

SUFFOLK COUNTY
SUPREME COURT

Justice Thom

STEINMETZ v. BOARD OF EDUCATION, EAST MORICHES—In this proceeding under CPLR Article 78 petitioner seeks review of a determination made by respondent denying petitioner access to certain information regarding seven teachers employed by the respondent school district. Respondent cross-moves to have the seven teachers joined as parties respondent in this proceeding.

By letter dated Jan. 9, 1980, petitioner requested from the respondent, the following information about seven teachers named therein:

1. Step hired on.
2. Year hired
3. present step & column as of 9/79
4. All written approvals for courses including name of course and number of credits if available
5. . . . or if written approval is missing . . . all names of courses and number of credits (for each course)
6. Verification of satisfactory completion of each course or how is this done."

On April 22, 1980, respondent denied petitioner's request for information, in a letter reading, in part, as follows:

"The Board previously provided you with the information concerning their (the seven teachers) present step, column and salary. With regard to the information concerning copies of written approvals for courses, the number of credits and the names of all courses and verification of satisfactory completion of each course, the Board of Education has studied your request at length. This information is only available in the individual teacher's personnel file. The information is contained only on the transcripts which the School District receives from the educational institutions attended by the individual and a summary form prepared by the district based on such transcripts which is retained in that file. The disclosure of such transcripts would, in the opinion of the majority of the Board of Education, after consultation with the Board's attorney, constitute an unwarranted invasion of personal privacy of the individual teacher.

At a Special Meeting of the Board of Education held March 20, 1980, the Board denied your request by a 4 to 1 vote. The resolution reads as follows: "That since the information requested is contained on teachers' personnel folders, it is the Board's position that the information in these folders is confidential and the Board of Education thereby moves to deny this request."

Prior to the denial of petitioner's request, and on March 24, 1980, the Committee of Public Access to Records, in answer to a request by respondent's attorneys, issued an opinion which stated in part that the disclosure of transcripts from a college or university could "justifiably be

withheld." However, the opinion concludes that:

"To the extent that written records concerning the taking of courses exist other than the transcripts, they are subject to rights of access granted by the Freedom of Information Law."

On May 20, 1980, the Committee on Public Access to Records, in answer to a request by petitioner, issued an opinion which stated in part that:

"In the context of your request, it is my opinion that records identifiable to teachers of the district, other than transcripts, that indicate approval for courses, the names of courses and the number of credits granted, and verification of satisfactory completion of the courses are available."

Since the Committee on Public Access of Records is the administrative agency charged with the oversight of the Freedom of Information Law (section 88, subd. 9), its interpretation of the statute, if not irrational or unreasonable, should be upheld (*Sheehan v. City of Binghamton*, 59 AD 2d 808. See also, *Matter of Howard v. Wyman*, 28 NY 2d 434; *Matter of Bernstein v. Toia*, 43 NY 2d 437; *Matter of Fineway Supermarkets, Inc. v. State Liquor Authority*, 48 NY 2d 464).

Section 85 of the Public Officers Law (Freedom of Information Law) contains a statement of legislative intent reflecting a strong policy in favor of complete disclosure of governmental records (*Gannett Co., Inc. v. County of Monroe*, 59 AD 2d 309, affd. 45 NY 2d 954). Section 87, subd. 2(b) of the Public Officers Law, exempts from disclosure records which, "if disclosed would constitute an unwarranted invasion of personal privacy under the provisions of subdivision two of section eighty-nine of this article." The relevant portion of Section 89, subd. 2, which defines an unwarranted invasion of personal privacy is (b)(1) which exempts "disclosure of employment, medical or credit histories or personal references of applicants for employment" (see, *Montes v. State*, 94 Misc. 2d 974). Respondent has the burden of demonstrating the applicability of the exemption (*Matter of Burke v. Yudelison*, 81 Misc. 2d 870, affirmed 51 AD 2d 673).

There appears to be no dispute that the transcripts from educational institutions attended by the teachers are not subject to disclosure, since the transcripts themselves may contain personal information about the teachers which, if disclosed would constitute an unwarranted invasion of their privacy. However, it does not necessarily follow, that all information contained in the transcripts is exempt. Here, the information sought by petitioner is contained in summary forms prepared by the respondent. The fact that these summary forms are kept in the teachers' personnel folders, does not ipso facto make them exempt. Respondent has failed to establish that information requested by petitioner is exempt under the Freedom of Information Law. On the contrary, the opinions of the Committee on Public Access to Records indicate that the information is subject to disclosure.

Accordingly, judgment is awarded in favor of petitioner, annulling the determination dated April 22, 1980 which denied petitioner's request for information, and directing respondent to furnish petitioner with the following information concerning the seven teachers:

- (1) Approval for courses.
- (2) Names of courses and the number of credits granted.
- (3) Verification of satisfactory completion of the courses.

The foregoing information can be obtained from transcripts without disclosing any other information which may be of a personal or private nature.

Respondent's cross-motion is denied. In the court's opinion, the disclosure of the foregoing information does not constitute an unwarranted invasion of the privacy of the seven teachers, and therefore, they need not be joined as parties respondents.

Either party may apply at the foot of the judgment to be entered hereon for such other different or further relief as to the court may be just under the premises. Settle judgment.