

## **Matter of Schenectady County Society for the Prevention of Cruelty to Animals, Inc. v. Mills, Index 163**

We hold that an agency responding to a demand under the Freedom of Information Law (FOIL) may not withhold a record solely because some of the information in that record may be exempt from disclosure. Where it can do so without unreasonable difficulty, the agency must redact the record to take out the exempt information.

Petitioner sent an e-mail to the Education Department, asking for the names and addresses of veterinarians licensed by the Department in Schenectady County. The Department replied that it would provide a list of names, and the city and state portions of the addresses, but would not provide street addresses because "[i]t is not public information for us to provide home addresses for a licensed professional and thats [sic] what we have on file." Petitioner responded: "What about business address?", and the Department replied: "No[t] everyone has provided us with a business address."

Petitioner then formally requested the list of names and addresses under FOIL. The Department again offered to provide names and cities, but repeated its refusal to provide street addresses, explaining: "As our computerized files are currently configured, we are unable to distinguish a licensee's business address from a residential address." After an unsuccessful administrative appeal, petitioner began this proceeding to require that the list be produced. Petitioner specifically sought only "a photocopy of the requested list with names of licensed professionals and their business addresses."

Supreme Court dismissed the petition. The Appellate Division reversed, with two Justices dissenting, and granted the petition (Matter of Schenectady County Socy. for the Prevention of Cruelty to Animals, Inc. v. Mills, 74 AD3d 1417 [3d Dept. 2010]). The Department appeals as of right, pursuant to CPLR 5601 (a), and we affirm.

The Department argues that disclosure of licensees' home addresses "would constitute an unwarranted invasion of personal privacy" and so is not required by FOIL (Public Officers Law §87 [2] [b], 89 [2-a]). But we do not need to address this claim, because petitioner is not seeking home addresses, only business addresses, and the Department makes no claim that the business addresses are private.

It seems obvious to us that, if the Department does not want to supply home addresses, it should simply delete them from the list. It says that its computer database does not distinguish between home and business addresses, but it does not claim that it would be hard to find out, by communicating with the licensees, which addresses are homes and which are businesses. This should not be a burdensome task, because the number of licensed veterinarians in Schenectady County is unlikely to be very large; it was represented at oral argument that the number is 72.

It is true that FOIL generally does not require an agency to create a new record (Public Officers Law §89 [3] [a]): "Nothing in this article shall be construed to require any entity to

prepare any record not possessed or maintained by such entity" with specified exceptions). But there is a difference between creating a new record and redacting an existing one. Courts deciding FOIL issues often order redaction when a record contains both exempt and non-exempt information (e.g., *Matter of Data Tree, LLC v. Romaine*, 9 NY3d 454, 464 [2007] [noting that "even when a document subject to FOIL contains...private, protected information, agencies may be required to prepare a redacted version with the exempt material removed" (citing Public Officers Law §89 [2] [c] [i])]; *Matter of New York Times Co. v. City of N.Y. Fire Dept.*, 4 NY3d 477, 482-483 [2005]; *Matter of Scott, Sardano & Pomeranz v. Records Access Officer of City of Syracuse*, 65 NY2d 294 [1985]). In responding to petitioner's FOIL request, the Department had the choice of producing the existing record in full or removing the information that it did not want to produce and that petitioner did not demand. It cannot refuse to produce the whole record simply because some of it may be exempt from disclosure.

We are at a loss to understand why this case has been litigated. It seems that an agency sensitive to its FOIL obligations could have furnished petitioner a redacted list with a few hours effort, and at negligible cost. Instead, lawyers for both sides have submitted briefs and

"You had made this extremely stressful process that much easier for us"

argued"Mirranda and I wanted to express our thanks for all of the help you have provided in the process of selling our old home and purchasing our new one. When we purchased our last home we took the recommendation of our realtor on a lawyer to use and we were less than impressed. I can say that this time around that is not the case and we couldn't be happier with the work and effort you put in. You had made this extremely stressful process that much easier for us. Again thank you for all of your help and dealing with my many of phone calls and emails, I would be more than happy to recommend you and your firm to anyone," C.K. on Partner Graig Zappia, Esq. and Paralegal Anita Reagan.

Prior results do not guarantee similar outcomes.

