed pursuant to RSA 293-A, New Hampshire's Business Corporations Act. Pennichuck owns all outstanding shares of Water Works. The petitioner represents the majority of employees of Pennichuck and Water Works.

On February 1, 2012, all employees of Pennichuck and its subsidiaries were notified that the City's ownership of Pennichuck rendered their salaries subject to disclosure pursuant to RSA 91-A et seq. (2001, Supp. 2012), New Hampshire's Right-to-Know Law. The notice further informed employees that Pennichuck would release this information in response to the Telegraph's request for publication on February 5, 2012. On February 2, 2012, this petition was filed, asserting that the City's ownership does not render the Right-to-Know Law applicable to Pennichuck or Water Works. The Telegraph subsequently field its cross-claim against Pennichuck and Water Works, requesting the disclosure of a list of the former shareholders of Pennichuck, the names and salaries of all Pennichuck employees pursuant to RSA 91-A:7, as well as an injunction against future violations of the Right-to-Know Law.

Rulings of Law

I. Petitioner's Request for Permanent Injunctive Relief

"It is within the trial court's sound discretion to grant an injunction after consideration of the facts and established principles of equity." Town of Atkinson v. Malborn Realty Trust, 164 N.H. 62, 66 (2012). "The issuance of injunctions, either temporary or permanent, has long been considered an extraordinary remedy." N.H.

Dep't of Envtl. Servs. v. Mottolo, 155 N.H. 57, 63 (2007). In order for the petitioner to be entitled to a permanent injunction, it must not only prevail on the merits, but must also demonstrate that there exists "an immediate danger of irreparable harm to [it], and [that] there is no adequate remedy at law." Id. The Court must also balance the hardships, including that to the respondents in granting the injunction and to the petitioner in denying the injunction, see Carroll v. Schechter, 112 N.H. 216, 221 (1972), taking into consideration whether "the public interest would . . . be adversely affected if the [C]ourt granted the [ ] injunction," Thompson v. N.H. Bd. of Med., 143 N.H. 107, 108 (1998). In order to determine whether the petitioner is entitled to permanent injunctive relief in this case, the Court will first consider whether the petitioner prevails on the merits of its claim that Pennichuck and Water Works (the "corporate respondents") are not subject to RSA 91-A.

"Part I, Article 8 of the New Hampshire Constitution provides that 'the public's right of access to governmental proceedings and records shall not be unreasonably restricted.'" Prof'l Firefighter of N.H. v. HealthTrust, Inc., 151 N.H. 501, 503 (2004) (quoting N.H. CONST. pt. I, art. 8). In order to protect this right, New Hampshire's Right-to-Know Law provides that, "[e]very citizen during the regular or business hours of all public bodies and agencies . . . has the right to inspect all governmental records in the possession, custody, or control of such public bodies or agencies . . . ." RSA 91-A:4, I (Supp. 2012). "Public body" includes the following:

> (a) The general court including executive sessions of committees; and including any advisory committee established by the general court.
> (b) The executive council and the governor with the executive council; including any advisory committee established by the governor by executive order or by the executive council.

> (c) Any board of commission of any state agency or authority, including the board of trustees of the university system of New Hampshire and any committee, advisory or otherwise, established by such entities.
> (d) Any legislative body, governing body, board, commission, committee, agency, or authority of any county, town, municipal corporation, school district, school administrative unit, chartered public school, or other political subdivision, or any committee, subcommittee, or subordinate body thereof, or advisory committee thereto.
> (e) Any corporation that has as its sole member the state of New Hampshire, any county, town, municipal corporation, school district, school administrative unit, village district, or other political subdivision, and that is determined by the Internal Revenue Service to be a tax exempt organization pursuant to section 501(c)(3) of the Internal Revenue Code.

RSA 91-A:1-a, VI.

