

LAW REVIEW 1088

Privacy Act Applies to National Guard Even When Not Federalized

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9.0—Miscellaneous

In re SEALED CASE, 551 F.3d 1047 (D.C. Cir. 2009).

This is an interesting and important case on the application of the Privacy Act to the National Guard. The plaintiff and appellant in this case is a member of the Vermont Army National Guard. The District Court and Court of Appeals withheld his name to protect his privacy.

This unnamed service member alleged that a civilian employee of the Vermont Army National Guard and some other individuals improperly disclosed some highly sensitive personal information about the member and thereby caused him emotional, psychological, and financial harm. He sued the Department of the Army under the Privacy Act, 5 U.S.C. 552a. That Act provides that certain kinds of personal information contained in federal agency records are not to be disclosed without proper authority.

The Department of the Army contended, and the District Court agreed, that the Vermont Army National Guard was not part of the Department of the Army (except when called to federal active duty) and dismissed the case on that basis. The unnamed service member appealed, and the Court of Appeals reversed, holding: “Section 101 of Title 10 [of the United States Code] defines ‘military department’ to include ‘all ... reserve components ... under the control or supervision of the Secretary of the department.’ 10 U.S.C. 101(a)(6). As the Department concedes, Appellee’s Br. 8, the Army National Guard of the United States is one of those reserve components. 10 U.S.C. 10101(1). Section 10105, in turn, provides that the Army National Guard of the United States ‘consists of’ in part ‘federally recognized units and organizations of the Army National Guard.’ Section 10105. Given that the government nowhere disputes appellant’s assertion that the Vermont Army National Guard is federally recognized, the Privacy Act applies. Put another way, because it is undisputed that the Vermont Army National Guard enjoys federal recognition, it is part of the Army National Guard of the United States, which is a reserve component, which is part of the military department of the Army, which is included in the Privacy Act’s definition of ‘agency.’ Although it takes several steps to reach this conclusion, the result is clear.”

Accordingly, the Court of Appeals reversed the District Court’s order dismissing the case.