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Kirwan v. Diamondback:**Records of University Parking Tickets Are Not Protected From Disclosure as Personal or Financial Records Under the Maryland Public Information Act or as Education Records Under Family Education Rights and Privacy Act**

By Adam Cizek

The Court of Appeals of Maryland held that the records of parking tickets issued to a university employee were not exempt from disclosure as personnel or financial records under the Maryland Public Information Act. *Kirwan v. Diamondback*, 352 Md. 74, 721 A.2d 196 (1998). Furthermore, the court held that records of parking tickets issued to students of the university were not protected as financial records under the Maryland Public Information Act or as educational records under the Family Educational Rights and Privacy Act. Additionally, the court held that disclosure of the records of these parking tickets does not violate the public policy considerations of the Maryland Public Information Act.

In February of 1996, a University of Maryland (the "University") basketball player was suspended for three games after receiving money from a former coach to pay university parking tickets. *Kirwan*, 352 Md. at 79, 721 A.2d at 198. The Diamondback, a campus newspaper, commenced an investigation to determine whether the University was giving special treatment to players on the men's basketball team who parked illegally on campus. *Id.* Under the Maryland Public Information Act ("MPIA") (codified in Md. CODE ANN., State Gov't §§

10-611 - 10-628), the Diamondback requested the records of parking violations committed by Gary Williams ("Coach Williams"), the head coach, and players on the men's basketball team. *Id.* The University refused the Diamondback's request, contending that under the MPIA the records concerning coach Williams were personnel and financial records and, therefore, exempt from disclosure. *Id.* at 80, 721 A.2d at 198. Furthermore, the University maintained that the records concerning the members of the men's basketball team were protected from disclosure as financial records under the MPIA and educational records under the federal Family Educational and Privacy Rights Act ("FEPPRA") (codified in 20 U.S.C. § 1232(g)). *Id.* at 80, 721 A.2d 199.

In order to compel the University to disclose the requested information, the Diamondback filed suit in the Circuit Court for Prince George's County. *Id.* The circuit court granted the Diamondback's request. *Id.* The University appealed to the court of special appeals; however, the court of appeals granted certiorari before the intermediate appellate court heard the case. *Id.*

Beginning its analysis, the court noted that section 10-612 of the MPIA "establishes a public policy and a general presumption in favor of

disclosure of government or public documents." *Id.* (citing MD. CODE ANN., State Gov't § 10-612 (1995 & Supp. 1997)). The legislative intent of the MPIA was to ensure that "citizens of the State of Maryland be accorded wide-ranging access to public information concerning the operation of their government." *Id.* at 81, 721 A.2d at 199 (quoting *Fioretti v. Maryland State Board of Dental Examiners*, 351 Md. 66, 73, 716 A.2d 258, 262 (1998)).

The University argued that Coach Williams's alleged parking tickets were personnel records and, therefore, exempt from disclosure under the MPIA. *Id.* at 82, 721 A.2d at 200. The court noted that the statute does not define personnel records. *Id.* at 82, 721 A.2d at 200. The statute does, however, enumerate specific categories of personnel records: "(1) an application (2) performance rating or (3) scholastic achievement." *Id.* (quoting MD. CODE ANN., State Gov't § 10-616(a)(i)(1995 & Supp. 1997)). The court concluded from these enumerations that the legislature intended to protect personnel records that concerned only employment and employment performance. *Id.* at 82-83, 721 A.2d at 200 (citing Md. CODE ANN., State Gov't § 10-616(a)(i)(1995 & Supp. 1997)). Reasoning that Coach Williams's

parking record was not directly related to his employment or employment performance, the court held that an employee's parking violations do not constitute personnel records under MPIA. *Id.* at 84, 721 A.2d at 200-01.

