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Prison Contractor Subject to Public Records Act, Supreme Court Rules

A private contractor hired to do a crucial government function can't sidestep public records law, the Vermont Supreme Court ruled last week. The justices' decision overturned a lower court ruling and declared that a former Vermont prison health care contractor was effectively a "public agency" as defined by the state's Public Records Act. Writing for the high court, Justice Harold Eaton Jr. concluded that "providing medical care to incarcerated persons is a quintessential governmental function," and that a private company hired to perform that function "acts as an 'instrumentality' of the state." The case stemmed from a 2015 records request made by the Human Rights Defense Center, a Florida-based nonprofit focused on prisoners' rights, to Correct Care Solutions, which at the time handled medical services in Vermont prisons. The organization sought records of legal actions or settlements arising from the care provided under Correct Care Solutions' state contract. The company, now known as Wellpath, denied the organization's request on the grounds that it was not covered by Vermont public records law. Wellpath provided five years' of medical care to Vermont inmates under a contract worth more than \$91 million. The defense center sued in 2019, but a trial court judge ruled in Wellpath's favor. The nonprofit appealed, and numerous groups, including the ACLU of Vermont, the Prisoners' Rights Office, Secretary of State Jim Condos and State Auditor Doug Hoffer filed briefs in support of the nonprofit. In reaching their conclusion, the justices followed a line of legal logic distinct from those put forward by the parties. The court examined the definition of a "public agency" under state law, which includes "any agency, board, department, commission, committee, branch, instrumentality, or authority of the State." Justices then determined that the arrangement to use a private company to deliver health care in prisons qualified the contractor as an "instrumentality" of the state. The Department of Corrections "crafted, in minute detail, policies governing when, whether, and how Wellpath was to deliver services to persons in custody," Eaton Jr. wrote. "Wellpath necessarily exercised the authority of the state in administering these policies on the DOC's behalf." He continued: "Thus, we conclude that the language of the [Public Records Act] is unambiguous: where the state contracts with a private entity to discharge the entirety of a fundamental and uniquely governmental obligation owed to its citizens, that entity acts as an 'instrumentality' of the State." The court did not order Wellpath to hand over the records that HRDC had requested; it sent that matter back to the lower court to decide whether the specific records in question are "public records" under the law. But the decision provides legal precedent for a matter that has remained unsettled for years. The defense center, through its publication Prison Legal News, has previously filed other records lawsuits against different prison contractors. A 2013 case against Corrections Corporation of America, now CoreCivic, ended when the company agreed to provide the requested records voluntarily, before a judge could rule on the legal question.