



EDUCATION PRACTICE

ALERT

PA'S OOR AND THE MAN WHO SEES DEAD PEOPLE

Today, PA's Commonwealth Court released another Open Records decision on the very topical and very gripping issue of when the public is entitled to information from the Coroner related to his findings of cause of death. In case you were desperately waiting for the answer to this one, apparently it is not until 30 days after the end of the year, just like it says in the Coroner's Act, but I really doubt anyone reading this blog cared too much about that issue. So, I guess it is really not so topical.

The other issue discussed there was the dueling requests for counsel fees. This is a much sexier (ok, maybe not sexy) and topical (this time it really is topical) issue.

The requester claimed counsel fees were owed because the Coroner's denial was "contradicted by the language [of the particular cited section] of the RTKL and undermine[d] the clear intent in the RTKL to promote timely access to public records," p. 11.

WGAL-TV lost on the initial issue dealing with the time of release, so one would think that as the non-prevailing party they would automatically lose on this issue, too. Apparently not the case. Instead, the court summed up the law in this area, noting the criteria required for a requester to get counsel fees following a denial. The court pointed out that §1304 of the RTKL allows a court to award fees where:

(1) the agency receiving the original request willfully or with wanton disregard deprived the

requester of access to a public record subject to access or otherwise acted in bad faith under the provisions of this act; or

(2) the exemptions, exclusions or defenses asserted by the agency in its final determination were not based on a reasonable interpretation of law.

p. 13, citing 65 P.S. § 67.1304. From there, the court (ignoring the claimed reasons why counsel fees should be awarded, and after pointing out that the TV station did not prevail) went on to examine the above criteria. In doing so it found that "there is absolutely no evidence presented that the Coroner acted in bad faith or refused the Request based on an unreasonable interpretation of the law." Of course, I would think that by prevailing, one obviously would not have denied a request "willfully" or with "wanton disregard" or "otherwise acted in bad faith," yet the court felt the need to actually mention it separately.

Regardless, it was good news for the Coroner, but I wonder whether winning was the key and the summary of the criteria was simply support, or is the court implying that a requester can get counsel fees under some theory even if he or she loses?

(For a short case where the applicable portion was even shorter, this post turned out to be longer than I expected.)

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