CASE REPORT

PUBLIC DISCLOSURE ACT - INVESTIGATIONS OF EMPLOYEE MISCONDUCT - RELEASE OF IDENTITY OF ACCUSED. School districts must disclose the names of teachers who have been accused of sexual misconduct unless an adequate investigation results in a determination that the accusation was false. **Bellevue John Does v. Bellevue School District**, ___ Wn.App. ____, 2005 WL 2416830 (Wn.App. Div. I).

I.   Facts. The Seattle Times asked various school districts for records identifying teachers accused of, investigated, or disciplined for sexual misconduct within the previous 10 years. The school districts notified the 55 current and former teachers affected. Thirty-seven of those teachers filed an action against the districts to enjoin release of their respective records, essentially claiming that RCW 42.17.310(1)(b) allowed the districts to exempt records from their personnel files to avoid a violation of their rights to privacy. The school districts released the records of the teachers that did not object. For the 37 that objected, the school districts released the records but changed the teacher identities to "John Doe" or "Jane Doe." The Seattle Times intervened in the lawsuit seeking identities of the Does. The trial court concluded that the identities of teachers who had received letters of direction[1] but did not receive discipline after an adequate investigation could be withheld, and that the identities of teachers could also be withheld in the event an adequate investigation revealed the allegations were unsubstantiated. The Seattle Times appealed seeking the identity of the remaining 15 teachers.

II.   Applicable Law and Analysis. The court of appeals reversed the trial court's decision in part, holding that names of teachers who had received letters of direction as a result of complaints of sexual misconduct, and names of teachers who were subjects of unsubstantiated, but not false, accusations were not exempt from disclosure under the Public Disclosure Act.

Teachers who received letters of direction argued that such letters were supervisory tools, serving as performance evaluations which may be exempt from disclosure under Dawson v. Daly, 120 Wn.2d 782 (1993). The court stated that a district's decision not to discipline a teacher after an investigation did not convert the investigation file into a performance evaluation. Where investigations were unsubstantiated, teachers argued that Tacoma v. Tacoma News, 65 Wn.App. 140, review denied, 119 Wn.2d 1020 (1992), allowed withholding of names of the accused because the public has no legitimate interest in the names. The court here agreed with Tacoma News--that the public has no legitimate interest in finding out the names of people who have been falsely accused--but found that the trial court failed to distinguish between "unsubstantiated" and "false." The court stated that "unsubstantiated" often means only that an

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[1] A letter of direction is a counseling letter used by a school district when it views a teacher's conduct as inappropriate but not serious enough to warrant a reprimand or other discipline.

investigator is unable to reach a firm conclusion, and that it is possible that the accuser was accurately reporting the misconduct. The court concluded that where the possibility exists that the accuser is correct, the public has a legitimate interest in knowing the name of the accused.

III.   <u>**Conclusion.**</u> Investigative files regarding allegations of employee misconduct must be released under the Public Disclosure Act, with appropriate redactions. The identity of the accused may only be withheld in the event the accusations were false, as shown by an adequate investigation. The identity of the accused must be released if the allegations are substantiated or if they are unsubstantiated but not found to be false. Keep in mind this case focused on the identities of the accused, but that other exemptions may apply authorizing further redactions. If in doubt, be sure to consult your city attorney for assistance in navigating the exemptions to the Public Disclosure Act.