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## ESPN LAWSUIT RULING THAT QUESTIONS CAMPUS POLICE DEPARTMENT STATUS AS A PRIVATE AGENCY REVERSED IN INDIANA COURT OF APPEALS



Posted by: Margaret Christensen and Brian W. Welch on Wednesday, March 30, 2016 at 9:00:00 am

In a case watched closely by private colleges and universities in Indiana, the Indiana Court of Appeals on March 15 reversed the St. Joseph Superior Court and ruled that the Notre Dame Police Department is a “law enforcement agency” as that term is defined in Indiana’s Access to Public Records Act (“APRA”). The Court thus held that police records sought repeatedly by ESPN from Notre Dame regarding the handling of incidents involving its athletes are covered by APRA and subject to its disclosure obligations.



Perhaps because the parties in the case failed to make ESPN’s request a part of the record, the Court did not decide which records, if any, are to be produced by Notre Dame to ESPN and remanded that issue to the trial court for determination. APRA has a number of exceptions to the disclosure requirement that may apply to some of the records sought by ESPN, so it’s not clear yet which of the records sought are to be disclosed. Notre Dame has until April 14, 2016, to seek transfer to the Indiana Supreme Court and is expected to ask that Court to review the issue.

In a related matter, the Indiana General Assembly approved House Enrolled Act 1022, and Governor Pence vetoed the legislation on March 24, 2016. HEA 1022 would have excepted from the disclosure obligations of APRA any investigatory records of a private university police department.

Given the Court of Appeals’ declaration that private university police departments are subject to APRA, the exception under APRA for any investigatory records of a public law enforcement agency would seem to protect such records from disclosure. If Notre Dame seeks transfer to the Indiana Supreme Court, we may see further development on this issue.

*To learn more about Margaret Christensen and her practice, please visit her profile.*

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