

REPORT TO RECORDS COMMISSION 5-21-15

RECENT COURT DECISIONS

Confidential law enforcement investigatory records: ORC 149.43(A)(1)(h) exemption

ORC 149.43(A)(2) exempts these records only when their release would create a high probability of disclosing any of:

- Identity of uncharged suspect, or of informant or witness
- Specific investigatory techniques, procedures, & work products
- Information that could endanger law enforcement personnel, victim, witness, or informant

Ohio Supreme Court 4-7-15, *JC Marketing v. McGinty*

JC Marketing ran 2 Internet sweepstakes cafes in Cuyahoga Co.

Undercover police investigated the cafes for possible illegal gambling.

A grand jury said JCM & others were concealing illegal gambling.

Prosecutor McGinty mailed cease & desist orders.

JCM filed for a restraining order & injunction against McGinty & sought discovery of the results of the investigation.

McGinty denied the records on the basis of attorney work product privilege, deliberative process privilege, and law enforcement investigatory privilege.

Trial court looked at the records & ordered McGinty to give the records.

McGinty appealed & the **appeals court said the reports were discoverable with undercover officer names redacted but e-mails were not discoverable.**

Supreme Court upheld the appeals court, saying this exemption is not absolute; one justice dissented.

Supreme Court used factors in a previous case, including:

- Would disclosure discourage citizens from giving the government information?
- What might happen to informants if their identities were known?
- Is the information factual or evaluative?
- Is the discovering party a criminal defendant?
- Is the police investigation complete?
- Did the investigation bring up any intradepartmental discipline?
- Is the plaintiff's suit frivolous or in good faith?
- Is the information available from other sources?
- How important is the information to the plaintiff's case?

Dissenting justice used these factors:

- Did the discovering party demonstrate a "particularized need" (defined in another case as "probability that the failure to provide [the records] will deny the defendant a fair trial.")?
- Did the ends of justice require disclosure?

- Does the interest in discovery outweigh the public interest in continued confidentiality?