

Court opens window for public right to complaints against public employees

SI & A Cabinet Report

By Marc Maloney

The public's right to know about substantial and well-founded complaints against public employees outweighs the worker's right to privacy, according to a ruling from the state's 2nd District Court of Appeal.

The right-to-know versus right-to-privacy debate was the crux of the *Marken v. Santa Monica-Malibu Unified School District* case.

According to a news brief written by attorney Manuel Martinez, an associate with the Lozano Smith law firm – the ruling emphasized that “balancing the privacy rights of an employee against the public's right to know about issues of public import remains a case-by-case determination.”

“However,” Martinez said, “the pendulum continues to swing in the direction of disclosure.”

The case stems from a 2008 complaint of sexual harassment lodged by a student against a teacher at Santa Monica High School. The school district investigated and concluded in part that some alleged acts “more likely than not *did* occur.” The teacher received a written reprimand for violating the district's policy prohibiting sexual harassment, but no criminal charges were filed.

Two years later, the father of another Santa Monica High School student filed a Public Records Act request seeking disclosures related to the 2008 investigation as well as the district's findings. The request also sought any other records regarding any substantial complaints about the teacher's improper behavior toward students.

When the district informed the teacher of its intent to release the investigation report, a letter of reprimand and other substantial complaints alleging improper behavior toward students, the teacher sued the district.

His suit argued that release of his personnel records was not authorized under the state's Public Records Act and would violate his constitutional and statutory rights of privacy.

Although the battle over the public's right to know and the privacy of a public employee had been waged in court many times before, the *Marken* case provided the court new ground.

In earlier rulings, Martinez noted in his news brief, the court had established a precedent that “a public official in an important and highly visible position,” such as a school superintendent, “has a lesser expectation of privacy in his or her personnel records when a well-founded complaint is involved.”

Using this precedent, the court concluded the public can access documents about well-founded complaints against teachers.

In balancing the issues, the court also held the public's right to know about substantial complaints like sexual harassment of students by district employees outweighs the privacy rights of teachers in certain circumstances.

An instructor “occupies a position of trust and responsibility as a classroom teacher,” the court noted, “and the public has a legitimate interest in knowing whether and how the district enforces its sexual harassment policy.”

Disclosure of the teacher’s reprimand was mandatory because the court found the investigation’s information to be reliable, well-founded, and substantial.

The court also acknowledged the records could be redacted prior to disclosure to protect confidential student information. This determination was based on this case’s specific facts; each Public Records Act request must be considered on its own merits in light of the nature of the document sought.

Marken also is the first California case to conclude expressly that public employees can file a lawsuit against their employers to prevent disclosure of private information. In prior “Reverse PRA” cases, the courts had not decided whether employees who are the subject of the documents sought under a Public Records Act request could object to their disclosure.