When interpreting the Right-to-Know Law, the Court "appl[ies] the ordinary rules of statutory construction to [its] review [ ], and [ ] accordingly first look[s] to the plain meaning of the words used." Ettinger v. Town of Madison Planning Bd., 162 N.H. 785, 788 (2011). "Words and phrases are construed according to the common and approved usage of the language unless from the statute it appears that a different meaning was intended." Id. The Court "resolve[s] questions regarding the law with a view to providing the utmost information in order to best effectuate the statutory and constitutional objective of facilitating access to all public documents." Union Leader Corp. v. N.H. Hous. Fin. Auth., 142 N.H. 540, 546 (1997) (internal citations omitted).

Whether a corporation of which a city is the sole shareholder constitutes a public body within the meaning of RSA 91-A:1-a, VI is an issue of first impression in this State. Although the New Hampshire Supreme Court has previously considered entities not easily characterized as entirely private or public, the Court finds these cases distinguishable because of significant differences in the nature of the entities at issue. Nonetheless, the Court finds such case law instructive in determining the factors to

consider when assessing whether an entity is a public body pursuant to RSA 91-A:1-a, VI.

In Bradbury v. Shaw, 116 N.H. 388, 389 (1976), the court "considered the status of an industrial advisory committee formed by the mayor of Rochester[, New Hampshire]." In reaching its determination in that case, the court "examined [the committee's] composition (which included 'newspapermen and members of the city council'), the frequency of its meetings (once per month), and its functions (which included reviewing land purchases the city had made, identifying city-owned property to possibly sell, arranging sale transactions and participating in land sale negotiations, discussing extension of city water and sewer lines and construction of new streets)." Prof'l Firefighters of N.H. v. Local Gov't Ctr., Inc., 159 N.H. 699, 704 (2010) (quoting Bradbury, 116 N.H. at 389). Focusing on "the committee's involvement in governmental programs and decisions," the Bradbury Court found the Right-to-Know Law applicable. Prof'l Firefighters of N.H., 159 N.H. at 704 (citing Bradbury, 116 N.H. at 390).

In Union Leader, the court determined that "the balance favor[ed] a finding that the [New Hampshire Housing Finance Authority was] subject to the Right-to-Know Law" for the following reasons: (1) the authority was created "to encourage the investment of private capital through the use of public funding;" (2) the authority performed an essential government function of providing safe and affordable housing for elderly and low-income citizens; and (3) the authority was created by statute, which deemed it "to be a *public instrumentality* and the exercise by the authority of the powers conferred by [RSA 204-C] shall be deemed and held to be the performance of *public* and *essential*

governmental functions of the state." Union Leader Corp., 142 N.H. at 547 (emphases in original).

Subsequently, in Professional Firefighter of New Hampshire, 151 N.H. 501, the supreme court considered whether HealthTrust, Inc., a non-profit New Hampshire corporation made up of over three hundred governmental entities for the purpose of providing health insurance benefits to public employees, constituted a public body within the meaning of RSA 91-A. As in Union Leader, the court ultimately determined that HealthTrust was subject to the Right-to-Know Law based on the following factors: (1) "HealthTrust is an organization comprised exclusively of political subdivisions, which, notably, are subject to the Right-to-Know Law;" (2) "HealthTrust is governed entirely by public officials and employees;" (3) "HealthTrust provides health insurance benefits for public employees through a pooled risk management program, which the legislature has recognized is an essential governmental function;" (4) "HealthTrust operates for the sole benefit of its constituent governmental entities and for the sole purpose of managing and providing health insurance benefits for public employees;" and (5) "HealthTrust manages money collected from governmental entities and enjoys the tax-exempt status of public entities." Prof'l Firefighter of N.H., 151 N.H. at 504.

More recently, the supreme court again looked to similar factors in Professional Firefighters of New Hampshire, 159 N.H. 699, and determined that the Right-to-Know Law applied to affiliated entities of Local Government Center, Inc. ("LGC"), an admitted governmental entity subject to the Right-to-Know Law. The court noted that LGC's affiliated entities "are part of an organization solely owned by LGC and managed by a single board of directors, consisting of municipal public officials, school public officials,

employee officials, and a county public official." Id. at 705. Participants of LGC "consist of public government members and other entities that perform functions that would otherwise have to be performed by a governmental entity." Id. Further, the affiliated entities of LGC also enjoyed the tax-exempt status of public and governmental entities pursuant to the federal tax code. Id. at 706. "In the end, [the court] examine[d] the structure and function of an entity to assess the entity's relationship with government, and determine[d] whether that entity [was] conducting the public's business." Id. at 705.

