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AT 4:45 O'Clock P. M  
CLERK OF DISTRICT COURT

*James Hansen*  
Deputy

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI**

**THE HAGADONE CORPORATION,** )  
 )  
 *Plaintiff,* )  
 vs. )  
 )  
 **NORTH IDAHO COLLEGE, ET AL,** )  
 )  
 *Defendant.* )  
 \_\_\_\_\_ )

Case No. **CV28-23-1273**

**MEMORANDUM DECISION AND  
ORDER REGARDING ALLEGED  
FRIVOLOUS PURSUIT BY  
DEFENDANTS**

**I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.**

On July 12, 2023, this Court held a hearing on a Petition for Order to Show Cause filed by the plaintiff, the Hagadone Corporation d/b/a Coeur d'Alene Press (CDA Press). That Petition for an Order to show cause was filed on June 14, 2023, against defendants North Idaho College (NIC) and Laura Rumpler (Rumpler). At the conclusion of that hearing this Court made its findings on the record that CDA Press was entitled to the employment contracts and the attorney billings with nearly all the redactions removed, but the Court took under advisement the issue of whether or not the defendants withheld or pursued withholding records frivolously, and whether CDA Press is entitled to attorney fees for bringing the motion under Idaho Code § 74-116(2). This Court ordered simultaneous briefing was allowed, the first round due July 26, 2023, the responding and final round due on August 3, 2023, at which time that issue would be fully under advisement.

## II. STANDARD OF REVIEW.

The standard of review was set forth in *Hymas v. Meridian Police Department*, 159 Idaho 594, 598-99, 364 P.2d 295, 299-300 (Ct. App. 2015) (*Hymas II*):

When considering an appeal from a public records request, this Court will not set aside a district court's findings of fact unless they are "clearly erroneous, which is to say that findings that are based on substantial and competent, although conflicting, evidence will not be disturbed on appeal." *Bolger v. Lance*, 137 Idaho 792, 794, 53 P.3d 1211, 1213 (2002). "This Court exercises free review over questions of law, including the interpretation of a statute." *Ward v. Portneuf Med. Ctr., Inc.*, 150 Idaho 501, 504, 248 P.3d 1236, 1239 (2011). Whether to award costs and attorney fees pursuant to a statute is within the discretion of the trial court and will not be overturned absent an abuse of discretion. *Hymas I*, 156 Idaho at 743, 330 P.3d at 1101.

This Court is certainly familiar with the revised abuse of discretion analysis found in *Lunneborg v. My Fun Life*. 163 Idaho 856, 421 P.3d 187 (2018). A district court does not abuse its discretion when it:

(1) correctly perceives the issue as one of discretion; (2) acts within the outer boundaries of its discretion; (3) acts consistently with the legal standards applicable to the specific choices available to it; and (4) reaches its decision by the exercise of reason.

163 Idaho at 863, 421 P.3d at 194.

## III. ANALYSIS

CDA Press moves this Court to "find that Defendants withheld public records frivolously and award the CDA Press its attorney's fees and costs under Idaho Code § 74-116(2)." Pl.'s Br. in Supp. 1.

Idaho Code § 74-116(2) provides that:

If the court finds that the public official's decision to refuse disclosure is not justified, it shall order the public official to make the requested disclosure. If the court determines that the public official was justified in refusing to make the requested record available, he shall return the item to the public official without disclosing its content and shall enter an order supporting the decision refusing disclosure. In any such action, the court shall award reasonable costs and attorney fees to the

prevailing party or parties, if it finds that the request or refusal to provide records was frivolously pursued.

(emphasis added).

The Idaho Supreme Court set forth a three step analysis in *Wade v. Taylor*, 156 Idaho 91, 320 P.3d 1250 (2014) that summarizes this process. The Court shall determine “(1) whether respondent was justified in its initial refusal to disclose the requested records; (2) whether there was a prevailing party; and (3) if a prevailing party was identified, ‘whether the refusal was so unjustified as to be frivolous, thereby requiring an award of costs and attorney fees.’” *Hymas II*, 159 Idaho at 598, 364 P.3d at 299 (citing *Hymas I*, 156 Idaho 739, 747, 330 P.3d 1097, 1105 (2014)).

