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Cops have no claim against Aurora over disclosed data

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Seven Aurora police officers do not have constitutional claims against the city for disclosing their personal information — including home addresses and Social Security numbers — to a felon they helped imprison, a federal judge held.

In a written opinion, U.S. District Judge Mary M. Rowland rejected the argument that the city violated the due process rights of the officers and their families by releasing the officers' personnel files without redacting all the sensitive personal information.

The Aurora Police Department released the files in response to a request the felon filed under the Illinois Freedom of Information Act.

The government's failure to protect someone from violence at the hands of a private party generally does not run afoul of the due process clause, Rowland wrote, citing *DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 189 (1989).

Citing *Estate of Her v. Hoepfner*, 939 F.3d 872 (7th Cir. 2019), she acknowledged an exception to the general rule applies when the government's affirmative actions put someone in a dangerous position he or she would not otherwise have faced.

Plaintiffs pursuing due process claims under the state-created danger exception also must show that their injuries were caused by the government's failure to protect against the danger and that the government's conduct "shocks the conscience," Rowland wrote, quoting *Hoepfner*.

She wrote negligence or gross negligence by the government is not enough to show liability under the exception.

"At the very least, deliberate indifference, meaning 'conscious disregard of known or obvious dangers,' is required," Rowland wrote, quoting *Hoepfner*.

She held the police officers and their families had not made this showing.

Rowland granted summary judgment in favor of Aurora and Jo Ann Osberg, a former records manager and FOIA officer for the police department, on the due process claims.

Rowland dismissed without prejudice counts the officers and their families brought under Illinois law.

In September 2015, Jesse Alvarez submitted an FOIA request to the police department for the personnel files of the seven officers.

The officers had taken part in an investigation that netted Alvarez an 88-year prison sentence for attempted murder. Alvarez is incarcerated at the Menard Correctional Center in southern Illinois.

Osberg used Adobe PDF software to identify and redact personal information from the officers' files.

She then mailed 695 pages of documents to Alvarez. Those pages included 196 that contained personal information.

Osberg later testified she did not intentionally leave unredacted personal information in the documents.

Osberg learned the documents contained unredacted personal information when Alvarez sent a letter to an officer at his home address in November 2016.

An audit showed unredacted personal information was in documents sent to two other inmates who submitted separate FOIA requests.

Osberg was fired in December 2016.

The police officers and their families sued in July 2017.

In her opinion Friday, Rowland agreed with the plaintiffs that Osberg was aware of the dangers posed by an inmate's acquisition of law enforcement officers' personal information.

But the evidence shows Osberg did not act with conscious disregard of those dangers, Rowland wrote.

"It is undisputed that Osberg did not know that the Alvarez FOIA response contained unredacted personal information at the time she sent it," she wrote. "Without such knowledge, Osberg could not have deliberately disregarded the dangers posed by the leaked information."

The case is *John Munn, et al. v. City of Aurora, et al.*, No. 17 C 5296.

The police officers and their families are represented by Meredith W. Buckley and Seth R. Halpern, both of Malkinson & Halpern P.C.

Halpern said the plaintiffs and their legal team are disappointed with the ruling.

"We are looking at all options, including pursuing our remaining claims in state court as well as a potential appeal to the 7th Circuit," Halpern wrote in an email.

The lead attorney for the defendants is John B. Murphey of Odelson Sterk Murphey Frazier & McGrath Ltd. of Evergreen Park.

“From the beginning, we thought that it was wrong for the other side to literally try to make a federal case out of this thing,” he said.

Osberg made the majority of the redactions, Murphey said, and likely simply failed to save the last round of redactions.

“It was simple human error, not an outrageous violation of civil rights,” he said.

Murphey said his alternative argument in support of his clients — one Rowland did not have to address in light of her ruling on the state-created danger exception — was that there is no constitutional right to privacy in the type of personnel identifiers that were disclosed.

Murphey raised that argument in support of a previous motion to dismiss the suit.

In a November 2017 filing, he quoted a sentence from John Grisham’s 2017 book “Camino Island.”

That sentence was: “Elaine was right — nothing is really private these days with the [I]nternet and social media and hackers everywhere and all the talk about transparency.”

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