

SUPREME JUDICIAL COURT OF MAINE

Moore v. Abbott, 2008 ME 100

952 A.2d 980 (Me. 2008) · No. Cum-07-467 · Decided June 17, 2008

SUMMARY

The Maine Supreme Judicial Court affirmed the denial of James P. Moore's Freedom of Access Act request for records held by three private attorneys who independently investigated allegations concerning the prosecution of Dennis Dechaine. Applying a four-factor functional-equivalency test, the majority concluded that the attorneys were private citizens rather than a governmental agency or public official because they performed a nonbinding advisory role without legislative authorization, government funding, or substantial government control. Two justices dissented, reasoning that the panel performed a governmental function and was created and substantially directed by the Attorney General.

CASE DETAILS

COURT	Supreme Judicial Court of Maine
WRITING FOR THE COURT	Alexander, J.; Levy, J.; Silver, J.; Mead, J.; Gorman, J.
JURISDICTION	Maine
DECIDED	June 17, 2008
DOCKET	Cum-07-467
DISPOSITION	affirmed
PROCEDURAL POSTURE	Moore appealed from a Cumberland County Superior Court judgment denying his Freedom of Access Act appeal and declining to require three private attorneys who conducted an Attorney General-requested investigation to disclose investigation records.
STANDARD OF REVIEW	The court reviewed the application of the Freedom of Access Act and the Superior Court's functional-equivalency determination under the governing statutory framework and four-factor test.
PRECEDENTIAL VALUE	Published Maine Supreme Judicial Court majority opinion; precedential.
PARTIES	James P. Moore v. Charles Abbott, Eugene Beaulieu, Marvin Glazier

TOPICS

statutory interpretation

administrative law

appellate procedure

civil procedure

PRACTICE AREAS

administrative law

civil procedure

government transparency

QUESTIONS PRESENTED

1. Whether three private attorneys who, at the Attorney General's request, conducted an uncompensated and independent investigation and issued a nonbinding report were the functional equivalent of a State agency or public official under Maine's Freedom of Access Act.
2. Whether records gathered or created by those attorneys during the investigation were public records subject to disclosure under 1 M.R.S. §§ 402(3) and 408.

HOLDINGS

1. An entity or individual is evaluated functionally under four factors: whether it performs a governmental function, whether it receives governmental funding, the extent of governmental involvement or control, and whether it was created by private or legislative action. The three attorneys did not qualify as a State agency or public official because all four factors weighed against functional equivalency.
2. The Freedom of Access Act's document-disclosure mandates did not apply to documents generated during the attorneys' independent investigation that were in their possession.

KEY QUOTATIONS

“The four factors are: (1) Whether the entity is performing a governmental function; (2) Whether the funding of the entity is governmental; (3) The extent of governmental involvement or control; and (4) Whether the entity was created by private or legislative action.” (¶ 11)

“A person or entity, acting without statutory authority or state support, who provides nonbinding advice to a state agency or state official, even on a matter that may be of some significance, does not, by providing that nonbinding advice, become an agent of government performing a governmental function for purposes of application of the Freedom of Access Act.” (¶ 15)

FACTUAL BACKGROUND

The Attorney General asked three experienced attorneys to conduct an independent, uncompensated review of allegations of prosecutorial and law-enforcement misconduct in the investigation and prosecution of Dennis Dechaine. The attorneys received no government funding, conducted the review independently, and issued a nonbinding report to the Attorney General, who had provided access to public records, personnel, and limited logistical assistance. Moore sought the attorneys' investigative files under Maine's Freedom of Access Act, but the attorneys declined to provide them.

PROCEDURAL HISTORY

Moore submitted Freedom of Access Act requests to the three attorneys seeking files, records, and reports generated during their independent review of allegations concerning the Dechaine prosecution. After receiving

no response, he brought an action under 1 M.R.S. § 409(1) and Maine Rule of Civil Procedure 80(C). The Superior Court concluded that the attorneys were not a public agency or political subdivision subject to the Act and denied relief. The Supreme Judicial Court affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Dechaine, 572 A.2d 130 (Me. 1990)
- State v. Dechaine, 630 A.2d 234 (Me. 1993)
- Town of Burlington v. Hospital Administrative District No. 1, 2001 ME 59, 769 A.2d 857
- Dow v. Caribou Chamber of Commerce & Industry, 2005 ME 113, 884 A.2d 667
- Lewiston Daily Sun, Inc. v. City of Auburn, 544 A.2d 335 (Me. 1988)
- Cyr v. Madawaska School Department, 2007 ME 28, 916 A.2d 967
- Moffett v. City of Portland, 400 A.2d 340 (Me. 1979)
- Conn. Humane Society v. Freedom of Information Commission, 218 Conn. 757, 591 A.2d 395 (Conn. 1991)
- Railway Labor Executives' Association v. Consolidated Rail Corp., 580 F. Supp. 777 (D.D.C. 1984)
- Telford v. Thurston County Board of Commissioners, 95 Wash. App. 149, 974 P.2d 886 (Wash. Ct. App. 1999)
- Portland Water District v. Town of Standish, 2006 ME 104, 905 A.2d 829
- United States v. Lara, 541 U.S. 193, 124 S. Ct. 1628, 158 L. Ed. 2d 420 (2004)