

Appeals court denies Montgomery inspector general's request for police investigation documents

Elected officials look into other options to require police to turn over information

by Danielle E. Gaines and Erin Cunningham, Staff Writers

Some Montgomery elected leaders are concerned that a Maryland Court of Appeals ruling could prevent the county's appointed watchdog from doing its job.

The state court ruled June 29 that Montgomery County police do not have to release to the county inspector general's office the internal investigation documents related to a 2008 crash involving a fire official.

In a 5-2 opinion, the court decided that the police department's internal investigation which looked at whether officers violated administrative rules during the initial crash investigation should not be disclosed under the Maryland Public Information Act because the documents are considered "personnel records."

Now, County Executive Isiah Leggett (D) said he might consider proposing legislation that would compel the department to turn over such records in the future. And County Councilman Philip M. Andrews (D-Dist. 3) of Gaithersburg, chairman of the council's public safety committee, said he also is looking into the matter.

"I'm concerned about the court's decision, and I'm looking into what options there may be to address it," he said.

Councilman Marc Elrich (D-At large) of Takoma Park said he also is concerned by the court's ruling, but is unsure if there is anything the council could do locally to change the disclosure requirement.

"The whole point of an inspector general is to have some independent review of things," he said. "I'm kind of ashamed to not be able to do that [in this case]."

Judge Sally D. Adkins wrote the dissenting opinion, shared by Judge Mary Ellen Barbera.

"We should not ... extend the term 'personnel records' to include all records relating to an officer's actions in the course of his duty," Adkins wrote. "Not only would this holding impair the Inspector General in performing its oversight role, but would also shield the police, who are public officers, from public scrutiny."

In January 2009, former county Inspector General Thomas Dagley sought the records in response to concerns that the investigations by county police and Montgomery County Fire and Rescue were incomplete. Dagley issued a report in October 2009 that faulted police investigators for not interviewing eye witnesses, including the first police officer at the scene.

Assistant Chief Gregory J. DeHaven was returning from serving in an honor guard during a Washington Redskins football game in Landover when his county vehicle crashed into three cars, including a police cruiser making a traffic stop, about 8 p.m. Nov. 30, 2008, police said.

DeHaven was cited for failing to control vehicle speed to avoid a collision and paid a \$130 fine. County police said that at the time DeHaven passed a field sobriety test at the scene of the crash, but one officer revealed he detected alcohol on DeHaven's breath.

Sgt. Edward A. Shropshire and Capt. Willie E. Parker-Loan administered the initial field sobriety test. A police internal affairs investigation that ended May 26, 2009, found that Shropshire and Parker-Loan committed "no administrative violations" and that DeHaven did not get special treatment when the two officers did not force him to take a test to check his blood-alcohol level.

DeHaven no longer works for the county, spokeswoman Donna Bigler said Friday.

Shropshire and Parker-Loan filed a lawsuit in August 2009 against the county in an effort to keep the records private.

In April 2010, Montgomery County Circuit Court Judge Michael D. Mason ruled that the county had the right to inspect the records. That decision was overturned June 29 by the appeals court.

The police department declined to comment on the decision Tuesday.

Edward L. Blansitt III, who took over the inspector general's post in April, said he received the court's decision and is evaluating how to move forward. Blansitt said that if more information needs to come to light, he will issue a second report.

"I do not think that pursuing the additional documentation is something I'm intending to do at this point in time," he said. "I'm looking at what we have and I think we can draw conclusions from that."