

Animal Agency Wins Round in FOIL Dispute

An appellate court ruling involving a seemingly innocuous Freedom of Information Law request to a state agency by a nonprofit organization may turn out to have far-reaching effects.

The Appellate Division of state Supreme Court decided last week in a 3-2 opinion that the Schenectady County Society for the Prevention of Cruelty to Animals has the right to the names and complete addresses of all veterinarians and veterinary technicians in the county.

The 2-year-old SPCA whose "vital function (is) helping animals" wanted to "tell people in the animal community who we are, what we do and how to reach us," said Mat Tully, chairman of the board of directors and chief humane law enforcement officer and a principal in Tully Rinckey, the law firm that represented the society. Under FOIL, the society asked the Department of Education, which licenses professionals in New York, for information on the vets and technicians, fewer than 100 in all, so it could do a mass mailing.

State Ed provided a list with only the city or town portion of the addresses and refused to disclose the street addresses, "stating the release of such information would constitute an unwarranted invasion of personal privacy" because many of the license holders work out of their homes and provided only those addresses. From the list, the SPCA "was able to ascertain addresses of half of them," Tully said. So, the Schenectady group sued State Ed and then-Commissioner Richard Mills. After Supreme Court Justice Eugene "Gus" Devine in Albany dismissed the lawsuit, the SPCA appealed.

Thursday's majority opinion, written by Associate Justice William McCarthy, noted that the state could have heeded the 2006 opinion from the state Committee on Open Government. That decision, written by its executive director, Bob Freeman, said licensee records are subject to FOIL, and licensees should be told when renewal notices go out that addresses they provide are subject to disclosure, Tully said.

Bernard "Bud" Malone Jr. wrote a dissenting opinion, noting that State Ed maintains a database with nearly 800,000 people working in 47 professions, such as doctors, dentists, nurses, psychologists, social workers, physical therapists and certified public accountants, and all that is required is a current mailing address. The database does not differentiate between residential and business addresses. Many professionals, such as physical and occupational therapists work out of their homes, Malone pointed out.

He said the decision had to reflect the "privacy interests at stake (and) the public interest in disclosure of the information." He came down on the side of the "legitimate privacy concerns."

Malone also suggested the state should allow those included in the FOIL request to intervene by being informed that the address they provided could be disclosed.

With a 3-2 ruling, the Court of Appeals, the state's highest court, could very likely agree to hear the case.

"I hope so," Tully said.

A spokesman for the state attorney general's office, which represented State Ed, said the ruling is being reviewed and could be appealed.

The arguments raised on dissent are valid arguments, Tully said, such as the intervention issue, which is not currently covered under FOIL.

The Albany-based Appellate Division, Third Department, "is not known for putting out judicial philosophy or allowing debate," Tully said, and such a "harshly worded majority and harshly worded dissent" are rarely seen.