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82-44

JAMES E. TIERNEY
ATTORNEY GENERAL



STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
STATE HOUSE STATION 6
AUGUSTA, MAINE 04333

August 25, 1982

Harold R. Reynolds, Jr.
Commissioner
Department of Educational &
Cultural Services
State House Station #23
Augusta, Maine 04333

Dear Commissioner Reynolds:

This responds to your inquiry of August 19, 1982, regarding the applicability of the confidentiality provisions of Section 554(2)(E), of the Maine Personnel Law, 5 M.R.S.A. § 551, et seq., to the public release, pursuant to the Maine Freedom of Access Law, 1 M.R.S.A. § 401, et seq., of the August 18, 1982 revision of Section XII(B) of the report of the Special Review Team, dealing with the role of the Department of Educational and Cultural Services ("Department") personnel in responding to allegations of physical and sexual abuse of children at the Baxter School for the Deaf. We conclude, based upon the analysis contained in our Opinion issued on August 18, 1982, that, although Section 554(2)(E) does not permit the release of the entire revision, it does permit the release of all but certain minor portions of the revision and its accompanying documents. Thus, if the revision is released, we would recommend that, in compliance with the legislative purposes behind the Maine Personnel Law, you delete the names and strictly personal information of those persons covered by the Maine Personnel Law who specifically are accused of misconduct, made specific accusations of misconduct, or possibly were the victims of misconduct, if they have not yet been identified publicly.

I

We begin with a brief review of the circumstances leading to your inquiry. On July 14, 1982, the Department publicly released a report prepared by the Department's Special Review Team concerning the Baxter School for the Deaf. Section XII(B) of the report, however, was not released, pending an Opinion from the Attorney General about the applicability of the confidentiality provisions of the Maine Personnel Law to the release of Section XII(B) and its accompanying documents.

On August 18, 1982, we issued our opinion concerning the public release of the July, 1982 version of Section XII(B) of the Department's report. See Op.Me.Atty.Gen. 82-42 (August 18, 1982) ("Opinion"). We concluded that the July 14, 1982 version of Section XII(B) and its accompanying documents could be released publicly.

At 3:00 p.m. on August 18, 1982, a copy of a revised version of Section XII(B) was delivered to the Attorney General. The revision contained additional information and quoted or relied upon additional documents. Because the Attorney General had not been able to review either the revision or the additional documents, we specifically declined to express any opinion about the applicability of the Maine Personnel Law to the release of the August 18, 1982 revision of Section XII(B) and its accompanying documents. Id. at 1 n.1.^{1/}

In addition to the documents examined by us in relation to our August 18, 1982 Opinion, see id. at 2-4, the latest version of Section XII(B) of the Department's report quotes or relies upon several new documents to reach its conclusion. In order to avoid confusion, a combined list of the documents principally relied upon by the Department in both versions of Section XII(B) of its report is as follows:

^{1/} At approximately 2:00 p.m. on August 24, 1982, a further revision to two pages of the August 18, 1982 revision of Section XII(B) of the Department's report was delivered to the Attorney General's Office. In contrast to the Department's August 18, 1982 revision of Section XII(B), the August 24 revision makes only relatively minor changes to two pages of Section XII(B). Accordingly, this Opinion applies with equal force to this new material also, and when citing to the August 18, 1982 version of Section XII(B) of the Department's report, we mean the August 18, 1982 version, including the August 24 additions and changes.

- (1) Resignation form of Susan Nordmann dated June 13, 1975;
- (2) Letter from Joseph Youngs to Beverly Trenholm dated July 17, 1975;
- (3) Memorandum from Joseph Youngs to Beverly Trenholm dated October 27, 1975;
- (4) Undated letter from Margaret Gruver to Joseph Youngs;
- (5) Letter from Joseph Youngs to Margaret Gruver dated July 10, 1975;
- (6) Letter from Cass A. Gilbert to H. Sawin Millet, Jr., dated October 1, 1976;
- (7) Notes taken by Beverly Trenholm at an October 14, 1976 meeting with Susan Nordmann;
- (8) Written statement (with attachments) of Susan Nordmann dated September 25, 1975 and sent to Larry Pineo on October 15, 1976;
- (9) Notes taken by Beverly Trenholm at a December 2, 1976 meeting with Dorothy Davis;
- (10) Notes made by Beverly Trenholm in preparation for a December 16, 1976 meeting with Joseph Youngs;
- (11) Memorandum from Joseph Youngs to Larry Pineo dated January 1, 1977;
- (12) Resignation form of Gerald R. Amelotte dated April 16, 1976;
- (13) Resignation form of Mary Devine Gray dated June 21, 1976;
- (14) Resignation form of Charles Overholser dated August 23, 1976;
- (15) Memorandum from Larry Pineo to H. Sawin Millett, Jr., dated August 17, 1978;
- (16) Resignation form of Arden Wood dated March 16, 1979;

