



## CASE REPORT

**PUBLIC RECORDS ACT - WORKPLACE INVESTIGATIVE REPORT.** Investigative report prepared by outside investigator was subject to release where not protected by work product doctrine or the attorney-client privilege, and in this case not offensive enough to create a privacy issue. Morgan v. City of Federal Way, \_\_\_ Wn.2d. \_\_\_, Slip Op. No. 81556-9 (August 20, 2009).

**I. Facts.** A municipal court employee made a hostile work environment complaint against the presiding municipal court judge, Michael Morgan. The allegations included angry outbursts, inappropriate gender-based and sexual comments and demeaning colleagues and employees. The city attorney initiated an investigation in accordance with city policy, and hired an attorney to conduct a factual investigation of the complaint. The Tacoma News Tribune requested a copy of the investigative report and the city agreed to produce it. Morgan filed a motion to prevent the release of the report. The trial court granted the initial temporary restraining order preventing release, but later dissolved the order, allowing the city to release the report. Judge Morgan appealed, claiming the report was protected under work product doctrine and the attorney-client privilege. He further claimed the report was exempt from disclosure because it contained personal information and that release would violate his right to privacy. The Court of Appeals transferred the case to the Supreme Court for direct review. The Supreme Court held that the report was subject to disclosure.

**II. Applicable Law and Analysis.** Under the work product doctrine, a record may be exempt from disclosure if it was prepared at the direction of an attorney in anticipation of litigation. The Supreme Court found that the report here was created for purposes of remedial action and was not prepared in anticipation of litigation. Morgan argued that the report could be withheld on the basis of the attorney-client privilege, but the Court found that no attorney-client relationship existed between Morgan and the investigator. Finally, Morgan argued that the release of the report would violate his right to privacy because it contained what he considered unsubstantiated allegations of inappropriate behavior and thus should be exempt from disclosure under RCW 42.56.230(2). RCW 42.56.230(2) exempts personal information in files maintained for employees to the extent that disclosure would violate their right to privacy. The right to privacy extends to matters concerning a person's private life that (1) would be highly offensive to a reasonable person, and (2) are not of legitimate concern to the public. After stating that unsubstantiated allegations are exempt from disclosure, the Court found that the allegations here were not unsubstantiated simply because Morgan disputed them, and noted that the report concluded that many of the allegations were likely true. Additionally, the Court found that the allegations were not offensive and that the report was of legitimate concern to the public and voters, as they are entitled to information regarding Morgan's job performance.

**III. Conclusion.** Whether an investigative report must be disclosed under the Public Records Act depends on a number of factors, such as the outcome, the nature of the allegations, and

whether the report is protected work product or subject to the attorney-client privilege. If you receive a request for such a report, contact your city attorney for assistance in determining whether the report is subject to disclosure under the Public Records Act.