Although these cases are persuasive in ascertaining the factors to which the Court looks in determining whether an entity is a public body pursuant to the Right-to-Know Law, the Court finds the matter before it distinguishable from those considered by the supreme court previously. Rather, the Court finds this matter analogous to Hopf v. Topcorp, Inc., 628 N.E.2d 311 (Ill. App. Ct. 1993). In that case, an Illinois appellate court considered whether a corporation, owned entirely by a city and a university, and its subsidiary corporation were public bodies within the meaning of Illinois' Open Meetings Act and Freedom of Information Act. Hopf, 628 N.E.2d 311. The Illinois Open Meetings Act defines "public body" as follows:

> [A]ll legislative, executive, administrative or advisory bodies of the state, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees or commissions of the State and any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees which are supported in whole or in part by tax revenue, or which expend tax revenue, except the General Assembly and committees or commissions thereof.

Id. at 315 (citing 102 Ill. Comp. Stat. 41.02 (1985)). Illinois case law has established the following three-factor test to determine whether an entity is a "subsidiary body": "(1) whether the entity has a legal existence independent of government resolution; (2) the

nature of the functions performed by the entity; and (3) the degree of government control exerted over the entity." Hopf, 628 N.E.2d at 314-15. The Hopf Court applied this test as follows:

> First, Topcorp and RPI were and remain incorporated under the Illinois Business Corporation Act. Second, the functions of the two corporations remain proprietary: Topcorp purchases land and acts as a holding company for RPI; RPI develops the land and then markets space in the research park to potential [tenants]. Finally, the corporate structure of the two corporations is unchanged: both the City and Northwestern own ½ of the outstanding shares and appoint ½ of the directors. Although both the City and Northwestern are able to *influence* the direction and decisions of the two corporations through their appointment power, neither the City nor Northwestern can *control* the two corporations.

Id. at 315 (emphases in original). As a result, the court concluded that the corporations were not public bodies subject to Illinois' mandatory governmental disclosure laws.

The Court also notes that a number of other jurisdictions apply similar multi-factor tests on a case-by-case basis. For instance, the Oregon Supreme Court adopted the following factors in order to determine whether an entity was a public body within the meaning of that State's right-to-know law:

> (1) The entity's origin (e.g., whether the entity was created by government or had some origin independent of government).
> (2) The nature of the function assigned to and performed by the entity (e.g., whether that function is one traditionally associated with government or is one commonly performed by private entities).
> (3) The scope of the authority granted to and exercised by the entity (e.g., does the entity have the authority to make binding governmental decisions, or is it limited to making nonbinding recommendations).
> (4) The nature and level of government financial involvement with the entity. (Financial support may include payment of the entity's members or fees as well as provision of facilities, supplies, and other nonmonetary support.)
> (5) The nature and scope of government control over the entity's operation.
> (6) The status of the entity's officers and employees (e.g., whether the officers and employees are government officials or government employees).

Marks v. McKenzie High Sch. Fact-Finding Team, 878 P.2d 417, 424-25 (Or. 1994); see also Bd. of Tr. of Woodstock Acad. v. Freedom of Info. Comm'n, 436 A.2d 266, 270-71 (Conn. 1980) (holding that, based on its survey of relevant federal case law, courts should consider the following factors: (1) whether the entity performs a governmental function; (2) the level of government funding; (3) the extent of government involvement or regulation; and (4) whether the entity was created by government); Town of Burlington v. Hosp. Admin. Dist. No. 1, 769 A.2d 857, 863 (Me. 2001) (noting after a survey of other jurisdictions that, "[f]actors which courts generally consider include: (1) whether the entity is performing a governmental function; (2) whether the funding of the entity is governmental; (3) the extent of governmental involvement or control; and (4) whether the entity was created by private or legislative action").

