

KENNETH A. CAPRON

v.

BUREAU OF REHABILITATION SERVICES et al.

Submitted on Briefs January 20, 2006
Decided February 17, 2006

Panel: CLIFFORD, DANA, ALEXANDER, CALKINS, LEVY, and SILVER, JJ.

MEMORANDUM OF DECISION

Kenneth A. Capron appeals from a judgment entered in the Superior Court (Cumberland County, *Delahanty, J.*) affirming a decision of Jill Duson, Executive Director of the Bureau of Rehabilitation Services (BRS), denying his request for certain BRS documents under the Freedom of Access Act (FOAA), 1 M.R.S. §§ 401-410 (2005). Contrary to Capron's contention, the documents he requested are not "public records" because they "have been designated confidential by statute."¹ 1 M.R.S. § 402(3)(A) (2005). Although not cited by BRS, 26 M.R.S.

¹ We do not accept BRS's argument that a record designated as confidential by an agency rule fits within FOAA's statutory exception for "[r]ecords that have been designated confidential by statute." 1 M.R.S. § 402(3)(A) (2005); see *Springfield Terminal Ry. Co. v. Dep't of Transp.*, 2000 ME 126, ¶ 8, 754 A.2d

§ 1412 (2005), by criminalizing the release of “a list of names of, or information concerning, individuals applying for or receiving rehabilitation,” effectively designates records containing such information as confidential. *See also* 29 U.S.C.A. § 721(a)(6)(A) (1999 & Supp. 2005). Furthermore, BRS did not abuse its discretion in declining to release the records under its rules. *See* 5 C.M.R. 12 152 001-4 § 2(4) (2004); *Bath Iron Works Corp. v. Unemployment Ins. Comm’n*, 2005 ME 54, ¶ 10, 870 A.2d 580, 583. If Capron is indigent and cannot afford the fee that BRS would charge to produce copies of the records with the confidential information redacted, he may petition BRS for a waiver of the fee. *See* 1 M.R.S. § 408(3)(A), (B), (5), (6)(A) (2005).

The entry is:

Judgment affirmed.

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353, 356 (stating that we construe FOAA by applying plain meaning of statute and interpreting exceptions strictly); *Bangor Publ’g Co. v. City of Bangor*, 544 A.2d 733, 736 (Me. 1988) (holding that materials that “are not specifically excepted by statute from the requirements of [FOAA] . . . must be made available” on request).