



EDUCATION PRACTICE

ALERT

AN INJUNCTION TO SHIELD PUBLIC DOCUMENTS

When an agency in Pennsylvania gets a right to know request, it has a couple of options. Obviously, it can grant the request or deny the request. The third, less obvious choice, is to realize that in many cases the agency "does not have a dog in the fight" and the person who does may be more interested in footing the bill for keeping information private. In those cases, the agency may choose to simply notify that person (or corporation or other entity) of the request, and give that person a chance to bring proof of an injunction or some other court order stopping the agency from making the release.

That is what happened in a case just decided by the Pennsylvania's Commonwealth Court that ended up pitting Philadelphia's police union against the Philadelphia Newspaper LLC. The fight concerned a request for "all arbitration awards, including written decisions by arbitrators, pertaining to police officers"

The Philadelphia court issued the injunction but the Commonwealth Court found that it was a mistake. The appeals court found that Philadelphia court should not have issued the injunction because there were ample ways within the RTKL of shielding the information the union had wanted to protect. Nevertheless, there were interesting issues discussed by the Commonwealth Court in its opinion.

First, the case shows this is an effective and appropriate procedure for dealing with such issues.

Second, the court more clearly defined what needed to be released and drew a line between the arbitrator's 'opinion' and his or her 'award' or 'order'. Although various records relating to grievance

arbitrations are shielded by an exception within the RTKL, there is an "exception to the exception" stating that the "final award or order" is not shielded. This means that where a requester asks for those final awards or final orders, the agency is supposed to release them.

The court explained that the final award or order is generally separated from the arbitrator's opinion much as the court itself separates its opinion from its order, even when they are within the same document. You can see the way the court itself did it in the linked court opinion/order, below, but the same is also true of the the final determinations of the OOR. Those final awards or orders generally do not have much in the way of facts about the case, but even if they did, some of those facts can be redacted if there is an exception that covers them.

Third, when this case discussed the 2009 PSEA v. OOR injunction decision, it did not do so dismissively or in any way concluding that Senior Judge Friedman had been wrong in her statement about the law. This is noteworthy in light of the later decision by the court to dismiss the PSEA case. Also, Judge Pelligrini joined the majority in this case after writing a scathing concurrence in the prior case stating he did not believe there was any constitutional right to privacy in home addresses.

Published by the Commonwealth Court this past Friday, this new case is *M. G. Lutz, et al. v. City of Phila, 1996 C.D. 2009*.

If you have any questions about this Alert, please contact Kyle Berman at 610.397.7980 or aberman@foxrothschild.com, or any member of Fox