

The following is a general synopsis of the matter of *The Regents of the University of Idaho v. TPC Holdings, Inc., dba Lewiston Tribune and Daily News, et al.*, in the Second Judicial District, County of Latah, Case No. CV-2011-00916, the Honorable John R. Stegner, District Judge, presiding. The other media defendants were: the Idaho Statesman Publishing, LLC, dba *The Idaho Statesman*; *The Associated Press*; Cowles Publishing Company, dba *The Spokesman Review*; Spokane Television, Inc.; and Idaho Press Club, Inc.

Even though the case is not reported on, it is very significant as a citing authority if dealing with a factual case involving the wrongdoing of a public official when his or her personnel records are being sought.

On August 21, 2011, Professor Ernesto Bustamante took the life of graduate student, Katy Benoit, and, when cornered by the police, he took his own life. Professor Bustamante (Bustamante) had resigned as a professor at the University of Idaho (U of I) three (3) days prior to this tragedy, but during his tenure as professor he had a relationship with Ms. Benoit which she had sought to bring to an end. Ms. Benoit had been threatened by Bustamante and had made a complaint in regard to his actions. The reaction of the U of I to her concerns and that of local police officials became the center of the public focus which ensued.

Record requests were made by various media outlets and the U of I sought guidance from the U.S. Department of Education in regard to releasing Ms. Benoit's student records. After obtaining guidance from the U.S. Department of Education, the U of I determined that the confidentiality of student records required under federal law (FERPA) does not extend after a student's death.

The U of I also released a detailed time line of its interactions with Ms. Benoit between June 10, 2011, and August 22, 2011, concerning her complaint. This detailed time line was printed and published by the media.

Ironically, Bustamante's records had not been disclosed because Idaho law dictated as to their protection from release. The remaining question was whether or not the Idaho statute, as is typical throughout most states, excepted from disclosure the personnel files of a public official. Bustamante's records were at issue. (An affidavit filed in a quickly filed criminal action against Bustamante implied multiple personalities, a violent temper, and erratic behavior.) The Idaho statute reads:

Except as provided in this subsection, all personnel records of a current or former public official other than the public official's public service or employment history, classification, pay grade and step, longevity, gross salary and salary history, status, work place and employing agency. All other personnel information relating to a public employee or applicant including, but not limited to, information regarding sex, race, marital status, birth date, home address and telephone number, applications, testing and scoring materials, grievances, correspondence and performance evaluations, shall not be disclosed to the public without the employee's or applicant's written consent.

Thus, what the statute and most statutes do not define is what constitutes "personnel records." Additionally, does a "former public official" include a dead former public official? Because the statute contemplated the records could be released with the employee's "written consent," did this imply that the statute contemplated that the employee or public official would be alive?

The Court found:

Third, which is the middle avenue, and the avenue taken by this Court, is to allow disclosure following the death of the public official, when the public's need to know exceeds the need to maintain confidentiality. Here, the public's need to know clearly outweighs whatever right to privacy exists. Bustamante engaged in behavior that resulted in Benoit lodging a complaint against him. The public needs to know, in as much detail as possible, how the University responded to that complaint and whether its response was appropriate under the circumstances. Bustamante, by doing what he did, has little, if any, right to maintain the privacy of his "personnel records." Accordingly, before personnel records of a deceased public employee may be released, a court must conduct a balancing test to determine whether the public's interest outweighs the former public official's right to privacy.

In conclusion, although Bustamante is a "former public official" who has a privacy interest in his personnel records under I.C. § 9-340C, in balancing his right to privacy against the public's need to know, the clear weight of the balance tips in favor of public disclosure. As such, the personnel files of Ernesto Bustamante are not exempt from disclosure under the Idaho Public Records Act.

A literal reading of the statute does not discuss a balancing test, but the opinion rendered by Judge Stegner creates such a standard in Idaho. There is not a great deal of case law available throughout the nation. This case applies not only to a dead public official, but any public official who has acted wrongly or inappropriately where the "public's need to know" is paramount. The similarity of Idaho's statute to that of other states may allow this case to be quite helpful to First Amendment practitioners despite it not being a reported case or one affirmed by a higher court.