

Attorney Fees Awarded in Right to Know Case

Gretchen K. Love

Campbell, Durrant & Beatty, P.C.

(As prepared for and published in the PELRAS Newsletter
for the Pennsylvania League of Cities and Municipalities)

In drafting settlement agreements, many municipalities incorporate confidentiality clauses which attempt to limit the ability of either party to discuss the terms of the agreements. For public entities, confidentiality clauses are typically drafted with reference to the Sunshine Act/Right to Know Act to acknowledge the legal requirement to disclose information in response to a valid request. This is because settlement agreements are viewed as public records subject to disclosure under the Sunshine Act/Right to Know Law. *See e.g. Tribune-Review Pub. Co. v. Westmoreland County Housing Authority*, 833 A.2d 112, 116-117 (Pa. 2003).

In Newspaper Holdings, Inc. t/d/b/a New Castle News v. New Castle Area School District *et al.*, Case No. 06-1648 (Pa. Commw. 2006), New Castle Area School District attempted to deny the New Castle News' request for a copy of a settlement agreement. The School District's denial was based on a District Court's order, which sealed documents relating to the litigation, including the settlement agreement, from the public. Specifically, the District Court's order provided that the record was to be sealed "pursuant to the parties' agreement for confidentiality." The agreement for confidentiality provided, in pertinent part, that the parties "covenant and agree to keep the terms and amount of this settlement confidential, excepting only disclosure required to be made by the School District pursuant to the Sunshine Act, Right to Know Act and other similar laws."

In denying New Castle News' right to know request, the School District posited that the District Court's order precluded disclosure under Section 66.1 of the Right to Know Act. Section 66.1 excludes from the definition of "public record" access to any publication "which is prohibited... by order or decree of court." 66 P.S. § 66.1.

The Commonwealth Court disagreed with the rationale of the School District finding that the District Court's order did not "require confidentiality in all circumstances, but allowed disclosure in cases when such did not violate the confidentiality provision of the parties' Settlement Agreement." Accordingly, the Commonwealth Court awarded reasonable attorney fees to New Castle News under Section 66.4 (a)(1) of the Right to Know Act, which permits the award of attorney fees where the public agency willfully and wantonly disregarded access to a public record.