

Court Orders Release of Investigation and Discipline Records of DNR Conservation Warden

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Personnel professionals, administrators and law enforcement supervisors should be aware of a recent interpretation of a key provision of Wisconsin's Public Records Law that was applied to investigation and discipline records. This decision is the first appellate-level public records court decision to analyze Section 19.36(10)(d), Wis. Stat., which bars a records custodian from disclosing certain staff management planning personnel records.

In *Kroeplin v. Wis. Dept. of Natural Resources*, 2005AP1093, (Ct. App. Oct. 12, 2006); *The Lakeland Times v. Wis. Dept. of Natural Resources*, 2005AP2047, (Ct. App. Oct. 12, 2006), a Wisconsin Court of Appeals ordered the Department of Natural Resources to disclose records related to DNR's personnel investigation and the disciplinary disposition of a DNR Conservation Warden. The Court held that discipline investigation records are not exempt from disclosure under Section 19.36(10)(d).

BACKGROUND

DNR Conservation Warden Thomas Kroeplin requested a license plate check from a City of Minocqua police dispatcher. Kroeplin requested the license plate check only six minutes after his nephew tried to obtain the same information from the dispatcher. Kroeplin's request came to the attention of the local newspaper, *The Lakeland Times*. The newspaper obtained copies of the dispatcher's transcript and questioned the legality of Kroeplin's license plate check request.

DNR initiated an internal investigation regarding whether Kroeplin violated any work rules by requesting the license plate check. The investigation concluded and Kroeplin was issued a disciplinary memorandum. The newspaper subsequently requested all records relating to the investigation and DNR's conclusions and findings. DNR determined it would not release portions of investigation records and portions of the disciplinary memorandum citing Section 19.36(10)(d) and specific public policy reasons. DNR then notified Kroeplin of his right to challenge disclosure of the investigation and discipline records that DNR planned to disclose. Kroeplin filed suit against DNR to bar DNR from disclosing the records.

The *Lakeland Times* also filed suit against DNR alleging DNR was not disclosing all of the information required under the law.

The issue before the Court of Appeals was whether Section 19.36(10)(d) of Wisconsin's Public Records Law or any public policy considerations preclude a records custodian from disclosing the disciplinary letter and investigation records. Section 19.36(10)(d) precludes a records custodian from disclosing the following personnel records:

Information relating to one or more specific employees that is used by an authority or by the employer of the employees for staff management planning, including 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.

Kroeplin argued that Section 19.36(10)(d) applies to all records related to the investigation and discipline, because the records will be used by DNR “when engaging in the kinds of activities listed in Section 19.36(10)(d),” such as issuing performance evaluations and planning judgments. DNR offered a narrower construction of Section 19.36(10)(d). DNR argued Section 19.36(10)(d) exempts from disclosure most, but not all, of the information contained in the investigation and disciplinary records, distinguishing between factual information, which DNR argued should be disclosed, and supervisory opinions and evaluative information that form or will form the basis of an evaluation or judgment used for purposes of staff management planning, which should not be disclosed.

DNR also alleged the following public policy considerations justify this situation as an exceptional case where full disclosure of these investigation and discipline records would not be warranted. DNR alleged as follows:

(1) Disclosure would undermine the compelling public interest in allowing management to engage in frank discussions of inappropriate job-related actions with employees and to protect the reputations of those employees, especially when the employee is a law enforcement officer;

(2) The public policy expressed in several statutes express apprehension in the release of disciplinary information concerning specific employees; and

(3) The release of all records of public employees who have been subject to discipline would discourage public employers from imposing corrective disciplinary sanctions in the first place and would discourage employees who have been disciplined from correcting their behavior and continuing their public employment, and would ultimately discourage competent, conscientious, well-motivated persons from seeking or continuing in public employment and could have a chilling effect on Kroeplin’s ability to enforce the law effectively.

Kroeplin offered similar public policy arguments.

THE COURT’S DECISION

The Court of Appeals rejected all of DNR’s and Kroeplin’s arguments and ordered disclosure of the investigation and discipline records. First, the Court rejected DNR’s and Kroeplin’s interpretations of Section 19.36(10)(d). The Court determined Section 19.36(10)(b), which precludes disclosure of records related to a pending personnel investigation into a possible criminal offense or misconduct, is the only statutory exception applicable to these records. Section 19.36(10)(d) was simply inapplicable to these records. Of importance, the Court unequivocally stated that once management acts to impose discipline on an employee as a result of the investigation, the investigation records involving employee misconduct may be released subject to the common law balancing test, and Section 19.36(10)(b) no longer applies. The Court also rejected DNR’s analysis that factual information from evaluative records should be disclosed while supervisory opinions should remain confidential. The Court found DNR’s framework created an unworkable standard.

Second, the Court rejected the public policy reasons offered by both Kroeplin and DNR and determined this case was not the exceptional case where nondisclosure would be warranted. First, the Court determined the reasons submitted by DNR were not specific to the facts of this case and were generic to all discipline cases. Second, the Court stated that when individuals become public employees—especially in a law enforcement capacity—they should expect closer public scrutiny, which includes the possibility that disciplinary records may be released to the public.

DISCUSSION

Kroeplin reinforces how cautious personnel professionals and records custodians must be when responding to public records requests. This case is a helpful reminder that carefully tailoring redactions and providing specific public policy reasons that are relevant to the factual information contained within the records that are redacted or not disclosed are important to minimize liability exposure and undue publicity.

Kroeplin also has several other important considerations. The *Kroeplin* decision demonstrates Wisconsin's Courts continuing trend of ordering disclosure of records related to personnel misconduct—regardless of whether the individual is a rank-and-file employee or a public official.

Additionally, while the Court acknowledged the term “staff management planning” record is ambiguous, it only provided some guidance regarding what does not constitute a “staff management planning” record (in this case, investigation and discipline records). The Court, however, did not provide custodians any further guidance regarding what actually constitutes a “staff management planning” record.

Finally, while the Court did not directly address the common law considerations applicable to the personnel records of law enforcement officers, this decision certainly can be used by records requesters to allege that those public policy and common law considerations applicable to law enforcement officers are no longer well grounded. In light of this concern, law enforcement supervisors in your communities should be informed of this decision.

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