

NOTICE

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No. 81-2298

STATE OF WISCONSIN : IN SUPREME COURT

LARRY HATHAWAY,

Petitioner-Appellant,

v.

JOINT SCHOOL DISTRICT NO. 1, CITY OF
GREEN BAY, et al.;
BOARD OF EDUCATION OF JOINT SCHOOL
DISTRICT NO. 1, CITY OF GREEN BAY, et al.;
and TIMOTHY G. QUINN, SUPERINTENDENT OF
JOINT SCHOOL DISTRICT NO. 1, CITY OF
GREEN BAY, et al.,

Respondents-Petitioners.

FILED

JAN 31 1984

MARILYN L. GRAVES
CLERK OF SUPREME COURT
MADISON, WISCONSIN

REVIEW of a decision of the Court of Appeals.

Affirmed and remanded.

HEFFERNAN, C.J. This is a review of a published decision of the court of appeals, dated December 7, 1982, which reversed a judgment of the circuit court for Brown county, Robert J. Parins, Circuit Judge, which denied Larry Hathaway's petition for writ of mandamus to compel the Green Bay Board of Education of Joint School District No. 1 to permit him access to a computer-generated list of the names and addresses

of parents of pupils enrolled in the school district.^{1/} We affirm the court of appeals and direct that the cause be remanded to the circuit court with directions to issue a writ of mandamus to compel the Green Bay Board of Education to make available for inspection the list of parents' names and addresses.

On June 4, 1981, Hathaway requested access to a computer-generated list of the names and addresses of all the parents of school children in the Green Bay school district. Hathaway, as executive director of the Green Bay Education Association (Association), requested the list so that the Association could contact the children's parents in regard to its position on matters being discussed in the collective bargaining agreement between it and the Joint School District of Green Bay. The Association is the certified collective bargaining representative for the professional teachers employed by the Joint School District of Green Bay (School District), one of the respondents.

The computer-generated list, requested by Hathaway, consists of the names and addresses of all parents who have one or more children in the Green Bay public school district, created by the School District for its use in mailing information to the parents of the school system's students. Through the means of a computer, the list of names is transferred onto mailing-address labels, which are then individually placed on whatever mailing the School District desires to reach the attention of the parents.

The School District, through its attorneys, on July 15, 1981, denied Hathaway's request for the list, stating:

"[T]he District takes the position that the parent name labels to which you refer do not constitute public records as defined by Wisconsin law."

^{1/} Hathaway v. Joint School Dist. No. 1, 110 Wis. 2d 254, 329 N.W. 2d 217 (Ct. App. 1982).

Hathaway, on August 24, 1981, filed a petition for writ of mandamus asking the circuit court to compel the School District to provide access to the list of parents' names and addresses. In the School District's return to petition for writ of mandamus, it reiterated its position that the list "is not a public record within the meaning of sec. 19.21 of the Wisconsin Statutes and is therefore not available"

A hearing on the petition for writ of mandamus was held on November 6, 1981, before Circuit Judge Robert J. Parins of Brown county. On that date, the circuit court noted that the School District's position was predicated upon a reading of the pupil record statute, sec. 118.125, Stats., which prohibits the disclosure of pupil records. The court acknowledged that a pupil record may not include director information concerning parents. It noted, however, that the list of names and addresses was gleaned from the records maintained by the School District for the individual pupil. Consequently, the list of parents' names and addresses constituted a pupil record within the purview of sec. 118.125 (1) and (2). The circuit court further recognized that the purpose of both the state and corollary federal statute, 20 U.S.C. sec. 1232g (Supp. 1976), is to safeguard the privacy of the student. It was satisfied that disclosure of the parents' names and addresses, derived from the pupil records, defeated the purpose of the legislation. The circuit court denied Hathaway's petition for writ of mandamus to order the School District to provide him access to the list.

The basis upon which the court of appeals reversed the circuit court is that the plain language of sec. 118.125, Stats., demonstrates the legislature's intent to protect certain personal information about pupils, nothing of which is correlated with the pupil's parents' names and addresses. It stated, "The mere fact that the information is gleaned from a pupil record does not make it a pupil record." 110 Wis. 2d at 255.

