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News for School and Municipal Clients

Court Decision Favors Public Access To Investigation Records

Investigations of employee misconduct by school districts and other municipalities often lead to questions from the media concerning the employees involved and the nature of the misconduct. As part of its inquiry, the media often requests records associated with the public employer's investigation. Such records may include an investigation report and letters of discipline. A recent case reaffirmed that such records will likely be subject to disclosure under the Wisconsin Public Records Law, even if the employee who is the subject of the investigation is a rank-and-file employee, rather than a high ranking public official.

In *Kroeplin v. Wisconsin Department of Natural Resources*, the DNR conducted an investigation of Conservation Warden Thomas Kroeplin after Kroeplin requested a license plate check under questionable circumstances. As a result of the investigation, a DNR supervisor wrote an investigatory memorandum and sent a disciplinary letter to Kroeplin. A local newspaper, *The Lakeland Times*, requested all public documents related to Kroeplin's license plate check request, including the DNR's investigation documents. The DNR was prepared to release some of the information contained within the disciplinary letter and investigatory

memorandum, but to deny access to other information within the records for various policy and statutory reasons.

The Lakeland Times, however, was not satisfied with receiving only *some* of the information. In turn, it filed a court action to require the DNR to disclose *all* of the information within the records. Meanwhile, Kroeplin, who had properly received notice from the DNR that the records would be disclosed to the newspaper, believed that *none* of the information within the records should be disclosed. As a result, Kroeplin also filed a court action, seeking to prevent the DNR from releasing the records. The Wisconsin court of appeals recently resolved this dispute and issued a decision requiring the DNR to release *all* of the information contained in the records to *The Lakeland Times*.

The court's decision is significant for two primary reasons. First, the court provided an interpretation of a relatively new subsection in the Wisconsin Public Records Law that exempts records related to "staff management planning." This subsection exempts such records as "performance evaluations, judgments, or recommendations concerning future salary adjustments or other wage treatments, management bonus plans, promotions, job assignments, letters

of reference, or other comments or ratings relating to employees.” The question before the court was whether this subsection also served to exempt disciplinary and investigative records.

Kroeplin argued, in part, that this section served as a blanket exemption for all investigation and disciplinary records because the records would likely be used as part of future performance evaluations. The court, however, rejected this interpretation, based in part on the fact that there was no clear indication that the legislature intended to exempt access to records simply because performance evaluations may contain information gleaned from documents on disciplinary matters. Further, according to the court, such records may contain information of great interest and value to the public and, therefore, should not be exempt.

The DNR argued that this subsection should be read as creating a distinction between factual information, which it asserted may be disclosed, and evaluative judgments, which it asserted may not be disclosed. The court rejected this argument, concluding that the DNR did not adequately explain its theory, and that the statutory subsection did not support this argument. Thus, based on the above, public employers should not rely on the exemption for “staff management planning” records as a basis for denying access to investigative and disciplinary records.

Second, the court’s decision is significant because the court dismissed numerous public policy arguments offered by Kroeplin and by the DNR to support denying access to the records. Perhaps most significantly, the court rejected an argument by Kroeplin that, as a lower ranking law enforcement officer, he has a greater expectation of privacy regarding his employment records than an employee in a high profile public position, and therefore, the public’s interest should weigh in favor of protecting his reputation and privacy. The court dismissed this argument in short order, stating simply that the DNR had ignored other appellate court cases involving similar lower profile employees, such as school teachers, where access to such records was permitted. As the court noted, “when individuals become public employees, they should expect closer scrutiny, which includes the real possibility that disciplinary records may be released to the public.” Thus, public employers may not be able to deny access to their employee investigation records, even when lower ranking employees are involved.

This case serves to remind public employers that any records that they created as part of an employee investigation may become a public record at some point. The courts have been continually reluctant to hold that such investigation records are protected from disclosure. As a result, any denial of access to such records should be undertaken with caution.

If you have any questions regarding this topic, please call any of the following members of the Lathrop & Clark LLP School, Municipal, Labor and Employment Law Team.

Michael J. Julka (608) 286-7238	Frank C. Sutherland (608) 286-7243	Carrie M. Benedon (608) 286-7208
William L. Fahey (608) 286-7234	Joanne Harmon Curry (608) 286-7248	Todd J. Hepler (608) 286-7160
David E. Rohrer (608) 286-7249	Shana R. Lewis (608) 286-7202	Jennifer G. Taylor (608) 286-7244
	Richard F. Versteegen (608) 286-7233	

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