At this Court’s July 12, 2023, Order to Show Cause hearing, it announced on the record that North Idaho College and Rumpler were not justified in withholding the requested employment contracts, and ordered the immediate production of the same to the CDA Press. It further found, after a line by line analysis of the attorney billing disclosures, that North Idaho College and Rumpler were only justified to a limited extent to redact the disclosures, and ordered the production to the CDA Press of the non-justified redactions. In determining whether to grant CDA Press their attorney fees and costs related to this litigation, the Court will discuss in turn whether there was a prevailing party, and if so, whether North Idaho College and Rumpler’s refusal to provide the requested records was frivolously pursued.

**A. CDA Press is the Prevailing Party.**

Given this Court’s ruling made on the record at the July 12, 2023, hearing, this Court finds that the CDA Press is the prevailing party under I.C. §74-116(2). The Court has considered the extent to which each party prevailed relative to the final judgment or result. *Hymas II*, 159 Idaho at 600-01, 364 P.2d at 301-02. As the Court of Appeals

held in that case:

Before the district court can identify a prevailing party, it must determine whether the agency was justified in initially withholding the requested documents. *Hymas I*, 156 Idaho at 747, 330 P.3d at 1105. Here, the district court found that appellants were the prevailing party because it would have ordered respondent to produce ten of the sixty requested documents. Although the district court correctly determined that appellants were the prevailing party, it erred in determining that respondent was justified in refusing to disclose any of the documents.

All public records are presumed open at all reasonable times for inspection except as otherwise provided by statute. I.C. § 74–102(1). A law enforcement agency is not required to disclose investigatory records compiled for law enforcement purposes if disclosure would interfere with enforcement proceedings or disclose investigative techniques and procedures. I.C. § 74–124(1). The Court narrowly construes these exceptions. *Wade*, 156 Idaho at 97, 320 P.3d at 1256. “[T]he withholding agency has the burden to demonstrate a reasonable probability that disclosure of the requested records would result in a harm listed in Idaho Code section [74–124(1)(a)–(f)].” *Id.* at 100, 320 P.3d at 1259. “The district court is to make [its] determination in light of the record before it, not based on a generalization of the types of documents withheld.” *Id.* at 99–100, 320 P.3d at 1258–59.

159 Idaho at 601, 364 P.2d at 302. Given the fact that CDA Press prevailed as to all issues regarding the employment contacts, and all but a few redactions on the attorney fees, this Court finds that CDA Press was the prevailing party in this Order to Show Cause, and in this litigation.

**B. Defendants Were Frivolous in their Refusal To Disclose the Requested Employment Contracts, but Not Frivolous in Their Redactions of The Attorney Billing Disclosures.**

Because the Court has determined the CDA Press was the prevailing party, it now determines if CDA Press should be awarded its reasonable costs and attorney fees pursuant to I.C. § 74–116(2). In other words, the Court now determines if North Idaho College and Rumpler frivolously pursued the refusal to provide the records requested by the CDA Press.

As noted by both parties, the Public Records Act does not define what

constitutes “frivolous.” Def.’s Opp’n. 3, ¶ A, 1; Pl.’s Br. In Supp. 6. However, the Idaho Court of Appeals provided guidance on such issue in *Hymas II*:

Under a separate title, the Idaho Code defines frivolous as conduct “not supported in fact or warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law.” I.C. § 12–123(1)(b)(ii); see also BLACK’S LAW DICTIONARY 451 (8th ed.2004) (defining a “frivolous defense” as one that has no basis in law or fact). However, a party’s position is not frivolous simply because the district court concludes that it fails as a matter of law. *Garner v. Povey*, 151 Idaho 462, 468, 259 P.3d 608, 614 (2011).

