

SUPREME COURT OF WISCONSIN

Osborn v. Board of Regents of the University of Wisconsin System, 2002 WI 83, 254 Wis. 2d 266

647 N.W.2d 158 (2002) · No. No. 00-2861 · Decided July 2, 2002

SUMMARY

The Supreme Court of Wisconsin reviewed whether the University of Wisconsin System was required under Wisconsin's open records law to disclose information from student and applicant records. The court held that FERPA protects personally identifiable information in education records, but does not prohibit disclosure of non-identifying information such as aggregated or redacted admissions data. The court further held that the University must redact exempt information when necessary to comply with an open records request and may charge the actual, necessary, and direct costs of doing so.

CASE DETAILS

COURT	Supreme Court of Wisconsin
WRITING FOR THE COURT	N. Patrick Crooks, J.
JURISDICTION	Wisconsin
DECIDED	July 2, 2002
DOCKET	No. 00-2861
DISPOSITION	reversed
PROCEDURAL POSTURE	Review of a published court of appeals decision in a mandamus action seeking disclosure of public records under Wisconsin's Open Records Law.
STANDARD OF REVIEW	De novo review of statutory interpretation and application of the Open Records Law to undisputed facts; in reviewing mandamus, the court first examines the legal sufficiency and specificity of the custodian's stated reasons for denial.
PRECEDENTIAL VALUE	Published Wisconsin Supreme Court opinion; precedential
PARTIES	Board of Regents of the University of Wisconsin System v. J. Marshall Osborn, Center for Equal Opportunity

TOPICS

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QUESTIONS PRESENTED

1. Whether FERPA prohibits disclosure of admissions information from education records when the requested information, after redaction, is not personally identifiable.
2. Whether Wisconsin's public-policy balancing test permits denial of access to non-personally-identifiable admissions information despite the statutory presumption of openness.
3. Whether Wisconsin Stat. § 19.36(6) requires the University to redact or delete nondisclosable information and provide the information subject to disclosure.
4. Whether the University may refuse the requests on the ground that redacting information would effectively require creation of a new record.

HOLDINGS

1. FERPA prohibits the nonconsensual disclosure of personally identifiable information contained in education records, but it does not prohibit disclosure of all information contained in those records. A custodian may deny a request under FERPA only when the requested information would make a student's identity traceable, subject to directory-information and other statutory exceptions.
2. The public-policy balancing test favored disclosure because the requested information was not personally identifiable and Wisconsin law presumes that public records are open. This was not an exceptional case warranting denial of access.
3. Wisconsin Stat. § 19.36(6) requires a public-records custodian to provide information subject to disclosure and delete or redact information not subject to disclosure before releasing the record.
4. The University could not avoid its statutory duty to redact merely because compliance might be burdensome. The University could charge the requester the actual, necessary, and direct costs authorized by the Open Records Law.

KEY QUOTATIONS

“If the custodian states insufficient reasons for denying access, then the writ of mandamus compelling disclosure must issue.” (254 Wis. 2d 283)

“The unambiguous and instructive word “shall” does not give a custodian, under these circumstances, the option of separating the information or simply denying the open records request.” (254 Wis. 2d 301-302)

“Consistent with Osborn's open records requests and FERPA, therefore, the University must redact or delete personally identifiable information in the application records before releasing the information subject to disclosure.” (254 Wis. 2d 304-305)

FACTUAL BACKGROUND

In 1998 and 1999, J. Marshall Osborn requested admissions data from University of Wisconsin campuses and professional schools, including test scores, grade-point averages, class rank, race, gender, ethnicity, and socioeconomic background. He sought aggregate or minimally identifying information and indicated that personally identifiable information should be redacted. The University produced some records but denied requests concerning admissions data, relying on FERPA, privacy and public-policy concerns, and the asserted burden of extracting or redacting information from individual application records.

PROCEDURAL HISTORY

Osborn and the Center for Equal Opportunity requested admissions-related records from University of Wisconsin campuses, the Law School, and the Medical School. After the University denied portions of the requests, Osborn filed an amended mandamus action in Dane County Circuit Court. The circuit court granted and denied the University's motion in part, allowing disclosure of records concerning nonmatriculating applicants but concluding that the University was not required to create new records by compiling information or redacting individual files. The court of appeals affirmed in part and reversed in part, holding that FERPA barred disclosure of all requested records and affirming the refusal to require record creation. The Wisconsin Supreme Court reversed the court of appeals.

DISPOSITION

reversed

CASES CITED

- Nichols v. Bennett, 199 Wis. 2d 268, 273, 544 N.W.2d 428 (1996)
- Rathie v. N.E. Wis. Tech. Inst., 142 Wis. 2d 685, 419 N.W.2d 296 (Ct. App. 1987)
- Linzmeyer v. Forcey, 2002 WI 84, 254 Wis. 2d 306, 646 N.W.2d 811
- Mayfair Chrysler-Plymouth v. Baldarotta, 162 Wis. 2d 142, 469 N.W.2d 638 (1991)
- Hathaway v. Green Bay Sch. Dist., 116 Wis. 2d 388, 342 N.W.2d 682 (1984)
- Newspapers, Inc. v. Breier, 89 Wis. 2d 417, 279 N.W.2d 179 (1979)
- Oshkosh Northwestern Co. v. Oshkosh Library Bd., 125 Wis. 2d 480, 486, 373 N.W.2d 459 (Ct. App. 1985)
- Chvala v. Bubolz, 204 Wis. 2d 82, 552 N.W.2d 892 (Ct. App. 1996)
- State ex rel. Blum v. Board of Education, 209 Wis. 2d 377, 565 N.W.2d 140 (Ct. App. 1997)
- Milwaukee Teachers' Ed. Ass'n v. Milwaukee Bd. of Sch. Dirs., 227 Wis. 2d 779, 596 N.W.2d 403 (1999)
- Woznicki v. Erickson, 202 Wis. 2d 178, 549 N.W.2d 699 (1996)
- Wis. Newspress v. Sheboygan Falls Sch. Dist., 199 Wis. 2d 768, 546 N.W.2d 143 (1996)
- Kraemer Brothers, Inc. v. Dane County, 229 Wis. 2d 86, 599 N.W.2d 75 (Ct. App. 1999)
- Schopper v. Gehring, 210 Wis. 2d 208, 565 N.W.2d 187 (Ct. App. 1997)
- Gonzaga University v. Doe, 536 U.S. 273, 122 S. Ct. 2268 (2002)
- Tarka v. Franklin, 891 F.2d 102, 104 (5th Cir. 1989)
- Doe v. Knox County Bd. of Educ., 918 F. Supp. 181, 184 (E.D. Ky. 1996)

- Norwood v. Slammons, 788 F. Supp. 1020, 1026 (W.D. Ark. 1991)
- Mattie T. v. Johnston, 74 F.R.D. 498, 501 (N.D. Miss. 1976)
- Human Rights Auth. of the State of Ill. Guardianship & Advocacy Comm'n v. Miller, 464 N.E.2d 833, 836 (Ill. App. Ct. 1984)
- Kryston v. Bd. of Educ. of the E. Ramapo Cent. Sch. Dist., 77 A.D.2d 896, 897 (N.Y. App. Div. 1980)

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