MTEA vs. Milwaukee Board of School Directors

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Practice Area: School Law & County and Municipal Governance

While Wisconsin's open records law has generally been interpreted to allow access to most government records, the question of whether to allow the public access to personnel records of public employees has in the past caused a quandary for the courts. Court decisions over the years have fluctuated from allowing unlimited access to such records to prohibiting access to such records. It is clear now that personnel records of public employees are not exempt from the open records laws. Last week in *MTEA v. Milwaukee Board of School Directors*, the Wisconsin Supreme Court clarified the process of allowing access to personnel records of public employees. This article will briefly describe the law before *MTEA*, the Wisconsin Supreme Court's decision in *MTEA*, and the consequences for public employers.

The Law Before MTEA

The pivotal case in Wisconsin on public employees' rights as it relates to the disclosure of their personnel records is *Woznicki v. Erickson*, decided in 1996. In *Woznicki* a school district employee had been the subject of a criminal investigation. Requests for Woznicki's personnel file and telephone records were made under the open records law. These records were in the custody of the District Attorney. The District Attorney decided to release the records and notified Woznicki, who filed a lawsuit to prevent the release of the records.

After a series of appeals, the Wisconsin Supreme Court heard Woznicki's case. It first held that personnel records of public employees are, in fact, subject to the open records law. The court also held that the open records law provided a right to employees seeking to prevent disclosure of their personnel records to ask a court to prevent such a disclosure. The court also stated that the District Attorney could not release the personnel records without first notifying Woznicki and allowing him a reasonable amount of time to appeal the decision.

Since *Woznicki*, we have recommended that public employees be given notice and an opportunity to intervene prior to the disclosure of their personnel records. We had questioned, however, whether the Woznicki process applied only to records kept by the District Attorney or whether it applied to all personnel records regardless of the custodian.

The Court's Decision in *MTEA*

The Supreme Court's decision in *MTEA* clarified the extent to which a public employee is entitled to *Woznicki* rights. In the Milwaukee Public Schools had performed district-wide criminal background checks and discovered that over 500 of its employees had criminal records. MPS released the names and criminal records of these employees to the *Milwaukee Journal-Sentinel*. The *Milwaukee Journal-Sentinel* subsequently made a request under the open records law for personnel information related to these employees including whether any disciplinary action was taken against the employees with criminal records and whether any formal grievances had been filed. The MPS records custodian notified each of the employees that were the subject of the open records request and informed them that he intended to release the records within 10 days unless they filed a suit in court to prohibit the release of the records.

Seven of the employees, along with the Milwaukee Teachers Education Association, filed a lawsuit to prevent MPS from releasing the requested information. The trial court determined that Woznicki rights applied only to situations involving records kept by district attorneys. The case was then appealed to the Court of Appeals and the Wisconsin Supreme Court.

The Wisconsin Supreme Court held that *Woznicki* rights apply to all personnel records of public employees regardless of whether or not they are held by the District Attorney. The court noted that all Wisconsin citizens have important privacy and reputational interest. The court stated that personnel records containing personal information about a public employee "implicate the exact same concerns of protection of privacy and reputation whether those records are in the hands of a school district, as in this case, or a District Attorney, as in *Woznicki*."

The court went on to state that release of the information would impact the privacy and reputations of the school district employees. The court emphasized that two of the employees in question had only a single misdemeanor conviction stemming from college incidents and that several of the misdemeanor convictions had occurred 10 years prior to the employees being hired by the school district. The court was hesitant to allow the disclosure of the information when such a disclosure would permit the employees to be identified by family members, the community, co-workers, and students. As the court stated, "disclosure could harm plaintiffs' personal relationships, tarnish their reputations, and undermine their authority with students."

It should be noted that the Wisconsin Supreme Court did not automatically prohibit the disclosure of the records. Rather, it sent the case back to the original court to conduct the balancing test required by the open records law, *i.e.* whether the public interest in disclosing the records outweighs the public interest in not disclosing the records.

Practical Implications

The Court's decision in *MTEA* will not drastically change the day-today operations of most public employers. Public employers that von Briesen and Roper represent have already been advised on the use of *Woznicki* letters when a request for personnel records of a public employee have been made. The Court's decision, however, emphasizes the importance of privacy associated with public employee personnel information. In fact, while the court did not explicitly hold as such, it is possible that the request for any record which might affect the reputation or privacy of an individual might give rise to *Woznicki* rights.

In light of *MTEA* and its predecessor, *Woznicki*, public employers should keep the following in mind when faced with an open records request for personnel information of a public employee:

- The public employee must be made aware of their rights under *Woznicki*. It is also advised to inform the public records requestor that the employee has been made aware of their rights under *Woznicki*, in order to explain any possible delay in the disclosure of the records.
- It is true that personnel records are not automatically exempt from public records requests. However, there have been situations in which courts have ruled that such records need not be disclosed. Certain public employers, such as police departments, may have a specific public interest in not disclosing personnel information of its employees. The Wisconsin Supreme Court in MTEA identified the importance of employee's privacy and reputational interests.
- In the event that you decide that such records are not going to be disclosed, it is important to identify all possible reasons why you are not disclosing the records. This is because you will be limited to these reasons in your letter denying the request if the requestor files a lawsuit against you seeking to disclose the records.

Open records requests must be examined on a case-by-case basis. Unfortunately there is no simple rule to apply to public records disclosure even when the information involves something as personal as the private information of public employees. However, a careful analysis of the public interest for and against releasing such records on a case-by-case basis by the employer and its internal and external counsel, will hopefully minimize challenges to your decisions of whether or not to release such records.
