

SUPREME JUDICIAL COURT OF MAINE

Marcel Dubois et al. v. Department of Environmental Protection et al.

2017 ME 224 · No. Yor-17-23 · Decided December 7, 2017

SUMMARY

The Maine Supreme Judicial Court reviewed a partial denial by the Department of Environmental Protection of a Freedom of Access Act request for records concerning Dubois Livestock, Inc. The court affirmed withholding records protected by the work product privilege but vacated the judgment concerning complainant identities withheld under the informant identity privilege. The matter was remanded for factual findings regarding whether the Department was conducting an investigation and whether its personnel were acting as law enforcement officers.

CASE DETAILS

COURT	Supreme Judicial Court of Maine
WRITING FOR THE COURT	Saufley, C.J.; Alexander, J.; Mead, J.; Gorman, J.; Humphrey, J.
JURISDICTION	Maine
DECIDED	December 7, 2017
DOCKET	Yor-17-23
DISPOSITION	other
PROCEDURAL POSTURE	Appeal from the York County Superior Court's judgment affirming in part the Maine Department of Environmental Protection's partial denial of a Freedom of Access Act request for public records.
STANDARD OF REVIEW	Alleged due-process errors are reviewed de novo. Legal issues concerning the nature and scope of privileges are reviewed de novo, while underlying factual findings are reviewed for clear error.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Marcel Dubois, Sol Fedder v. Department of Environmental Protection

TOPICS

judicial review of agency action administrative law environmental law appellate procedure due process

PRACTICE AREAS

administrative law environmental law civil procedure evidence constitutional law

QUESTIONS PRESENTED

1. Whether the Superior Court's in camera review of withheld records and consideration of a Department affidavit denied the appellants due process in a FOAA appeal.
2. Whether the work-product privilege applied to drafts of an administrative search warrant, a warrant application, and related emails and strategy documents.
3. Whether the record established that the informant-identity privilege or statutory confidentiality for investigative records protected records identifying complainants to the Department.
4. Whether the matter had to be remanded for factual findings concerning whether Department personnel were law-enforcement officers conducting an investigation.

HOLDINGS

1. The Superior Court's in camera review of disputed records did not violate due process because permitting FOAA requesters to inspect allegedly privileged records before the court determined whether the privilege applied would defeat the privilege and FOAA exceptions.
2. The work-product privilege applied to the Department's drafts of an administrative search warrant, warrant application, and related emails concerning drafting and execution strategy because the documents were prepared in anticipation of regulatory enforcement or other compliance-related litigation.
3. The record was insufficient to determine whether records identifying complainants were protected by the informant-identity privilege or by statutory confidentiality for investigative records; therefore, the judgment concerning those records had to be vacated and remanded for evidentiary proceedings and factual findings.

KEY QUOTATIONS

“Allowing such disclosure before determining whether the documents were privileged would eviscerate the protections provided by the exceptions within FOAA and the law of privilege.” (¶ 9)

“Because there were factual disputes regarding several findings necessary to a determination that there was “just and proper cause” for the Department’s withholding of records containing the identities of complainants, see 1 M.R.S. § 408-A, we must remand to the trial court to receive evidence from the parties relevant to whether the Department was conducting an investigation and whether its agents were acting as law enforcement officers in this particular matter.” (¶ 25)

FACTUAL BACKGROUND

On July 6, 2015, Marcel Dubois, Sol Fedder, and others submitted a broad FOAA request for Department records relating to a composting facility operated by Dubois Livestock, Inc. The Department produced some documents but redacted or withheld others, including drafts and communications concerning an administrative search warrant and records identifying people who complained about odors from the property. The Department relied on the FOAA privilege exception, the work-product privilege, and the informant-identity privilege.

PROCEDURAL HISTORY

Dubois, Fedder, and others submitted a broad FOAA request to the Department concerning records related to a composting facility operated by Dubois Livestock, Inc. The Department produced some records but redacted or withheld others based on work-product and informant-identity privileges. The appellants appealed to the Superior Court under FOAA and Rule 80B. The Superior Court denied their motion to strike the Department's affidavit, affirmed the withholding of records under both privileges, affirmed the withholding of confidential personnel records, and ordered disclosure of records deemed irrelevant by the Department. The appellants timely appealed.

DISPOSITION

other

REMAND INSTRUCTIONS

The Superior Court must take evidence and make factual findings concerning whether the Department was conducting an investigation, whether its agents were acting as law-enforcement officers in this matter, and whether the informant-identity privilege or statutory confidentiality provisions except the complainant-identity records from the definition of public records.

CASES CITED

- Colby v. York County Commissioners, 442 A.2d 544, 547-48 (Me. 1982)
- Friends of Maine's Mountains v. Board of Environmental Protection, 2013 ME 25, ¶ 11, 61 A.3d 689
- Preti Flaherty Beliveau & Pachios LLP v. State Tax Assessor, 2014 ME 6, ¶¶ 8, 10, 86 A.3d 30
- Boyle v. Division of Community Services, 592 A.2d 489, 491 (Me. 1991)
- Underwood v. City of Presque Isle, 1998 ME 166, ¶ 22, 715 A.2d 148
- Springfield Terminal Railway Co. v. Department of Transportation, 2000 ME 126, ¶¶ 16, 19, 754 A.2d 353
- Harris Management, Inc. v. Coulombe, 2016 ME 166, ¶ 12, 151 A.3d 7