

STUDENT DISCIPLINARY RECORDS ARE EXEMPT FROM PUBLIC DISCLOSURE

The Vermont Supreme Court recently held that student disciplinary records fall within the “student records” exception of the Vermont Public Records Act. *Caledonian-Record Pub. Co., Inc. v. Vt. State College*, 174 Vt. __ (2003). The case involves a request by the *Caledonian-Record* (“Appellant”) for access to student disciplinary records and to minutes from student disciplinary hearings from Lyndon State College and the Vermont College System under the Vermont Public Records Act and the Vermont Open Meeting Law. The case is important for public bodies subject to these statutes because it indicates that the Court will interpret the statutory exemptions to the Public Records Act broadly in order to protect individual privacy rights where the statute does not limit or qualify the exemption.

The Appellant originally sought access to the daily logs maintained by Lyndon State College’s security department, to student disciplinary records, and to student disciplinary hearings relating to allegations of student misconduct in violation of the criminal law and the College’s student code of ethics. Lyndon State College provided the security logs to the Appellant but refused to provide the requested student disciplinary records and the records of disciplinary hearings, claiming that they were exempt from the Public Records Act and the Open Meeting Law. The Washington Superior Court agreed with Lyndon State College and issued an order denying the *Caledonian-Record* access to the documents. This appeal followed.

Lyndon State and the Vermont State Colleges are instrumentalities of the state and are therefore considered “public bodies” subject to the Public Records Act and the Open Meeting Law. The purpose of the statutes is to ensure that the public’s business is conducted in the open and that records of public bodies are available for public inspection and copying.

With respect to the Public Records Act, the Vermont Supreme Court held that “the express Public Records Act exception for student records is directly on point and plainly exempts the student disciplinary records from disclosure.” *Caledonian-Record Pub. Co., Inc. v. Vt. State College*, 174 Vt. __ (2003). Specifically, the Public Records Act exempts “student records at educational institutions funded wholly or in part by state revenue...” from disclosure. 1 V.S.A. § 317 (c) (11). The Court stated that, although the Public Records Act does not define what constitutes a “student record,” the language of the exception is “broad and unqualified” and thus includes student *disciplinary* records.

In addition to the student disciplinary records, the Appellant also sought access to the minutes of the executive sessions in which the disciplinary hearings took place. Generally, all public bodies must conduct their business in public. 1 V.S.A. § 311. Under specifically listed exceptions, however, a public body may conduct its business out of the public domain in an “executive session” after following statutorily prescribed procedures. 1 V.S.A. § 313. Public bodies are specifically authorized to enter into executive session to consider “academic records or suspension or discipline of students.” 1 V.S.A. § 313 (a) (7). The Appellant did not dispute the propriety of the executive session and only sought access to the minutes of the executive session.

The Court denied the Appellant access to the minutes of the disciplinary hearings under the Open Meeting Law, stating, “we do not believe that disclosure of records

generated by disciplinary adjudications such as those at issue here is required when to do so would eviscerate the privacy considerations underlying the student records exception” of the Public Records Act. *Caledonian-Record Pub. Co., Inc. v. Vt. State College*, 174 Vt. ___ (2003). In short, the Court made clear that the Open Meeting Law, and its requirement that minutes of public meetings must be made available to the public, cannot be used to obtain information that is otherwise exempted from public disclosure under the Public Records Act.

This decision is important for all public bodies because it indicates how the Court may interpret other exceptions to the Public Records Law. For instance, the Court’s broad interpretation of “student records” indicates that the Court is willing to err on the side of individual privacy when exceptions to the Public Records Act lack limiting or qualifying language. In fact, a significant aspect of the Court’s decision was its recognition of “the important privacy interests that underlie the enumerated statutory exceptions to the rule of access.” This case indicates that the determination of whether a record is subject to public disclosure under the Public Records Act or whether one of the exceptions of the Act exempts a record from disclosure, will depend on the plain language of the statute and on a balancing of the public’s interest in broad access to governmental records and proceedings against individual privacy interests. The Court did, however, acknowledge that “the delicate balance inherent in these competing interests is, and remains, a legislative prerogative to alter or amend.”

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