An analysis of the public records statute, sec. 19.21, Stats. (1979-80), as well as the pupil records statute, sec. 118.125 (1) and (2), Stats. (1979-80), leads us to conclude that sec. 118.125 does not create an exception to sec. 19.21 which includes a list of parents' names and addresses. Public policy and public interest favor the public's right to inspect public records. Without an exception based upon statute, common law, or an overriding public interest in nondisclosure, there is a presumption that the public has the right to inspect public records. The mere fact that information is gleaned from a pupil record does not make a public record a pupil record to which confidentiality is afforded. Accordingly, we affirm the court of appeals.

It is conceded by the litigants before this court that the list of names and addresses of parents of children in the Green Bay School District constitutes a public record within the purview of sec. 19.21, Stats. (1979-80). Section 19.21 (1) provides that:

"Custody and delivery of official property and records.
(1) Each and every officer of the state, or of any county, town, city, village, school district, or other municipality or district, is the legal custodian of and shall safely keep and preserve all property and things received from his predecessor or other persons and required by law to be filed, deposited, or kept in his office, or which are in the lawful possession or control of himself or his deputies, or to the possession or control of which he or they may be lawfully entitled, as such officers."

This statute, which governs the examination or inspection of public records, was created by ch. 178, Laws of 1917, and was formerly numbered 18.01. Prior to that time statutes authorized inspection in certain circumstances. Otherwise, the public's right to inspection of public records was governed by the common law. International Union v. Gooding, 251 Wis. 362, 371, 29 N.W. 2d 730 (1947); State ex rel. Youmans v. Owens, 28 Wis. 2d 672, 137 N.W. 2d 470, 139 N.W. 2d 241 (1965); Newspapers, Inc., v. Breier, 89 Wis. 2d 417, 279 N.W. 2d 179 (1979).

In Gooding, supra, this court deemed that sec. 18.01, Stats., currently sec. 19.21 (1), dealt with three specific types of papers that must be kept by an office and delivered to a successor in office. Those three types of papers are:

"(1) Such books, papers, records, etc., as are required by law to be filed, deposited, or kept in his office; (2) books, papers, etc., in his possession as such officer; (3) books, papers, etc., to the possession of which he is entitled as such officer." Id. at 369.

The term, "public record," included not only those documents specifically required to be filed by the custodian of records, but all written papers made by an officer within his authority. Id. at 371; Youmans, supra. Thus, sec. 19.21 controls reports "required by law," as well as those "which are in the lawful possession or control" of the school district. These reports are denominated public records.

The list of names and addresses of parents who have children in the Green Bay School District is maintained, used, and updated by the School District for the purpose of communicating directly with the parents of its students regarding issues and concerns. The list of parents' names and addresses is generated by a computer on address labels which are in the care and custody of the School District. It is apparent that the list was not maintained by the School District because it was required to do so by law. Clearly, the list was in the possession of the School District in its capacity as a school district, and as a school district it was entitled to the list. Thus, the list was in the "lawful possession and control" of the school district. We conclude, therefore, as did the parties, that the list in question is a public record as contemplated by sec. 19.21 (1), Stats. (1979-80).

The general rule is that any person may inspect a public record. The fact that the list is a public record within the purview of sec. 19.21 (1), Stats. (1979-80), and a request for its inspection was properly made, does not mean that the

list must be produced for inspection. Section 19.21 (2), Stats. (1979-80), provides:

"(2) Except as expressly provided otherwise, any person may with proper care, during office hours and subject to such orders or regulations as the custodian thereof prescribes, examine or copy any of the property or things mentioned in sub. (1). Any person may, at his or her own expense and under such reasonable regulations as the custodian prescribes, copy or duplicate any materials, including but not limited to blue-prints, slides, photographs and drawings. Duplication of university expansion materials may be performed away from the office of the custodian if necessary. Computer programs, as defined in s. 16.97 (4) (c), are not subject to examination under this subsection, but the data stored in the memory of a computer is subject to the right of examination and copying." 2/

On its face, because the list is a public record, it is subject to inspection by Hathaway unless expressly provided otherwise. However, this court has not read this subsection literally. Newspapers, Inc., v. Breier, 89 Wis. 2d at 426. This section has been interpreted as stating that one manner in which the public's right to inspect public documents may be limited is by a statutory provision which embodies an exception to sec. 19.21 (1), Stats. (1979-80).

