



## W.Va. Court: Internal Affairs Info Not Secret

BY TRAVIS CRUM

SOURCE: THE CHARLESTON GAZETTE

CREATED: NOVEMBER 27, 2013

*The State Supreme Court ruled police cannot keep all information about internal investigations secret.*

CHARLESTON, W.Va.— West Virginia State Police cannot keep all information about their completed internal investigations a secret, the state Supreme Court ruled Tuesday, and ordered a Kanawha County circuit judge to determine what secret police documents should be opened.

In 2010, the Charleston Gazette sued the State Police after requests for information from State Police and the state Department of Military Affairs and Public Safety were repeatedly denied. State Police had sought to keep hidden information from its Professional Standards section, which handles internal investigations.

In May 2012, Kanawha Circuit Judge Jennifer Bailey sided with the State Police in keeping that information hidden. The Gazette appealed Bailey's order to the state Supreme Court, which heard arguments in October. State Supreme Court justices unanimously returned Bailey's order on Tuesday.

Tuesday's Supreme Court order returned the case to Bailey, and ordered her to review the disputed documents behind closed doors and determine what information in them is subject to the state's Freedom of Information Act.

Supreme Court Justice Margaret Workman wrote in Tuesday's opinion that information about a State Police officer's duties while on the job did not meet a privacy exemption under the Freedom of Information Act.

She compared the State Police's internal investigations to court rulings in previous Gazette lawsuits requiring the release of misconduct allegations against doctors and lawyers. In these cases, the public interest outweighs any need to keep the information private, she wrote.

"After the investigation or inquiry into [a] complaint has been concluded and a determination made as to whether disciplinary action is authorized by the Superintendent, the public has a right to access the complaint, all documents in the case file, and the disposition, with the names of the complainants or any other identifying information redacted in accordance with the confidentiality requirements," Workman wrote.

State Police Superintendent Col. C.R. "Jay" Smithers released a statement Tuesday.

"We are somewhat disappointed with the opinion, because it may affect the manner in which we review complaints," Smithers said in the statement. "Clearly there is more information for the lower court to consider and we look forward to providing the additional information that supports the position of the department."

Virginia Lanham, an attorney for the State Police, argued that the release of internal investigations would violate an officer's right to privacy. Sean McGinley, a lawyer for the Gazette, argued that police work is public information and not subject to exemption under privacy laws.

Information contained in the central log of complaints, Lanham said, would be used "to identify specific individuals who have been accused of misconduct in order to write newspaper articles detailing the misconduct."

Workman wrote that the court gave little weight to the argument that newspaper articles about police misconduct are "a misuse of information."

"Because the dissemination of public information by the press is an important cornerstone of a vivacious democracy, this factor weighs in the Gazette's favor," Workman wrote. "The press has a vital role in disseminating to the public the type of information at issue in this case."

The State Police central log of complaints contains information about officers who have been flagged for frequent misconduct allegations or have more than three use-of-force incidents. There are more than 1,200 entries in the agency's central log of complaints.

Those files contain information about an officer's health records and what stressors they may face on and off duty. The Gazette's original request said names could be redacted to bypass the privacy exemption, McGinley said.

Copyright 2013 The Charleston Gazette

McClatchy-Tribune News Service

**Do you recommend this news?**

Recommend