

PETER J. CARUSO, ESQ.
CARUSO & CARUSO, LLP
68 MAIN STREET
ANDOVER, MA 01810
978-475-2200

PETER J. CARUSO, ESQ.
PETER J. CARUSO II, ESQ.
pcaruso@carusoandcaruso.com
twitter:peterandover
carusoandcaruso.com
Facebook

MNPA
AUGUST 2020

PUBLIC RECORDS

- Non-Disclosure Agreements. A rash of public awareness on non-disclosure clauses in public settlement agreements. In Andover there are 6 secret contracts recently discovered.
- The Berkshire district attorney's general counsel resigned in January after she said the DA attempted to block the release of public records in a politically fraught case after The Eagle newspaper filed a public records request.
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PRIOR RESTRAINT

- A non-media case BUT ... strong legal language from the SJC on a landmark probate court decision. Involuntary nondisparagement orders (where the parties do not agree between themselves), commonly used to keep spouses from discussing their cases on social media, are unconstitutional. Impermissible prior restraint on free speech protected by the First Amendment, ONLY where there is "grave, imminent harm [to the child]. Need a compelling state interest and only in the rarest of cases. *Shak v. Shak*, SJC 12748, May 7, 2020.

- Police Stop. A Bay State Banner senior editor was stopped by seven Boston police reporters after he left Roxbury Municipal Court after taking photographers on the job. They FIOed (Field Interrogations and Observations) Yawu Miller who is Black. First times in over 20 years who has written for the Banner since 1988.

OPEN MEETING

- MBTA – State Representative Timothy Whelan filed a complaint that the MBTA board violated the open meeting law by not noticing the board’s direction to stop providing T buses to shuttle police to protests. MBTA counsel explained the board did not vote but communicated the sentiment of the board to agency officials. Bob Ambrogi noted that the chain of events could constitute a serial meeting of the board.

NEW HAMPSHIRE

- Access. Two Cases on the same day – May 29, 2020. Great Wins for Transparency. Rick Gagliuso and Gregory V. Sullivan secured two separate decisions relating to a 1993 unfavorable case that will make it easier for citizens to obtain personnel records, police and public employee misconduct records, through the New Hampshire Right to Know Law.
Atty. Gagliuso in *Seacoast Newspapers, Inc. v. City of Portsmouth* the Court overturned the 1993 decision, ironically Greg Sullivan’s case, relating to the release of a decision concerning the termination of a police officer by the City. Atty. Sullivan in *Union Leader Corp. v. Town of Salem* addressed a public records request for an audit report that included details about internal affairs complaint investigations which will now open up investigative reports and internal personnel practices. The Court acknowledged wrong interpretations and acknowledged mistakes. From a very broad categorical exemption to now a very narrow interpretation based on a two-part privacy interest balancing test.
The Court acknowledged that it was reversing the appellant attorney’s 1993 case – much to Greg’s delight.

- Access. June 3, 2020. Continuing a recent trend by the NH Supreme Court to favor release of public records, the Court ruled that Keene city officials improperly without records ranging from restaurant inspections to police use of force. In *Marianne Salcetti v. City of Keene*, Greg Sullivan argued the case for the 5 students at Keene State whose professor assigned a project that exploded into a real learning experience. The city also wanted to charge the students \$300 to look at reports which the court denied.

RHODE ISLAND

- Access. 911 calls are sealed since 1990s, prior they were open public records.
- Access. Governor refused questions and information on the COVID 19 issues. Common Cause and WPRI-Providence discussed the toll taken on open government during the pandemic through executive orders issued by Gov. Gina Raimondo.

VERMONT

- Access. House Bill 558 would exempt the Victim Compensation Board Hearings from the Vermont Open Meetings Law. Fight to keep them open.
- Access. Victory in Superior Court to inspect records versus taking a copy of these records.
- Access. Media was removed during a criminal case when competency became an issue; however, reopened quickly after a judicial education reports Mike Donoghue.

NATIONALLY

CALIFORNIA

- Access. California Supreme Court removed financial barriers to electronic public records requests. In *National Lawyers Guild v. City of Hayward* the court ruled that “extraction” costs cannot be charged for searching through a file cabinet or electronic records. Nor, for the cost of redacting exempt data from otherwise producible electronic records.
- Internet Protection. Atty. General William Barr suggested invoking antitrust laws against tech companies based on concern over alleged bias in content. Google appeared to be a target.

NEW ENGLAND FIRST AMENDMENT COALITION (NEFAC)

First Amendment Institute will consist of classes taught between Saturday, September 26 and Saturday, October 3, 2020. Due to concerns related to COVID-19 the 25 chosen fellows this year will be attending remotely. The deadline for applications is August 15, 2020.