&#8220;He took on this case with vigor and ZERO FEAR of the government!&#8221;

"LITERALLY THE BEST MONEY I EVER SPENT!!!! The USAF charged my son with Article 92, Violate General Order and Article 128, Simple Assault. I spoke to many attorneys who said to me, "Your son will be convicted of the Simple Assault because putting lotion on someone's face is considered an assault as it is an unwanted touch." They all wanted me to work on a plea deal with the government that ended with my son being discharged, spending time in the brig and having a federal conviction for the rest of his life. Knowing that this just didn't warrant a federal conviction, bad conduct discharge and time in the brig, I was on a search to find an attorney who would look at this case for what it was: a couple of 19-21 year-old immature young men horse playing. I was looking for someone who would say something different; someone who would be able to look at the case from more than one view. When I spoke to Mr. Rinckey, I thought I was going to get the same ole speech, but to my surprise, I IMMEDIATELY felt at ease and I knew right then that he was going to be my attorney (not sure if he knew it at this time). He took on this case with vigor and ZERO FEAR of the government! He wanted them to know that this was NOT going to go away with any plea deal! And he went to work! Then, LITERALLY 2 DAYS BEFORE trail the government added an additional charge, which was Article 134, Unlawful Entry. Mr. Rinckey stayed focused, developed a plan, and off to trail we went. He was so prepared, calm and at ease. I remember him saying to me, "I am ready to try this case." And yesterday - 14 APR 2016 - my son was found NOT GUILTY on ALL CHARGES AND SPECIFICATIONS!!! Yessss!!! You know, it's always hard to find money for an attorney, but I learned one thing with this case. Although I thought we couldn't afford an attorney, the truth of the matter was that we couldn't afford NOT TO HAVE an attorney. I only wish I had found Mr. Rinckey sooner, but that's okay. I have found my ATTORNEY for life," Y.W. on Founding Partner on Greg Rinckey, Esq.

Prior results do not guarantee similar outcomes.

&#8220;I was very impressed how he was so sharp and clear about every detail in this case&#8221;

"Before contacting Tully Rinckey, I searched many law firms to take my case, a legal claim against a giant Federal agency. Throughout the New York area I presented my complaint to prospective

attorneys hoping someone would have the ability and confidence to get the job done. Most of the personal lawyers I spoke with could not focus very well and many times gave me poor answers to my inquiries. Finally, I contacted Tully Rinckey, a law firm based in Albany NY. After my first contact with Tully Rinckey I was immediately impressed with the firm. Everyone I spoke with was polite, professional, and very helpful. For the initial consultation I had the honor to speak with Founder Greg Rinckey. I explained my situation and the details of the case. He provided excellent feedback and a sound strategy to be victorious. Soon after the consultation I received a call from Allen A. Shoikhetbrod. He said that he was an attorney employed by Tully Rinckey and that he was my representative for this case. Attorney Allen A. Shoikhetbrod's representation was the best of the best! I was very impressed how he was so sharp and clear about every detail in this case. At the time I hired Tully Rinckey I was up against a Summary Judgement from the agency. Mr Shoikhetbrod's Letter of Opposition was so powerfully written that the agency was now ready to negotiate a settlement agreement. I strongly believed that I could win from his opposition report. Ultimately I did win. The agency agreed to our demands and I also received a monetary award, something that is rarely accomplished when negotiating with this agency. This makes me feel like we made history in this case. No one but Allen A. Shoikhetbrod could achieve a result like this. Very complete! He expressed every detail, everything I wanted to say to prove my case. He concisely made every point. We won, a huge victory. Mr. Shoikhetbrod has a very special talent. He is a super well trained professional. No other law firm can compare with Tully Rinckey and Mr. Shoikhetbrod. Through Tully Rinckey and Allen A. Shoikhetbrod I finally received real legal protection, protection of my legal rights! Thank you Mr. Shoikhetbrod. Thank you Tully Rinckey," J.C. on Associate Allen Shoikhetbrod, Esq.

Prior results do not guarantee similar outcomes.

&#8220;I highly recommend Lisa to any fellow Brother in arms.&#8221;

"Throughout the entire process Lisa gave me advice to continue to hold out for more, as she stated my case was a "homerun" in terms. After the first month and the first offer had come back, I had only gone into more debt and wanted to be done. Again, Lisa told me to wait it out and see. After taking her legal advice throughout the process as well as her personal advice, she was able to win my case and provide more than double what was originally offered. If I had not held out for one more week, there would have been a massive difference in the settlement. It is with pleasure and experience that I highly recommend Lisa to any fellow Brother in arms. She not only looked out for my wellbeing but she was able to put up with me at my low and maintained her positive attitude throughout the process. I had placed several hundred phone calls and emails to Lisa and even on the weekend she was responding within an hour, if not minute. From everything between personal advice and professional law advisement, Lisa has a wealth of knowledge." D.B. on Attorney Lisa Newkirk.

Prior results do not guarantee similar outcomes.

&#8220;Best In Class Law Firm&#8221;

"I was fortunate to be represented by Mario Commetti for my recent divorce and could not be more pleased with the outcome. Everyone at the firm handled my case with white gloves and made a stressful life experience manageable and less overwhelming. By far best in class law firm and certainly my law firm for life! I have recently joined the firm as a Business Operations Manager to help more clients encounter the level of service and expertise that I was given!" - J.P. on Partner Mario Commetti.