In Gooding, supra, we interpreted the section as a pronouncement of the common law, subject to the limitations on the inspection of records which existed at common law. We relied on the revisor's notes to the subsection which state that this "is believed to give expression to the general implied right of the public to consult public records." Laws of 1917, ch. 178, Bill No. 133, S. Thus, we declared:

"While it is possible to contend that the words are so clear as not to be subject to construction we are of the view that the common-law right of the public to examine records and papers in the hands of an officer has not been extended.

"We shall not go into the scope of the common-law right exhaustively or attempt to document our observations upon it. It is enough to say that there are numerous limitations under the common law upon the right of the public to examine papers that are in the hands of an officer as such officer." 251 Wis. at 372.

2/ Section 19.21 (2), Stats. (1979-80), was repealed by Laws of 1981, ch. 335, sec. 9, effective January 1, 1983. Former sec. 19.21 (2) has been replaced by secs. 19.35 and 19.36 (1), Stats. (1981-82).

Thus, the public's right to inspect public records is not only subject to statutory provisions which expressly provide otherwise but is also subject to the limitations which existed under common law.

In Youmans, supra, we were called upon to determine whether a writ of mandamus should issue to compel Owens, the mayor of the City of Waukesha, to permit Youmans to examine certain papers in the custody of the mayor. We adopted a statement of the common-law right of inspection of public records made by the Vermont court which stated:

"We think it may be safely said that at common law, when not detrimental to the public interest, the right to inspect public records and public documents exists with all persons who have a sufficient interest in the subject-matter thereof to answer the requirements of the law governing that question." 28 Wis. 2d at 681, citing Clement v. Graham, 78 Vt. 290, 315, 63 A. 146 (1906).

We concluded that:

"[T]here may be situations where the harm done to the public interest may outweigh the right of a member of the public to have access to particular public records or documents." Youmans, 28 Wis. 2d at 681.

After we outlined the procedure which must be followed to arrive at such a determination, we said that it is incumbent upon the custodian of the public record who refused the demand of inspection to "state specifically the reasons for this refusal." Id. at 682. We did recognize in Youmans that public policy favors the right of inspection and it is only in the exceptional case that inspection should be denied. Thus, the third exception to the public's right to inspect public documents is where the public interest in keeping a public record confidential outweighs the public's right to have access to the documents.

As evidenced by the foregoing discussion, the public's right to inspect documents is not absolute. Gooding, supra; Youmans, supra; Beckon v. Emery, 36 Wis. 2d 510, 518, 153 N.W. 2d 501 (1967); Newspapers, Inc., v. Breier, supra.

We have concluded, however, where statutes, common law, or court decisions have not limited the public's right to examine records, "presumptively public records and documents must be open for inspection." Newspapers, Inc., v. Breier, 89 Wis. 2d at 426. In Beckon, supra, 36 Wis. 2d at 516, we stated that the "public policy, and hence the public interest, favors the right of inspection of documents and public records." See also, State ex rel. Dalton v. Mundy, 80 Wis. 2d 190, 196, 257 N.W. 2d 877 (1977). There exists the legislative presumption that "where a public record is involved, the denial of inspection is contrary to the public policy and the public interest." Newspapers, Inc., v. Breier, 89 Wis. 2d at 426-27. Thus, the general presumption of our law is that public records shall be open to the public unless there is a clear statutory exception, unless there exists a limitation under the common law, or unless there is an overriding public interest in keeping the public record confidential.

Section 19.21, Stats., in light of prior cases, must be broadly construed to favor disclosure. Exceptions should be recognized for what they are, instances in derogation of the general legislative intent, and should, therefore, be narrowly construed; and unless the exception is explicit and unequivocal, it will not be held to be an exception. It would be contrary to general well established principles of freedom-of-information statutes to hold that, by implication only, any type of record can be held from public inspection.

Having set forth the exceptions to the public's right to inspect documents, we now analyze the School District's position that the list, a public record, should not be disclosed to Hathaway. The School District maintains that there is an express statutory provision which limits the public's right of full access to public records. It relies on sec. 118.125, Stats. (1979-80), the pupil records statute, to support its