Next, the court addressed the University's argument that the records of parking violations are exempted financial information under the MPIA section 10-617(f). *Id.* at 84-85, 721 A.2d at 201. The statute does not define financial information. The statute does, however, list items that are financial information: "assets, income, liabilities, net worth, bank balances, financial history or activities, or creditworthiness." *Id.* at 85, 712 A.2d 201 (citing MD. CODE ANN., State Gov't § 10-616(f)(1995 & Supp. 1997)). The court concluded from this list that the legislature did not intend for parking tickets to be financial information.

Rejecting the University's argument that parking tickets are financial information because they constitute a record of indebtedness, the court noted that a parking ticket is a fine not a debt. *Id.* (citing MD. CODE ANN., Transp. II § 26-30b(a)(1)(i)(1995 & Supp. 1997)). Moreover, the court reasoned that the legislature clearly did not intend for parking violations to constitute financial information because section 10-616(h) of the MPIA broadly allows access to such information, with the narrow exception of obtaining records for marketing or legal services. *Id.* at 87, 721 A.2d at 202.

Relying upon the permissible denial language of section 10-618(a)

of the MPIA, the University argued that disclosing the traffic citations is against the public interest. *Id.* at 88, 721 A.2d at 202-03. Section 10-618(a) permits a records custodian to "deny inspection of records . . . if the custodian believes that inspection would be contrary to public interest." *Id.* Public interest denials, however, are limited to those categories enumerated in the statute, such as 'examination information' and 'details of a research project.' *Id.* (quoting MD. CODE ANN., State Gov't § 10-618 (1995 & Supp. 1997)). Traffic citations are not among the enumerated categories, therefore, the court rejected the University's public interest argument. *Id.* at 88, 721 A.2d at 203.

Additionally, the University contended that disclosure of the records would result in an unwarranted invasion of privacy. *Id.* The MPIA does not automatically create a disclosure exemption because an unwarranted invasion of privacy may occur. *Id.* Section 10-612(b) favors disclosure, subject to an unwarranted invasion of privacy. *Id.* at 89, 712 A.2d at 203. The court concluded that an expanded definition of personnel records or financial records would be inconsistent with the construction principles established in section 10-612(b). *Id.*

Next, the University contended that the requested records were protected from disclosure as educational records under the FERPA. *Id.* The FERPA "defines educational records as 'those records . . . which (i) contain information directly related to a student; and (ii)

are maintained by an educational agency or institution or by a person acting for such agency or institution.'" *Id.* at 90, 721 A.2d at 204 (quoting 20 U.S.C. § 1232g(a)(4)(A)).

The court found that the two main objectives of the FERPA were to protect the privacy of a student's academic information and to prevent academic institutions from "operating in secrecy." *Id.* at 90, 721 A.2d at 204. Furthermore, based on the legislative history of the FERPA, the court concluded that FERPA did not prevent the dissemination of records merely because a student's name would be revealed. *Id.* at 91, 721 A.2d at 204.

Educational records have consistently been interpreted as those which relate to a student's "academic performance, financial aid, or scholastic performance." *Id.* (citing *Red & Black Pub. v. Board of Regents*, 262 Ga. 848, 427 S.E.2d 257 (1993)). The cases examined by the court distinguished the records of a student organization court, a university discipline board, and a campus security department from educational records of the FERPA. *Id.* In each case, the requested records did not directly concern academics. *Id.* The court of appeals found the requested documents in the instant case to be analogous to these records and, therefore, held that the records of parking violations were not protected as educational records under the FERPA. *Id.* at 94, 721 A.2d at 205-06.

The court's decision in *Kirwan v. Diamondback* upheld the legislative intent of the MPIA by

ensuring that Maryland citizens will have access to public documents. By refusing to broaden the categories of exemptions from disclosure provided for in MPIA, the court prevented the erosion of the public's right to access such documents. Furthermore, the court established precedent which will serve to deter future attempts to erode the public's right to public documents. The continued access to public documents will help the citizens of Maryland monitor the activities of state facilities and help prevent corrupt activities more egregious than those sought to be exposed in the instant case.