Based on all of the above cases, the Court considers the following non-exclusive list of factors in determining whether Pennichuck is subject to the Right-to-Know Law: (1) the function of the corporation; (2) the involvement of the government in the creation of the corporation; (3) the role of the government in the governance and structure of the corporation; and (4) the source of the corporation's funding. The Court will consider each in turn, noting that no factor is either indispensible or dispositive.

First, the petitioner admits that Pennichuck and Water Works perform a governmental function by providing water services to the community. However, as the petitioner emphasizes, Pennichuck and Water Works serve a much larger area than just the City, extending service into Northern Massachusetts. In Professional Firefighter of New Hampshire, the supreme court noted that HealthTrust "operates for the sole benefit of its constituent governmental entities and for the sole purpose of managing and

providing health insurance benefits for public employees." 151 N.H. at 504. By contrast, Pennichuck and Water Works operate for the benefit of private citizens paying for the corporations' water services. Although water and other utility services may constitute essential governmental functions, they are also often performed by purely private entities. Moreover, "[w]hether an entity performs an essential governmental function is not the exclusive method for determining whether it is subject to the Right-to-Know Law." Prof'l Firefighters of N.H., 159 N.H. at 705. Accordingly, the fact that these corporations perform a governmental function does not weigh in favor or against finding that they constitute public bodies.

Next, the petitioner maintains that Pennichuck and Water Works "remain private businesses and for-profit corporations and the record of any payments made to their employees remains private and not subject to the provisions of RSA Chapter 91-A." (Pet. ¶ 11.) It is not disputed that Pennichuck and its subsidiaries have a purely private history. Unlike prior New Hampshire cases considering whether an entity constituted a public body, neither corporation here was created pursuant to any action by the legislature. In this case, the legislature's action merely authorized the City to purchase the outstanding shares of the existing corporation. Therefore, this factor weighs against a finding that Pennichuck and Water Works are public bodies, as the corporations' origin was independent of government.

Third, the Court looks to the degree of governmental control over the corporations. Pursuant to the Amended Articles of Incorporation written at the time the City purchased all outstanding shares of Pennichuck, the City may exercise its powers and rights as the sole shareholder "pursuant to vote of the Board of Alderman of the

City of Nashua, considered and adopted in accordance with applicable law and the provisions of the City Charter." (Pet'r's Ex. A, Art. VI.) The Board of Directors of the corporation maintains control over the management and affairs of the corporation. (Id. at Art. VII; see also Telegraph's Offer of Proof, Ex. C at 5.) "The composition of the Board and the election and appointment of members of the Board shall be in accordance with the By-Laws." (Pet'r's Ex. A, Art. VII.) According to Pennichuck's letter to its customers dated January 25, 2012, "[t]he City [ ] approved an Independent Board of Directors comprised of between 7 and 13 members. The current Board of Directors includes 5 members from Nashua and four members serving from other communities. Elected officials, key employees, and their family members cannot serve on the Pennichuck Board except for the Mayor of Nashua who will serve for 2 years to ensure continuity of purpose." (Pet'r's Ex. E (emphasis added).) Pursuant to RSA 294-A:8.01(b), the Board of Directors maintains discretion to exercise all corporate powers and to manage the business and affairs of the corporation. In addition, as support for finding that the merger was in the public interest, the merger proposal indicated that, "under the proposed transaction, . . . the current management and employees responsible for operating the Regulated Utilities will stay the same, their jobs will be preserved, and customers will contact the exact same people they always have with questions or concerns." (Id. at ¶ 20(e).) Although the City, as the sole shareholder, maintains the rights and responsibilities of that position, the inner-workings and the day-to-day business of the corporation are operated by the Board of Directors and the officers of the corporation. Therefore, the Court finds that the structure and governance of the corporation weighs against a finding that Pennichuck is a public body. As the

City's control over Water Works is further attenuated because any power must be exercised through Pennichuck's ownership of its subsidiary's stock, the Court also concludes that the governance of Water Works similarly weighs against a finding that it is a public body.