Courts have found that where an agency ignored the plain and unambiguous language of a statute or ordinance, its conduct was unreasonable and not in conformance with applicable law. See, e.g., *Gardiner v. Boundary Cnty. Bd. of Comm’rs*, 148 Idaho 764, 769, 229 P.3d 369, 374 (2010), *overruled on other grounds by City of Osburn v. Randel*, 152 Idaho 906, 277 P.3d 353 (2012). On the other hand, courts have found that where an agency’s improper application of a statute was nonetheless reasonable, the agency acted in conformance with applicable law. See *Randel*, 152 Idaho at 909, 277 P.3d at 356 (2012).

Therefore, we examine whether respondent ignored plain and unambiguous statutory language or whether it acted reasonably in the face of statutory ambiguity.

159 Idaho at 602, 364 P.2d at 303. (emphasis added). With such direction, this Court will analyze North Idaho College and Rumpler’s refusal to disclose the requested records to CDA Press to see if the defendants ignored the plain and unambiguous statutory language or whether defendants acted reasonably in the face of statutory ambiguity for both the attorney billing disclosures and the requested employment contracts.

**1. The Withholding of the Attorney Billing Disclosures Made Through Redactions by Rumpler and North Idaho College Were Not Done Frivolously.**

All public records are presumed open at all reasonable times for inspection except as otherwise provided by statute. I.C. § 74–102(1). “Any public record exempt from disclosure by [ ] state law [ ] to the extent specifically provided for by such law

or regulation” are exempt from disclosure.” I.C. § 74-104(a). Attorney-client privilege provides a client the privilege to “prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client which were made [ ] between the client or the client's representative and the client's lawyer or the lawyer's representative.” I.R.E. 502(b).

At the Order to Show Cause hearing in this matter, Rumpler “testified that the attorney invoices were redacted on an individual basis” (Tr. 36; 18; Def.’s Reply Br. 4.) and “explained that she redacted the attorney invoices based on her understanding of the attorney-client privilege.” Def.’s Opp’n. 5; Tr. 16-17; 22-15. CDA Press argues, in part, that the initial redactions by the defendants were frivolous because “[o]ut of the roughly 230 redacted entries, only eight were partially permissible.” Pl’s Br. 10. (citing Tr. 141-145.) However, a party's position is not frivolous simply because the district court concludes that it fails as a matter of law. *Garner*, 151 Idaho at 468, 259 P.3d at 614.

Rumpler made a page by page determination of each redaction, and defendants provided the unreacted records at issue for the Court’s inspection. The defendants’ improper application of the attorney-client privilege in their redaction was reasonable in this matter. And although wrong for the most part, was not frivolous. As such, reasonable attorney fees and costs pursuant to Idaho Code § 74-116(2) are not applicable regarding these redactions.

## **2. The Refusal to Provide the Employment Contracts by North Idaho College and Rumpler was done Frivolously.**

All public records are presumed open at all reasonable times for inspection except as otherwise provided by statute. I.C. § 74–102(1). Personnel records apart for

a public official “other than the public official’s public service or employment history, classification, pay grade and step, longevity, gross salary and salary history, including bonuses, severance packages, other compensation or vouchered and unvouchered expenses for which reimbursement was paid, status, workplace and employing agency” are exempt from disclosure. I.C. § 74-106(1). Upon receipt of a request for disclosure, an agency must, “separate the exempt and nonexempt material and make the nonexempt material available for examination.” I.C. § 74–112; *Hymas II*, 159 Idaho at 602–03, 364 P.3d at 303–04.

North Idaho College and Rumpler claim that the refusal to provide the employment contracts was not frivolous because “[Rumpler] perceived that producing employment contracts would run afoul of Idaho Code section 74-106, which she understood to prohibit the production of all personnel records, except for specific information or data points expressly identified in section 74-106.” Defs.’ Opp’n (citing Tr. 20; 7-25).

