

Tully Rinckey Takes Down State Education Department in Landmark FOIL Ruling

New York's highest court upheld Tuesday a decision by a state appellate court that further requires all governmental agencies to comply with the Freedom of Information Law (FOIL). The decision will affect nearly 800,000 professionals in 47 fields in New York. Back in 2008 the Schenectady County Society for the Prevention of Cruelty to Animals (SPCA) requested names and street addresses of all licensed veterinarians and veterinary technicians in Schenectady County. The State Education Department, which licenses professionals in the state, argued that the release of such information would constitute an unwarranted invasion of privacy. In Tuesday's decision the New York Court of Appeals ruled that an agency may not withhold a record solely because some of the information in that record may be exempt from disclosure. The court went on to explain that the agency is responsible for redacting any of the exempt information and is still required to supply the record. "This is a landmark ruling that upholds our very right to FOIL. It's all about transparency. If an agency does not want certain information released then the burden is on them to redact it. No longer can they say we are not supplying the record because there is one piece of information in it that we don't want to release," said Mathew B. Tully, winning litigator and founding partner of Tully Rinckey. He also serves as chief humane law enforcement officer for the Schenectady County SPCA. In June 2010 the Third Appellate Division for the New York State Supreme Court ruled in favor of the SPCA. With the Court of Appeals affirming that decision, it will affect nearly 800,000 NYS professionals statewide in various fields such as veterinarians, certified public accountants, dentists, nurses, psychologists and social workers. The New York State Education Department appealed the decision but lost that appeal Tuesday. The Court of Appeals lashed out at the State Education Department for its laziness, writing: "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 a redacted list with a few hours effort. Instead, this demanded the attention of three courts and 13 judges and a delay in disclosure for almost four years. It is our hope that the Department, and other agencies of government, will generally comply with their FOIL obligations in a much more efficient way." This landmark ruling now serves as a benchmark for all FOIL cases currently being argued and going forward. The biggest of such cases may be the fight between the Empire Center for New York Policy, a fiscally conservative watchdog group, and the New York City Police Retirement Fund. For years the group has requested through FOIL, and released pension information of state and municipal employees as well as teachers. However in 2010 the police pension fund refused to provide that information. The watchdog group has since lost its argument in two courts. "Government agencies have gotten lazy with their responsibilities. The courts and this case have called them out for it and they have been held accountable for their own apathy," said Mr. Tully.