

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT  
CIVIL ACTION  
NO. 07-4341

BOSTON FIREFIGHTERS UNION, IAFF, LOCAL 718,

Plaintiffs

V.

WHDH TV, CHANNEL 7,

Defendants

FINDINGS AND ORDER

The plaintiffs have petitioned the Court for a preliminary injunction enjoining the defendant from publishing or using any information it has obtained from the medical examiner's autopsy reports of deceased firefighters, Paul Cahill and Warren Payne. At a hearing where both parties were represented by counsel, plaintiffs orally amended the complaint to add Ann Cahill as surviving spouse of Paul Cahill, and Florence Payne as mother and next of kin of Warren Payne as plaintiffs. Furthermore, the attorney on behalf of the Boston Firefighters Union represented that they were authorized to act on behalf of Ann Cahill and Florence Payne, and would be representing the plaintiffs in this matter.

As brief background, Paul Cahill and Warren Payne died on

August 29, 2007, while responding to a fire incident. The defendant represents that it has received information contained in the medical examiner's autopsy reports from a confidential source. It is undisputed that the medical examiner's autopsy reports have not been disclosed as of this date to any third party.

The plaintiffs have brought an action alleging privacy violations and the defendant has responded to the petition for injunction with a prior restraint argument.

The analysis used by the Court applicable to both arguments is a reliance on *Globe Newspaper Company, et al., v. Chief Medical Examiner*, 533 N.E. 2d, 1356, 404 Mass. 132 (1989), wherein the Supreme Judicial Court established that "there is a strong public policy in Massachusetts that favors confidentiality as to medical data about a person's body." *Id.* at 1358. The SJC further confirmed that autopsy reports from the medical examiner's office are absolutely exempt from disclosure pursuant to public records G.L. c. 4, § 7, Twenty-sixth (c).

In addition, this Court relies on G.L. c. 38, § 2 which designates the Chief Medical Examiner as the custodian of autopsy reports, and gives the Examiner the rule-making authority for the circumstances under which they will be disclosed. 505 CMR 1.00 et. seq. outlines the parameters of disclosure of autopsy reports from the medical examiner's office, which would include in this

instance, a surviving spouse, a next of kin, an investigatory body, or in a civil action where the office of the medical examiner has an opportunity to address issues of confidentiality, privacy, investigative interests, or as justice may require. It is undisputed that the medical records have not been disclosed pursuant to 505 CMR 1.00 et. seq.

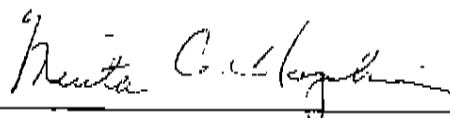
Based on the protections as outlined above, and in considering the plaintiffs privacy action, the Court finds a likelihood of success on the merits; irreparable harm to spouse or next of kin when time may be given to legal means of obtaining the documents; and disclosure will not adversely affect the public good where the Supreme Judicial Court has clearly weighed the public policy and has favored the confidentiality of medical records and, specifically, medical examiner autopsy reports.

The defendant argues that they should be allowed to release or use information from the autopsy reports that they have received through confidential sources. They argue that they do not hold the autopsy report itself, but merely the information included in the autopsy report. The defendant argues it has received the information from a confidential source and did nothing unlawful in obtaining the information. The Court finds that there is a compelling state interest as articulated by the SJC in protecting the confidentiality of medical data to include medical examiner autopsy reports. There is a lawful approach to

obtaining these records, including petitioning the court in a civil action. Circumventing this process through confidential sources does not abrogate the fact that these records are protected under the law.

Inasmuch as there has been no lawful dissemination of the autopsy report by the medical examiner's office, and no potential that the source of information may have come from a party who has the ability to waive the confidentiality of the records, the Court finds that a prior restraint on free speech is justified under these particular circumstances. The Court incorporates the transcript of the record into its finding.

WHEREFORE, the Court **ORDERS** that the defendant is enjoined from the release and/or use of autopsy reports, or the content of autopsy reports, from the medical examiner's office regarding Paul J. Cahill and Warren J. Payne based on the facts and arguments as presented to the Court today.



Merita A. Hopkins  
Justice of the Superior Court

Dated: October 3, 2007