

April 12, 2007

Ms. Linda McCulloch, Superintendent  
Montana Office of Public Instruction  
P.O. Box 202501  
Helena, MT 59620-2501

Dear Superintendent McCulloch:

Your office has requested an Attorney General Opinion or Letter of Advice concerning the following issue:

Are the names of teachers whose certification has been revoked by the State public information and is the public entitled to general information about the grounds for revocation.

Because the Supreme Court's body of law balancing the public's right to know against the individual right of privacy provides clear direction on this issue, it has been determined that a letter of advice will provide the appropriate response.

The Supreme Court has considered a number of cases involving disclosure of disciplinary or investigative documents in cases involving misconduct by public officials. In Great Falls Tribune Co. Inc. v. Cascade County Sheriff, 238 Mont. 103, 775 P.2d 1267 (1989), a newspaper sought public disclosure of the names of three law enforcement officers. The officers had been disciplined for their actions in running over a suspect on a public sidewalk after the suspect fled from the officers during a high speed chase. Id. at 104, 775 P.2d 1267. The Court held that the public's right to know outweighed any privacy interest the officers may have had because law enforcement officers "*occupy positions of great public trust.*" Id. at 107, 775 P.2d at 1269. (Emphasis added.)

In another case involving a law enforcement official, a newspaper sought public release of investigative documents associated with an officer who had been accused of sexual intercourse without consent while a cadet at the law enforcement academy. Bozeman Daily Chronicle v. City of Bozeman Police Dept., 260 Mont. 218, 859 P.2d 435 (1993). Although the officer was never criminally charged, he was forced to resign from the police force. Id. at 227, 859 P.2d at 440-41. The Court held that even though the criminal investigative report was confidential criminal justice information, "such alleged misconduct went directly to the

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police officer's breach of his *position of public trust*" and, therefore, the conduct was "a proper matter for public scrutiny." Id. (Emphasis added).

In Svaldi v. Anaconda-Deer Lodge County, 2005 MT 17, 325 Mont. 365, 106 P.3d 548, the Court held that the same reasons supporting public disclosure of allegations against law enforcement officers were applicable to an instance involving allegations of misconduct against a teacher. Svaldi retired from teaching after allegations she had assaulted and verbally abused her students. Svaldi, 2005 MT at ¶ 8, 106 P.3d at 550. After the county attorney disclosed to a reporter that he had been discussing the possibility of a deferred prosecution with Svaldi's attorney, she filed suit alleging violation of her right to privacy. Id. at ¶ 26, 106 P.3d at 552. Svaldi contended that her privacy interest outweighed the public's right to know. Id. The court rejected her argument and found that Svaldi had no legitimate privacy interest protecting her from such a disclosure. The Court stated:

As a teacher in the public schools, entrusted with the care and instruction of children, [Svaldi's] position *is one of public trust*. Also, the allegations of misconduct against her students, went directly to her ability to properly carry out her duties.

Id. at ¶ 31, 106 P.3d at 372. (Emphasis added).

The same reasoning applies to a teacher who has lost his or her certification because of allegations of misconduct. Teachers hold a position of public trust and, as a result, revocation of a teacher's certification and a general description of the basis for such revocation is a proper matter for public scrutiny.

This letter should not be construed as a formal Opinion of the Attorney General.

Sincerely,

CIVIL SERVICES BUREAU

ALI N. BOVINGDON  
Assistant Attorney General

anb/cv