However, Rumpler did not review the requested employment contracts at issue prior to the determination that the contracts were exempt from disclosure. Tr. 59; 82. Rumpler thus did not know if the information contained within the requested employment contracts were exempt or non-exempt before the categorical denying of such documents, just because the documents were contained in a “personnel” file. If there was non-exempt information provided for within the contracts, this information was not separated from the exempt information for examination as required by Idaho Code § 74-112. Further, as argued by CDA Press, “[i]nstead of producing the requested contract and information, [North Idaho College] directed the CDA Press to a notice on its webpage that indicated NIC would not be producing the requested contracts and information.” Pl.’s Br. In Supp. 4.

In their refusal, defendants ignored the plain and unambiguous language of Idaho Code § 74-112. As such, this Court finds that the refusal to provide the non-exempt material contained within the employment contracts for examination was done frivolously. Attorney fees and costs pursuant to Idaho Code § 74-116(2) to CDA Press as the prevailing party, is thus appropriate.

Additionally, defendants argue, in part, that the matter of whether employment contracts should be disclosed pursuant to a public records request is an issue of first impression precluding an award of attorney fees:

[A]s set forth in Defendants' prior briefing, the law in the state concerning the specific type of records at issue, employment contracts, is not "settled." Rather, it is an issue of first impression. There are no cases discussing whether employment contracts (even those containing non-exempt information) must be disclosed in response to a public records request. As such, Defendants' actions were not frivolous.

Footnote 1: Given that it is an issue of first impression, it is clear under Idaho law that Defendants' position could not have been frivolous. Moreover, as set forth in Defendants' briefing and the holding in *Hymas*, "a party's position is not frivolous simply because the district court concludes that it fails as a matter of law."

Def.'s Br. 4. (internal citations omitted).

However, as stated on the record at the July 12, 2023, Order to Show Cause hearing, this Court disagrees with defendants' assertion that this is an issue of first impression.

THE COURT: In an effort to try to save time, it seems to me that it is quite clear to the Court that the employment contracts, and I can't remember how many they are -- there are, that those are not exempt. Does the defense wish to argue that point today? And in coming to that conclusion I've reread a couple of cases, cases that took me down memory lane. The *Cowles Publishing Company v. Kootenai County Board of Commissioners* that involved the failed JET court, former prosecuting attorney Bill Douglas and Marina Kalani, some e-mails, and then *Federated Publications v. Boise City*, and Judge Nye's decision

when he was still a state district judge in the *Bingham* case I believe it is. Now I'm not finding that. And while the *Bingham* case isn't mandatory authority for this court, I certainly have a lot of respect for Judge David Nye, now a federal judge, and I think it's well-written and it's a sound -- a sound opinion. So is the defense still contesting those employment contracts?

MS. DREW: Yes, Your Honor.

Tr. 6; 4-23. Further stating that:

THE COURT: [B]ased on the research that I've done, that those employment contracts aren't a close question. Perhaps your argument today will convince me otherwise, but the briefing that I've seen up until now, the case law that I just mentioned, and the two Idaho Supreme Court cases are binding on this court. I don't think it's a close question . . . .

*Id.* 7; 13-19.

Further, the case law discussing this issue was additionally set forth in CDA

Press' briefing:

[T]he law on public records, and specifically records of the nature at issue here, was not unsettled. See, *Federated Publishing v. Boise City*, 128 Idaho 459 (1996) (analysis of the personnel record exemption); *Cowles Publishing Co. v. Kootenai Co. Bd. of Comm*, 144 Idaho 259 (2007) (documents are public records if they relate to the conduct or administration of public business or provide an explanation for public official's actions); *Henry v. Taylor*, 152 Idaho 155, 158 (2012) ("the performance of the contract is statutory duty of the prosecuting attorney and it is, therefore, public contract relating to the duties of the office of the prosecuting attorney"); *Bingham v. Blackfoot School District*, No. 55, Bingham County Case No. CV-2012-0002123 (Dec. 7, 2012) ("The hiring or separation of school district's superintendent clearly relates to the conduct or administration of public business").

