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High Court Closes Book On Howell FOIA Case

A school district is not obliged to turn over e-mails dealing with union business that were sent and received by three of its teachers due to a decision Thursday by the state Supreme Court.

In a 4-3 decision, the high court declined to reconsider lower court rulings that the Howell School District (HSD) could deny the request by the late Chetly ZARKO to see the e-mails that were sent in the midst of a contentious contract negotiation.

The school district had considered filling Zarko's March 2007 FOIA request, but the Howell Education Association (HEA) objected, arguing that the e-mails were not public record and did not need to be disclosed. HSD's attorney couldn't find any caselaw that could guide the school district one way or the other and suggested a "friendly" lawsuit to settle the matter.

In *Howell Education Association v. Howell Board of Education*, the Court of Appeals ruled last year that private e-mails written using public equipment on public time are not subject to be released through FOIA (See "Private E-Mails Not Subject To FOIA" 1/27/10).

Zarko began submitting a series of FOIA requests to Howell Public Schools, including a copy of every e-mail sent to and from three teachers who happened to be officials in the local chapter of the Michigan Education Association (MEA).

The requests were made during heated negotiations over a new collective bargaining agreement that was being reported in the local media. The MEA objected to having to release its union-related communications, saying those e-mails were not "public records" as defined under FOIA.

Zarko argued that the retention of electronic data is an official function and thus part of the public record kept by a public body.

The Mackinac Center on Thursday called for the Supreme Court to reconsider its decision.

"A Supreme Court hearing in this case is vital," said Mackinac Center Legal Foundation Director Patrick WRIGHT. "Just consider what the Court of Appeals' ruling condoned. It effectively said that a school employee can sign onto a school district computer system provided at public expense, read a warning that clearly states that anything on the system can be monitored and copied, and then go to court to prevent e-mails written and sent on that system from being reviewed by citizens who are concerned that the employee used the e-mails to break the law."

"This is awful. Illegal activity by public officials using public resources is precisely what the Freedom of Information Act was meant to expose."