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Does the privacy exemption apply to incident reports involving student-athletes?

FACTS

ESPN submitted a FOIA (Freedom of Information Act) request to Michigan State University asking it to provide incident reports involving a list of student-athletes over a specific period of time. ESPN sought the information to learn whether University policing standards are consistent and uniform for all students. The University produced two sets of records, but redacted the names and identifying information of the suspects, victims, and witnesses. The University cited the privacy exemption set forth in MCL 15.243(1)(a) and a related FOIA provision. ESPN sued on the basis that the University erroneously withheld the requested information.

MCL 15.243(1)(a) provides that a public body “may exempt” from FOIA’s disclosure requirement information that is of a personal nature if the disclosure would “constitute a clearly unwarranted invasion of an individual’s privacy.” Courts have determined that the exemption has a two-prong analysis—both of which must be met for the exemption to apply.

The first prong is satisfied if information contains “intimate” or “embarrassing” details of a personal nature. Michigan courts have indicated that “private or confidential information relating to a person” is information of a personal nature. Courts have also stated that although a name, in and of itself, is not information of a personal nature, information associated with the name may be information of a personal nature.

The second prong asks “whether disclosure of the information would constitute a clearly unwarranted invasion of an individual’s privacy.” Courts have indicated that in making this determination, the public interest in disclosure must be balanced against the interest intended to be protected.

QUESTION

Does the privacy exemption apply to the request for incident reports of student-athletes under the facts as presented?

ANSWER ACCORDING TO THE TRIAL

COURT: The trial court agreed that the privacy exemption applied to names and identifying information of the victims and witnesses, but ordered the disclosure of the names of suspects if on the list of student-athletes identified by ESPN in its request.

ANSWER ACCORDING TO THE MICHIGAN COURT OF APPEALS:

The Michigan Court of Appeals affirmed the decision of the trial court as it related to ESPN’s request for information related to suspects. The Court held that “the public’s interest in governmental accountability must prevail over an individual’s, or a group of individual’s, expectation of privacy.” (The issue as it related to victims and witnesses was not appealed.)

ESPN v Michigan State University, No. 326773 (August 18, 2015).

EDITOR’S NOTE: Case has been appealed to the Michigan Supreme Court.

This column highlights a recent judicial decision or Michigan Municipal League Legal Defense Fund case that impacts municipalities. The information in this column should not be considered a legal opinion or to constitute legal advice.