Finally, the Court also looks to the source of the corporations' funding. The acquisition of all outstanding shares of Pennichuck stock by the City was accomplished through the merger of a "newly-organized subsidiary owned by the City into Pennichuck." (Pet'r's Ex. I ¶ 11.) The merger was conditioned on the prerequisite that "the Board of Aldermen of the City must approve by two-thirds vote the issuance of bonds and make findings of fact required by the Special Legislation and ratify the purchase price pursuant to RSA 38:13." (Id. at ¶ 14.) The merger proposal further indicated that, "[t]he City intends to finance the costs of the merger, including reasonable transaction costs, the cost of establishing a rate stabilization fund and the cost of reimbursing the City for certain costs incurred in connection with the Eminent Domain Action, through the issuance of general obligation bonds issued by the City." (Id. at ¶ 15.) The City further anticipated that, "[i]n order for the City to finance the stock acquisition contemplated by the Merger Agreement, the rates for the Regulated Utilities will need to generate sufficient cash to cover their proper share of the debt service on the general obligation bonds that the City expects to issue." (Id. at ¶ 21.) "The cost of the bonds [ ] is repaid by revenue derived from the [corporate respondents'] various customers for services billed to them." (Pet'r's Req. Findings and Rulings ¶ 68 (citing Pet'r's Ex. J at 8-17).) Although the funding for the stock purchase was provided by bonds issued by the City for which the City is responsible, a portion of the corporation's

revenue derived from billing its customers goes towards the repayment of these bonds. In addition, Pennichuck and Water Works operate as for-profit corporations and do not benefit from tax-exempt status. As a shareholder, the City enjoys limited liability for the debts of the corporation. The Court therefore finds that this factor weighs against a finding that Pennichuck is a public body pursuant to RSA 91-A. As above, Water Works' funding is derived from its relationship with Pennichuck and its billing for services provided to its customers. Thus, this factor also weighs against a finding that Water Works is a public body.

Balancing the above factors, the Court is persuaded that Pennichuck and Water Works are not public bodies. The Court is particularly persuaded by the third and fourth factors. The purpose of the Right-to-Know Law is to provide citizens with a means to ascertain governmental transparency, and if the government does not play a substantial role in the governance of the corporation, the business of the corporation is not within the scope of RSA 91-A. Here, the Court finds that a reasonable balance of the above factors weighs against a finding that Pennichuck and Water Works are public bodies.

The Court further finds that its conclusion is supported by the language of RSA 91-A:1-a, VI(e). In defining "public body," the legislature specifically included certain types of corporations of which the State, a town, or a similar entity is the sole shareholder. The legislature could have included in the definition *all* corporations of which a governmental entity is the sole shareholder, but it did not. Rather, it carved out a certain category of such corporations; namely, those that have been qualified as 501(c)(3) corporations by the Internal Revenue Service. It is clear that neither Pennichuck nor Water Works fall within this category. Therefore, the Court finds that its

determination is consistent with the legislative intent as reflected by the plain language of the statute.

Accordingly, for all of the above reasons, the Court finds that Pennichuck and Water Works are not public bodies, and therefore the Right-to-Know Law does not apply to either corporation.

The petitioner contends that a finding in its favor as to the merits necessitates the issuance of a permanent injunction because the employees it represents "will suffer irreparable harm if their payment and other compensation, which information is private and with respect to which the employees have had an ongoing expectation of privacy, is disclosed to the public." (Pet. ¶ 11.) The Court agrees that Pennichuck and Water Works employees have an expectation of privacy in their salary as private employees. See Prof'l Firefighters of N.H., 159 N.H. at 708 (noting that the court previously "acknowledged that salary information generally constitutes private information"). However, the Court cannot find that the petitioner has demonstrated that there is an *immediate danger* of irreparable harm given the Court's above finding on the merits. "A petitioner's need for injunctive relief must be present and immediate. The [C]ourt will not grant a petitioner relief against a threat which may never materialize or which has already passed." 4 MacDonald, Wiebusch on New Hampshire Civil Practice and Procedure § 19.06. The existence of immediate danger at the time the petitioner filed its request for temporary and permanent injunctive relief was based on Pennichuck's clear indication that it believed that it was subject to the provisions of RSA 91-A. The corporation's intent to release salary information of all of its employees and the employees of its subsidiaries was based first on the Telegraph's request pursuant to the