Not only have the above-cited cases provided instruction on this issue for over decade, but they were contained in the very manual Ms. Rumpler claimed supported her decision to withhold the records.

Pl.'s Br. 8. This Court finds North Idaho College and Rumpler cannot hide behind the "first impression" argument. Their legal interpretation was wrong. More importantly,

Rumpler never looked at the contracts, so North Idaho College and Rumpler never had any factual basis to withhold the employment contracts.

#### **IV. CONCLUSION AND ORDER.**

For the reasons stated above, this Court finds plaintiff CDA Press is the prevailing party, and finds the CDA Press' Motion for Attorney Fees and Costs is GRANTED in part under I.C. § 74-116(2), as it relates to Employment Contracts, the Court finding that such defense was frivolous by defendants North Idaho College and Rumpler. This Court also finds the CDA Press' Motion for Attorney Fees and Costs is DENIED in part as it relates to the Attorney Billing Disclosures, the Court finding such defense was not frivolous.

Counsel for the plaintiff CDA Press will submit to counsel for defendants North Idaho College and Rumpler (and file with the Court), plaintiff's reasonable attorney fees and costs associated with this **entire** matter. I.R.C.P. 54(d)(4). Counsel for North Idaho College and Rumpler will have fourteen days to either file an objection or, pay one-half of those costs and fees. The only objections to those costs and fees which this Court will entertain from defendants North Idaho College and Rumpler will be the hourly rate (I.R.C.P. 54(e)(3)D) and the total hours billed (I.R.C.P. 54(e)(e)(A) and (D)). That is because this Court finds it unlikely that counsel for plaintiff CDA Press would have segregated the amount of time spent on the two subjects, and even if such segregation did occur, this Court uses its discretion to find that defendants are liable to plaintiffs one-half of the total charges spent by plaintiffs in this lawsuit. The Court is not going to get mired in parsing out what efforts were made on the employment contracts as opposed to attorney billings.

IT IS HEREBY ORDERED plaintiff Coeur d'Alene Press is the prevailing party, and finds the Coeur d'Alene Press' Motion for Attorney Fees and Costs is GRANTED in

part under I.C. § 74-116(2), as it relates to Employment Contracts, the Court finding that such defense by North Idaho College and Rumpler was frivolous.

IT IS FURTHER ORDERED even though this Court finds plaintiff Coeur d'Alene Press is the prevailing party on the Attorney Billing Disclosures, plaintiff Coeur d'Alene Press' Motion for Attorney Fees and Costs is DENIED in part as it relates to the Attorney Billing Disclosures as this Court finds such defense was not frivolous.

IT IS FURTHER ORDERED counsel for the plaintiff submit its total attorney fees and costs for this litigation.

IT IS FURTHER ORDERED counsel for the defendants shall file any objection within fourteen days after plaintiff's counsel's submission. If there is no objection filed by the defendants, the amount sought by plaintiffs for fees and costs for this litigation will be cut in half by the Court and counsel for plaintiff shall then present a judgment in that amount to the Court for its signature. If there is timely objection filed by the defendant, and hearing will be scheduled where the Court will hear argument only on the issues of the hourly rate charged by plaintiff's counsel (I.R.C.P. 54(e)(3)D) and the total hours billed by plaintiff's counsel (I.R.C.P. 54(e)(e)(A) and (D)).

Entered this 5<sup>th</sup> day of September, 2023.

  
John T. Mitchell, District Judge

Certificate of Service

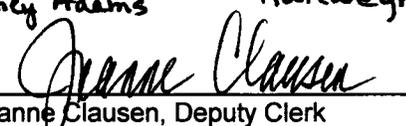
I certify that on the 5<sup>th</sup> day of September, 2023, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

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