(17) Notes taken by Beverly Trenholm during a November 28, 1979 telephone conversation with Susan Nordmann;

(18) Resignation form of Donna Allen dated November 11, 1980;

(19) Letter from Beverly Trenholm to Donna Allen dated November 21, 1980;

(20) Resignation form of Sarah Treat dated November 11, 1980;

(21) Letter from Cyrene Slegona to Larry Pineo dated September 17, 1981;

(22) Resignation form of Cyrene Slegona dated February 26, 1981;

(23) Letter from Veronica Siek to Larry Pineo dated October 11, 1981;

(24) Letter from Larry Pineo to Veronica Siek dated October 16, 1981.

(25) Memorandum from Harold Raynolds, Jr. to Larry Pineo dated October 27, 1981;

(26) Memorandum from Harold Raynolds, Jr. to Larry Pineo dated November 2, 1981;

(27) Memorandum from William Dunning to Beverly Trenholm dated November 2, 1981;

(28) Letter from Rita Corson to Alan York dated November 3, 1981;

(29) Memorandum from Al York to Rita Corson dated November 9, 1981; and

(30) Resignation letter of Joseph Youngs dated January 26, 1982.

The above list is comprised of documents which were in existence prior to the creation of the Special Review Team in February, 1982, and does not include documents prepared by or for the Special Review Team as part of its activities.

II

A

In our previous Opinion, we analyzed the language of 5 M.R.S.A. § 554(2)(E), the legislative history of the Section and the relevant case law applicable to interpreting the Maine Freedom of Access Law and the Maine Personnel Law. Based upon this review we reached the following conclusions:

It would appear that, in enacting Section 554(2)(E), the Legislature was attempting to protect three classes of persons: those who are the subject of the "complaints, charges or accusations of misconduct," those who make such charges, and those who might be the victims of the alleged misconduct. On the other hand, it would also appear that the Legislature, in enacting this provision, was not attempting to shield public officials from public scrutiny of the consequences of their policy decisions. To find otherwise would be to read so much into the word "misconduct" as to seriously negate the overall purpose of the Freedom of Access Law, which is to insure that such scrutiny is possible. Accordingly, we would think that the proper course of inquiry, when determining whether "confidential" documents may be disclosed, is to ascertain whether such disclosure would be incompatible with one of the evident purposes of Section 554(2)(E). If so, its disclosure would be prohibited; if not, the agency would have the discretion to release the information.

Opinion, supra at 10-11 (emphasis in original). Applying these principles to the case at hand, we find generally that none of the three purposes of Section 554(2)(E) set forth above would be compromised by the public disclosure of the August 18, 1982 revision of Section XII(B) of the Department's report and its accompanying documents. We find, however, that certain strictly personal information about certain persons, and the identities of certain persons who are the subject of certain complaints or who have made certain specific complaints, all of

whom have not yet been identified publicly,^{2/} may not be released publicly, consistent with the terms of our August 18, 1982 Opinion. In addition, we recognize that the privacy interests protected by Section 554(2)(E) vary according to particular statements, documents, and, indeed, portions of documents. See, e.g., Lane v. U. S. Department of Justice, 654 F.2d 917, 923 (3d Cir. 1981) (federal law). Accordingly, the balance of this Opinion will deal with only which specific words and phrases must be deleted from the August 18, 1982 version of Section XII(B), consistent with the terms of our August 18, 1982 Opinion to you.^{3/}