Prior results do not guarantee similar outcomes

&#8220;Honestly, you made this experience painless&#8221;

"Thank you it was a pleasure doing business with you. Honestly, you made this experience painless. Much appreciated happy customer." J. A. on Partner Barbara King, Esq.

Prior results do not guarantee similar outcomes.

&#8220;All in all, it was a positive experience.&#8221;

"My case was handled expeditiously and all my questions were answered in a timely manner. All in all, it was a positive experience." S.V. on Partner Michael Macomber, Esq.

Prior results do not guarantee similar outcomes.

“Can’t Thank You Enough” – J.E.

"I can't thank you folks enough, I feel so vindicated! Let me tell you a funny story. I received a letter from the court on Thursday saying that my appeal had been dismissed. In my translation of legalese, I thought the letter said that the Gov't had settled earlier with me for 104 hours and that I was entitled to nothing more. That wasn't the way I remembered it but you all had the facts, all I had was memory. I was going to write and thank you for your hard work on my behalf, and move on. The next day I went out to the mailbox and found a check from DFAS for \$2,034! I am sure you could have heard me cheer. When I submitted my case a few years back, the Gov't only sent me 3 years of finance records - and half of those belonged to someone else. I was told that no other pay records were available because of the infamous St. Louis records warehouse fire. Everything gets blamed on the warehouse fire. Thanks again, keep fighting for those of us who don't have a chance. You guys are heroes." - J.E.

Prior results do not guarantee similar outcomes

“Pleased With My Results” – R.A.

"I would like to express my appreciation for the great job your firm has done to get my refund from the Air Force for in correct charges of military leave while I was working as an Air Reserve technician. I had been retired for about fifteen years and had very little paperwork to support my claim. However your firm worked diligently to find all the necessary documents and negotiate a settlement. Everyone I dealt with at your firm were extremely knowledgeable, and professional. I was pleased with my results and have recommended your firm to several other former Air Reserve technicians who fell under the same situation." - R.A.

Prior results do not guarantee similar outcomes

“Cannot Thank You Enough” – R.S. and C.S.

"I cannot thank you enough for all that you did for us." - R.S. and C.S.

&#8220;Great Service&#8221; &#8211; E.S.

I want to thank you all for the great service rendered [to] myself and family. - E.S. on Client Relations Attorney Derrick Hogan

“High Regard” – R.E.M.

“Your firm held my best interests with high regard... I thank you for your efforts.” - R.E.M.

&#8220;Prompt and Efficient&#8221; – K.B.

"Prompt and efficient in processing claim, all correspondence handled in prompt and efficient manner." – K.B.

&#8220;Impressed&#8221; – W.W.

"As a retired heavy user of attorneys, I'm impressed with your concerns and your efforts to stay in touch with your clients. Its damned good management aligned with top notch expertise." – W.W.

"Excellent Service" – J.R.

"Excellent service, very professional, and understanding and considerate of clients needs. Attorney was very approachable and there was a very good comfort level." – J.R.

"Full Service" – K.M.

"I like the fact the office is close enough to where I work and live and that it is a full service practice, not just estate planning." – K.M.

"Professional and Informative" – J.H.

"Professional and informative... I was pleased with the handling of the case. I was treated as a person, and kept abreast of all aspects of the case. Thank you all." – J.H.

"Thanks So Much" – J.D.

"Without your firm, I would not have known of my claim. Thanks so much!" – J.D.

"Gets Results" – F.P.

"Most certainly – The firm gets results!" – F.P.

"Outstanding" – M.P.

"Results are outstanding." – M.P.

"Quite Satisfied" – R.W.

"I am quite satisfied with the services your office has provided." – R.W.

“Exceptional Legal Services” – A.S.

“Your firm, Tully Rinckey, has provided and continues to provide me with prompt, keen, exceptional legal services. After the initial consult, I felt relieved that I had the representation from Tully Rinckey... I have found a new found hope with Tully Rinckey...” – A.S.

“Absolute Best” – R.H.

“My attorney was the absolute best I could ever have hoped for. A pure professional in every sense of the word. She was very mindful of my financial expenditure and still was able to represent me very well in my court case.” – R.H.

“Outstanding Service” – A.R.

“Outstanding service, true professional.” – A.R.

“Top Notch” – V.W.

“My attorney was top notch. Very pleasant and helpful.” – V.W.

“Very Thankful” – C.P.

“Very thankful for the help and guidance I received from your law firm. Because of your law firm I was able to return to work with all my back benefits.” – C.P.

“Ideal Choice” – D.H.

“My attorney knew exactly the approach to take and was the ideal choice. She was extremely responsive. She was clear, balanced, and open to our views and feelings. She made it clear she was there for us and ready to answer questions.” – D.H.

“Very Satisfied” – D.D.

“I was very satisfied with the services provided which were completed in a very timely and professional manner.” – D.D.

“Excellent” – B.M.

“Your firm provides excellent & free service to federal workers and NG/USAR members.” – B.M.