



EDUCATION PRACTICE

ALERT

WHEN ACCESS AND CONTROL WILL NOT RENDER A RECORD PUBLIC

The Commonwealth Court recently issued a decision in the *Court of Common Pleas of Lackawanna County v. the Pennsylvania Office of Open Records and Lackawanna County*, No. 35 M.D. 2010 (Pa. Cmwlth.). Essentially, this case indicated that where an agency has access to a record as a result of its support of a second agency, that record will maintain its status and exclusions as though it was only held by the second agency.

The court found that the requested records were judicial records (normally exempt from the RTKL) but they were housed on the County's computer server, giving the County access to and control over the records. The OOR had decided that meant that a requester could gain access by directing a request to the County. The Commonwealth Court disagreed.

Essentially, the court decided that the County was providing a support function to the judicial agency and that the County's ability to access records as a result of that support did not convert the judicial agencies documents into County documents.

Just because the County provides logistic support to the courts does not mean that every record stored on what the County provides as part of its function to support the court makes it a county record – those records always remain the records of the court.

The court went on to point out that a different finding would lead to an absurd result where one could obtain non-public documents of the court simply by directing the request to the county.

This reasoning applies equally well to §708(b) exceptions. Thus, the §708(b) exceptions that would apply to a supported agency will continue to be effective on the records in the hands of the supporting one. An example of interest to some agencies might be where they contract with another agency to analyze or gather data and issue reports used for negotiations.

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