ACLU hopes to shed light on police

By TODD FEATHERS

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MANCHESTER — Since news broke last week that two fired police officers were accused of sexual assault, city officials have been mum about the internal investigations into their actions, one of which determined there had been no criminal activity.

But the New Hampshire chapter of the American Civil Liberties Union believes the public should have access to such investigation files, which police departments have long held are exempt from disclosure, and it is preparing to ask for them and to possibly reverse 25 years of legal precedent in the process.

Both former officers, Darren Murphy and Aaron Brown, are under criminal investigation for allegedly using their positions to force a woman.

>See ACLU,
Manchester police Chief Nick Willard fired Murphy and Brown earlier this year. He did not disclose the reason at the time and said Murphy’s misconduct did not rise to the level of a crime, although the Strafford county attorney is now investigating both of the fired detectives.

The allegations against them only became public after the New Hampshire Sunday News reported that a lawyer for Amanda Rogers, the alleged victim, sent the city a notice of her intent to sue.

Incoming Manchester police Chief Carlo Capano acknowledged the intense public interest in the case, but said the internal affairs files cannot become public documents.

“Whatever the punishment may be, I understand the public’s interest in knowing exactly what they did,” Capano said.

“It is something that, in terms of personnel records and internal investigations and criminal investigations as all of those are going on, we just can’t release that.”

Since 1993, police departments have pointed to a state Supreme Court ruling, in Union Leader Corp. v. Fenniman, as justification for withholding internal investigation documents under the Right-to-Know law.

In that case, the court ruled that the Dover Police Department did not need to make investigatory files about a lieutenant accused of making harassing phone calls public because they constituted “a quintessential example of an internal personnel practice” record, which the law exempts from disclosure.

Not at issue in the case was Dover’s final report on the internal investigation, because the department had already provided it to the newspaper.

Police say internal investigation files should remain confidential because they are often spawned by retaliatory citizen complaints and making them public would allow citizens to carry out vendettas against police officers who do nothing wrong.

The justices in Reid also wrote that their predecessors had not considered similar cases in other states, or at the federal level, that required a balancing test between public interest and employee privacy.

New Hampshire is the only New England state that considers internal affairs records categorically exempt.

The supreme courts in Massachusetts, Vermont and Rhode Island have issued precedent-setting rulings that the public’s interest in such records outweighs officers’ privacy rights, while in Maine and Connecticut, state laws define portions of the records as public documents.

The degree to which the public has access to them varies by state.

In Massachusetts, citizens can read the vast majority of internal affairs files, with some disciplinary information redacted. Rhode Island’s court has ruled that everything except identifying information about the officer in question, including his or her name, is public. And Maine law requires departments to disclose final decisions, but not investigatory files, in cases where they discipline officers.

As other states bring more transparency into police records, Granite State attorneys, including the lawyer who argued against Fenniman, have been frustrated with the New Hampshire court’s ruling and subsequent lack of information about police internal affairs files.

“Unfortunately, that’s what Fenniman stands for and it’s not right and it should be overturned,” said attorney Gregory Sullivan, who still represents the Union Leader. “Other states are distinguishing between an internal personnel record and an actual case of wrongdoing.”

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“I think you open up a can of worms if you say, ‘Oh, the public should be able to weigh in,’” said Steve Arnold, New Hampshire director of the New England Police Benevolent Association, the largest police union in the state with nearly 700 members.

“For the most part — 99.9 percent of the time... fired Manchester detectives