

Wiley Rein Secures Important Precedential Ruling for Pro Bono Clients in Maryland Personal-Information Case

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In a published decision issued on May 28, 2015, the Maryland Court of Special Appeals reversed in substantial part a trial court decision dismissing claims asserted by Wiley Rein's pro bono clients in a case brought pursuant to the Maryland Public Information Act. The court decided several important legal issues of first impression under the Act in favor of Wiley Rein's clients.

The suit was filed in 2012 on behalf of the American Civil Liberties Union of Maryland and 11 individuals against Anne Arundel County and former County Executive John Leopold. Former Anne Arundel County Police Chief James Teare was later added as a defendant. Plaintiffs alleged that Mr. Leopold, during his time in office, directed his staff and police officials to compile dossiers including personal information about the individual plaintiffs, whom he perceived to be political rivals or otherwise adverse to him. Mr. Leopold resigned from office in 2013 after being convicted of misconduct.

In addition to seeking production of the dossiers, plaintiffs asserted claims for damages and declaratory relief, as well as an award of attorneys' fees, against the County and the individual defendants. The trial court granted each of the motions to dismiss or for summary judgment filed by the County, Mr. Leopold, and Mr. Teare.

The opinion of the Maryland Court of Special Appeals reversed the trial court as to four critical legal issues. First, it held that the Public Information Act creates a private right of action for the violations alleged by plaintiffs. Second, it rejected the County's argument that any such private right of action does not extend to claims against

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governmental units such as the County. Third, the court rejected the arguments by Mr. Leopold and Mr. Teare that they are entitled to governmental official immunity and so may not be held personally liable for violations of the Act. Finally, the court held that plaintiffs are entitled to pursue claims for declaratory relief and nominal damages, as well as an award of attorneys' fees if they substantially prevail in the case, regardless of whether they can prove actual damages. The court affirmed the trial court's decision on the fact-specific issues of whether the County had made an adequate search for documents and held that the issue of whether a specific tape recording of an interview conducted by the police had been improperly withheld was moot because the tape was ultimately produced.

This case is the first to address the portions of the Maryland Public Information Act that provide a private right of action. The court's opinion therefore sets an important precedent regarding the right of citizens to challenge public officials' creation and use of personal records for illegitimate reasons.

The Wiley Rein team included Richard A. Simpson, Karen L. Toto, Jennifer A. Williams, and Meredith G. Singer. ACLU of Maryland Legal Director Deborah Jeon and Senior Staff Attorney David Rocah were co-counsel on the case. Ms. Toto argued on behalf of the plaintiffs at a January 14, 2015 hearing before a three-judge panel. Consistent with its usual practice in ACLU pro bono cases, Wiley Rein will donate any attorneys' fees that may ultimately be awarded on remand to the ACLU.