

New Hampshire Local Government Center

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Court Update

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The Right-To-Know Law Is Applicable to a Not Wholly Private Or Public Entity

Professional Firefighters of New Hampshire v. HealthTrust, Inc.

No. 2004-017, November 30, 2004

In *Professional Firefighters of New Hampshire v. HealthTrust, Inc.*, the Supreme Court held, in relevant part, that RSA Chapter 91-A, the Right-to-Know Law, applied to HealthTrust, Inc., a pooled risk management organization.

The pertinent facts are as follows. HealthTrust is a non-profit New Hampshire corporation formed by an association of governmental entities to provide general health insurance benefits for public employees under a pooled risk management program. The plaintiff, the Professional Firefighters of New Hampshire (PFNH), requested the disclosure of meeting minutes and documents from HealthTrust, including a contract between HealthTrust and Anthem Blue Cross & Blue Shield, under the Right-to-Know Law.

On appeal, the ultimate issue was whether the Right-to-Know Law applied to an entity that is not wholly private or public (that is, a quasi-public entity). In its decision, the Court recognized that HealthTrust provides products and services similar to other private entities, and competes with private entities in the market for the sale of these products and services. See RSA 5-B:3, I.

Nevertheless, the Court applied the Right-to-Know Law in a manner that furthered the statutory purpose of increasing public access to governmental proceedings. In finding that HealthTrust was subject to RSA Chapter 91-A, the Court considered several factors, including that HealthTrust: (1) is an organization comprised of political subdivisions; (2) is governed by public officials and employees; (3) provides health insurance benefits to public employees; and (4) manages monies collected from governmental entities and is tax-exempt.

Next, the Court considered whether HealthTrust was required to disclose the contract and meeting minutes between HealthTrust's board of trustees and counsel without the trial court first performing an in camera review to evaluate whether such documents were exempt from disclosure. RSA 91-A:5, IV exempts from disclosure documents containing "confidential, commercial or financial information." Further, for purposes of the Right-to-Know Law, RSA 91-A:2 excludes consultations with legal counsel. The Supreme Court remanded the matter with instructions that the trial court either conduct an in camera review of the materials or order HealthTrust to prepare a Vaughn index (that is, document/privilege log) to determine whether the materials fall within the statutory exemptions.

Finally, the Supreme Court declined to impose attorney's fees on HealthTrust. RSA 91-A:8 mandates the award of attorney's fees where: (1) the lawsuit was necessary to make the information available; and (2) the entity knew or should have known that its non-disclosure violated RSA Chapter 91-A. Here, the Court held that HealthTrust neither knew nor should have known that it was subject to the Right-to-Know Law.

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PO Box 617 • Concord, NH 03301 • 603.224.7447