Right-to-Know Law and on its belief that the City's stock ownership rendered it subject to the mandate of this law. (See Pet., Ex. A (indicating that, "[d]ue to the fact that [Pennichuck] is owned by a municipality, Pennichuck is now subject to New Hampshire's Right to Know Law, RSA Chapter 91-A") (emphasis in original).) Further, the provisions within Pennichuck's by-laws related to the disclosure of corporate records specifically cite RSA 91-A as the basis for such disclosure. Having held that Pennichuck and Water Works are not public bodies within the meaning of RSA 91-A, it is not clear that the corporations have any intent to immediately release employees' salaries to the public. There is no indication whatsoever that Pennichuck or Water Works seeks to voluntarily subject the corporations to the provisions of RSA 91-A, absent the statute's applicability. Accordingly, given the above determination, the Court cannot find that the petitioner has demonstrated an immediate danger of irreparable harm. Therefore, the petitioner has not sustained its burden of demonstrating that it is entitled to the requested relief and its petition for a permanent injunction is DENIED.

II. Petitioner's Request for Attorney's Fees and Costs

The petitioner also requests attorney's fees and costs associated with this lawsuit pursuant to RSA 91-A:8 (Supp. 2012), because the respondents violated the provisions of RSA 91-A. However, the Court has not entered any finding that a "public body or agency or employee or member thereof, in violation of the provisions of this chapter, refuse[d] to provide a governmental record or refuse[d] access to a governmental proceeding to a person who reasonably requests the same . . . ." RSA 91-A:8, I. Rather, its conclusion is that because the corporations are not public bodies, the Right-

to-Know Law does not apply. Accordingly, the Court cannot find any basis for awarding attorney's fees and costs in this case; thus, this request is DENIED.

III. The Telegraph's Cross-Claim

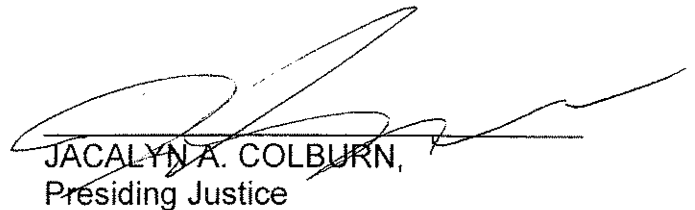
Finally, the Telegraph has filed a cross-claim against Pennichuck and Water Works, asserting that it is entitled to obtain a "list of Pennichuck employee names, their positions and their annual salaries," (Telegraph's Answer and Cross-Cl. ¶ 15), and a "list of names of all individuals and entities that were shareholders of Pennichuck stock prior to the city of Nashua's acquisition of the company, along with the amount of shares each person/entity held and how much money each received in this transaction," (id. at ¶ 16). The Telegraph requests this relief pursuant to RSA 91-A:7, and further requests costs and attorney's fees pursuant to RSA 91-A:8, I, as well as a further injunction against Pennichuck from future violations of the Right-to-Know Law pursuant to RSA 91-A:8, III. Because the Court has already determined that Pennichuck is not a public body pursuant to RSA 91-A:1-a, VI, the rights and remedies of RSA 91-A do not apply here. The Telegraph asserts that it is solely the by-laws that govern the Court's determination. The Court disagrees. As discussed above, it is clear that the inclusion of RSA 91-A in Pennichuck's by-laws was premised upon the belief that it was subject to the Right-to-Know Law based on the City's stock acquisition, not because of any voluntary decision by the corporation to subject itself to the law. Given the Court's finding that this belief was mistaken, the Court cannot find that the by-laws alone entitle the Telegraph to the relief requested. Therefore, the Telegraph's cross-claim is DENIED.

Conclusion

For the reasons set forth herein, the Court finds that Pennichuck and Water Works are not public bodies as defined in RSA 91-A:1-a, VI. Nonetheless, because the petitioner has failed to demonstrate that there is an immediate danger of irreparable harm, its request for a permanent injunction is DENIED, as is its request for attorney's fees and costs. The Telegraph's cross-claim is DENIED.

So ordered.

Date: January 17, 2013



JACALYN A. COLBURN,
Presiding Justice