

City of Homestead v. Dr. James McDonough

Case No: 3D16-2462

Third District Court of Appeal

Background

James McDonough filed a Notice of Intent to file a claim against the City of Homestead after an incident occurred between McDonough and an off-duty City police officer. While the Notice of Intent was pending, McDonough also filed a complaint against the officer for defamation. The defamation claim stemmed from alleged actions taken while the officer was off duty and not acting in his official capacity. The City was not named in the defamation complaint.

Subsequently, McDonough filed a public records request with the City for documents relating to the City's decision to defend the officer in the defamation action. Those documents were generated in July 2015, well after McDonough filed his April 2014 Notice of Intent with the City, and were placed in the City's risk management file before McDonough filed his public records request.

The City responded that the documents requested were exempt from production under section 768.28(16)(b) of the Florida Statutes. This section exempts claims files maintained by any risk management program administered by a city until termination of all litigation and settlement of all claims arising out of the same incident.

At trial, the court noted that all five email correspondence documents at issue were contained in the City's risk management file and all arose from the same incident. While finding the documents contained in the risk management file should be exempt, the trial court nevertheless determined the production of two of those five documents would not harm the City and would not place the City at any disadvantage and were thus not confidential. Accordingly, the trial court ordered the City to produce two of the five documents.¹

The City appealed from the part of the trial court's order requiring it to disclose two of the five records.²

¹ Two additional documents were held by the trial court to be confidential and exempt. The final document was acknowledged in open court by McDonough to be confidential, privileged, and exempt from production.

² McDonough cross appealed from the part of the trial court's order exempting two additional documents from disclosure.

Analysis

On appeal, the 3rd DCA held the trial court erred in creating a “no harm” exception to section 768.28 when it ignored the plain language of the statute indicating the entire claims file is exempt from disclosure until resolution of the claim.

The appeals court noted that Section 768.28 contains no statutory exception which would allow a trial court to require disclosure of some risk management file records and not others based on the court’s determination the records do not compromise the government’s risk management analysis or settlement negotiations. Additionally, no case law exists to support the trial court’s decision.

Accordingly, the 3rd DCA overturned the trial court’s determination that two of the five documents were not exempt from disclosure.³

³ With regard to McDonough’s cross appeal, the 3rd DCA affirmed the part of the trial court’s order which exempted the two additional documents in question from disclosure.