

**SYNOPSIS OF THE CASE**

**2011 MT 293, DA 10-0615: THE CITY OF BILLINGS, Defendant and Appellant, v. THE BILLINGS GAZETTE, a division of LEE ENTERPRISES, Plaintiff and Appellee.<sup>1</sup>**

The Billings Gazette learned that the City of Billings Police Department had placed Deana Anthony, a senior administrative coordinator with authority to purchase supplies and equipment with a City of Billings' credit card, on administrative leave after it was alleged that Anthony misused public funds. While the Police Department was conducting an internal investigation, it also referred the matter to the Montana Department of Justice for a criminal investigation. The Police Department created a 16-page due process letter detailing the evidence against Anthony obtained during its investigation. It provided the letter to Anthony and scheduled a hearing to give Anthony the opportunity to respond to the allegations and evidence. Anthony resigned before the scheduled hearing; therefore, the hearing was never held. The Gazette requested the 16-page letter but the City declined to release it on privacy grounds, and also because its release could taint any potential future criminal prosecution of Anthony. The Billings Gazette sued the City. The District Court instructed the City to release the letter to the Gazette and the City appealed.

On appeal, the Supreme Court noted that the people of Montana have a constitutional "right to know" about the actions of public agencies and employees, but that such employees have a "right to privacy" under the Montana Constitution. In cases where both of these constitutional rights are implicated, the district court must balance the two rights to determine whether the demands of individual privacy clearly exceed the merits of public disclosure. The Supreme Court determined that because the document sought by the Gazette was a public document created by a public body, it was subject to disclosure under the "right to know" provision. The Court further concluded that Anthony did not have a reasonable expectation of individual privacy to the document

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<sup>1</sup> This synopsis has been prepared for the convenience of the reader. It constitutes no part of the Opinion of the Court and may not be cited as precedent.

created during the administrative investigation because she held a “position of trust” with the Police Department and she was accused of breaching that trust. The District Court decision was therefore affirmed by a divided Court.

The dissenting justices agree that Anthony had no reasonable expectation of privacy in the investigation into her alleged wrongdoing. However, they maintain that as a public employee, Anthony had a privacy right in her employment personnel file, which included the due process letter that outweighed the public’s right to know.