^{2/} Although the July 14 version of Section XII(B) and the August 18 revision of Section XII(B) both contain the names of certain state employees who have not been identified previously, these individuals resigned expressing only general dissatisfaction with the administration of the Baxter School and not expressing any specific complaints about any specific individuals. Because Section 554(2)(E) is intended to preserve the confidentiality of information that could be used in disciplinary proceedings of individual state employees, it does not undermine the policies of Section 554(2)(E) to release the resignation forms of individuals generally dissatisfied with the administration of the Baxter School. Accordingly, the letters and resignation forms of Donna Allen, Sarah Treat, Margaret Gruver, Mary Devine Gray, Arden Wood, Cyrene Slegona, and Veronica Siek may be released. As a corollary to this conclusion, the identities of individuals who resigned and did not express any dissatisfaction about the administration of the Baxter School also may be released publicly. Accordingly, the resignation form of Charles Overholser may be released. In addition, Susan Nordmann and Gerald Amelotte have been identified previously, together with their resignation statements, and their resignation forms can be released. Cf. U. S. Department of State v. Washington Post Co., 102 S.Ct. 1957, 1961 (1982) ("[The personnel records exemption to the federal Freedom of Information Act is] intended to cover detailed Government records on an individual which can be identified as applying to that individual. When disclosure of information which applies to a particular individual is sought from government records, courts must determine whether release of the information would constitute a clear unwarranted invasion of that person's privacy.") (citation and footnote omitted).

^{3/} In determining whether, in compliance with the law, certain words and phrases must be deleted from the August 18, 1982 version of Section XII(B), we have decided to delete only the minimum number of words and phrases necessary to protect the personal privacy rights of individuals.

B

We believe that the following changes are necessary to permit the public release of the August 1982 revision of Section XII(B) and its accompanying documents.

On page 152, line five, remove the seven words that follow the word "though" and precede the phrase "according to the notes."^{4/}

On page 154, footnote 83, delete the names of the two people, other than Mr. Kelly and Mr. Pineo, who are mentioned, in the footnote, at each place where such names appear in the footnote.

On page 156, lines 24 and 25, remove the two words that follow the phrase "stating as her reason." Also on page 156, footnote 86, remove the first two words in the sentence and also remove the two words that follow "served as" and precede "a supervisory position."

On page 156, paragraph four, and, also on page 156, footnote 87, delete the name of the teacher who was dismissed and subsequently reinstated, at each place where such name appears.

On page 157, paragraph four, line two, remove the two words that follow the phrase "a houseparent who complained about." Also on page 157, paragraph four, line seven, remove the two words that follow the phrase "retaliation by" and precede the phrase "and Mr. Youngs." Also on page 157, delete footnote 89 in its entirety. Finally, on page 157, footnote 90, line three, delete the three words at the end of the sentence that follow the phrase "interfered with by."

On page 158, footnote 91, paragraph two, line 7, delete the 13 words that comprise the end of the sentence and follow the phrase "detail about."^{5/}

^{4/} These words are a totally speculative statement about strictly personal medical information which is exempt from disclosure, pursuant to 5 M.R.S.A. § 554(2)(A).

^{5/} These words are a gratuitous comment about an immediate family member of a state employee, and, not only are they irrelevant to the conduct of Baxter School officials or officials within the Department of Educational and Cultural Services, they are exempt from disclosure, pursuant to 5 M.R.S.A. § 554(2)(D).

On page 159, paragraph two, line two, delete the two names following the phrase "hit hard at."

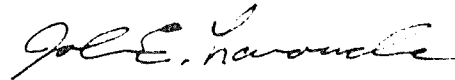
On page 159, paragraph three, line six, delete the words following the phrase "described the" and preceding the phrase "as nonprofessional."

On page 159C, paragraph three, delete the name of the former Baxter School student at each place where it appears.

We further ask that you make corresponding deletions to the documents accompanying the August 18, 1982 version of Section XII(B).^{6/} I hope that you find this information helpful.

Sincerely,

JAMES E. TIERNEY
Attorney General



JOHN E. LAROUCHE
Deputy Attorney General

JEL/dab

^{6/} Each of the individuals whose names we are asking that you delete in Section XII(B) of the Department's report, and each of the individuals who are the subject of statements concerning strictly personal information can, of course, authorize publication of such information, and, in fact, Part B of this Opinion recognizes the fact that some individuals have made such authorizations.