

Ruling Aids Access to Public Records

The state's top court, in a stern ruling Tuesday that put all governmental agencies on notice in the handling of Freedom of Information requests, settled a four-year-old case involving names and addresses of veterinarians in Schenectady County.

In its unanimous opinion, the Court of Appeals lashed out at the state Department of Education, which licenses veterinarians, for not complying with a request from the Schenectady County Society for the Prevention of Cruelty to Animals

, affirming a ruling of a mid-level appellate court that the SPCA had the right to the information it sought.

Further, the top court said it was at a loss as to why the case was even litigated.

The society wanted the names of vets and veterinary technicians in the county so as to "tell people in the animal community who we are, what we do and how to reach us," said attorney Mathew Tully, last year after the relatively new animal-protection organization's suit was successful by a 3-2 vote by the Appellate Division of state Supreme Court. It then went to the Court of Appeals.

On Tuesday, Tully called the victory "a full-frontal attack on state agencies who ignore FOIL," the state's Freedom of Information Law. The ruling is a "big win for people who are seeking transparency in government."

It also could affect some 800,000 people in various occupations licensed by the state Education Department, said Tully, a principal in the firm of Tully Rinckey. Tully is chairman of the SPCA board of directors and its chief humane law enforcement officer.

"We hold that an agency responding to a demand under the Freedom of Information Law may not withhold a record solely because some of the information in that record may be exempt from disclosure," began the five-page opinion written by Associate Judge Robert S. Smith. "Where it can do so without unreasonable difficulty, the agency must redact the record to take out the exempt information."

The SPCA wanted to do a mass mailing to about 72 veterinarians and veterinary technicians in Schenectady County. The state Education Department said it would only provide the names and not addresses because the agency couldn't ascertain whether the addresses were business or personal and expressed concern of an unwarranted invasion of privacy. Many licensed professionals operate out of their homes, the agency noted.

"We didn't ask for home addresses," Tully said. "We just asked for addresses, and the state couldn't determine if it was home or business."

While the agency said its database didn't distinguish between addresses, the agency "does not claim that it would be hard to find out, by communicating with the licensees, which addresses are homes and which are businesses," the opinion stated. "This should not be a burdensome task" because 72 was the number given at the oral arguments.

The Appellate Division noted last year the state agency could have heeded the 2006 opinion from the state Committee on Open Government. That decision, written by its executive director, Robert Freeman, said licensee records are subject to FOIL, and licensees should be told when renewal notices go out that addresses are subject to disclosure.

The seven members on the top court were "at a loss to understand why this case has been litigated," was how Smith concluded the opinion. "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 argued the case in three courts, demanding the attention of 13 judges, generating four judicial opinions and resulting in a delay in disclosure of almost four years. It is our hope that the department, and other agencies of government, will generally comply with their FOIL obligations in a more efficient way."

The court awarded attorneys' fees to his law firm, according to Tully, "because it was almost as if this case was frivolous in their defense of it."

But Tully said he has a suggestion that would save taxpayers money. If the state Education Department would buy the SPCA an animal-control van for about \$40,000 and an investigative car for about \$20,000, the law firm would waive the remaining attorneys' fees, which Tully estimated to be at least \$100,000.

"It's going for a good cause," he said. "It's to help animals and finally put a conclusion to this four-year disaster of a legal battle."