

Firm successfully defends Freedom of Information Act case which is upheld by Michigan Supreme Court

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Plunkett Cooney successfully defended a state university sued by a local newspaper for an alleged violation of the Freedom of Information Act.

The university's president became involved in a controversy over the construction of a new university-owned home for the current and future presidents. The university's board of trustees commissioned an outside audit of the project to determine whether any laws or internal procedures had been violated during the construction project.

While the audit was being conducted one of the trustees asked the vice-president of finance to provide his personal view of the president's role in the project. The information was solicited as part of the board's internal review of the matter to determine whether the president should be disciplined. The vice-president sent a letter to the trustee in response to her inquiry.

The university released the auditor's report to the public, and a local newspaper sent a Freedom of Information (FOIA) request to the university, seeking all internal documents related to the construction project investigation. The university identified the vice-president's letter but refused to produce it on the basis of the deliberative process exemption to FOIA requests.

The newspaper filed suit in state court seeking an order for immediate disclosure of the vice-president's letter. Plunkett Cooney attorney Michael Bogren represented the university and filed a counter-motion to dismiss the suit on the basis that the deliberative process exemption applied, and that the university properly refused to disclose the letter.

The trial court agreed with Plunkett Cooney's argument on behalf of the university and refused to order the university to disclose the letter on the basis of the deliberative process exemption. The newspaper appealed to the Michigan Court of Appeals, arguing that the trial court erroneously refused to order the letter to be disclosed.

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MICHIGAN SUPREME COURT Cont.

Plunkett Cooney continued to represent the university on appeal. Ultimately, the appellate court agreed with the arguments advanced by Plunkett Cooney appellate attorney Mary Massaron Ross on behalf of the university. The court affirmed the trial court's ruling that the letter did not have to be produced. The newspaper appealed to the Michigan Supreme Court, which agreed to hear the case.

The Supreme Court again ruled in favor of the university and adopted the arguments made by Plunkett Cooney. The Supreme Court ruling significantly changed the manner in which FOIA claims are reviewed by the appellate courts in Michigan and reinforced the ability of governmental agencies to exempt certain material from disclosure under Michigan's Freedom of Information Act.