

RIGHT-TO-KNOW UPDATE

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

The Commonwealth Court has ruled that a document request was not sufficiently specific and that the materials requested related to a proposed expansion of the Pennsylvania Convention Center are not within the meaning of “public record” under the Right-to-Know Act. Berman v. Pennsylvania Convention Center Authority, 901 A.2d 1085 (Pa. Commw. 2006). A “public record” is defined in Section 1 of the Act as:

any account, voucher or contract dealing with the receipt or disbursement of funds by an agency or its acquisition, use or disposal of services or of supplies, materials, equipment or other property and any minute, order or decision by an agency fixing the personal or property rights, privileges, immunities, duties or obligations of any person or group of persons...

65 P.S. §§ 66.1-66.9.

The Pennsylvania Convention Center Authority received a request for the “[t]he most recent plans, construction, and design documents depicting the Pennsylvania Convention Center’s westerly expansion to Broad Street in Philadelphia, Pennsylvania including floor plans for each floor, building sections, and building elevations.” The Authority did not respond and Berman filed exceptions to the deemed denial. The Authority then issued a detailed written final determination on the exceptions. The Authority concluded that the request lacked the specificity required by Section 2(c), 65 P.S. § 66.2(c): “A written request should identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested...” The Authority also concluded that the requested records sought were not within the meaning of “public records” under the Act, noting the materials were pending, incipient proposals or plans as to which the Authority had yet to make a decision. A “public record” is defined in Section 1 of the Act as “any account, voucher or contract dealing with the receipt or disbursement of funds by an agency or its acquisition, use or disposal of services or of supplies, materials, equipment or other property and any minute, order or decision by an agency fixing the personal or property rights, privileges, immunities, duties or obligations of any person or group of persons.” Berman appealed and the Commonwealth Court agreed with both of the Authority’s conclusions.

The Commonwealth Court held that the request was more in the nature of a discovery request than a proper request for public records under the Act. “Because the lack of any limitation on this general discovery-type request it conceivably could reach thousands of documents.” The Court found that some aspects of the request were more specific including “floor plans for each floor, building sections and building elevations” for the proposed expansion such that sufficient facts were provided to determine the type of record being requested.

However, the Court affirmed the Authority's denial of Berman's request because the requested materials are not within the meaning of the term "public record." The requested materials were "pre-decisional in nature" because the Authority had not yet made a final decision on the expansion of the Convention Center. Since no decision had been made and construction plans were therefore subject to change they are in the nature of pre-decisional proposals, i.e. internal deliberative aspects of agency decision making that have been held not to be subject to public scrutiny. In other words, the Court found the requested construction plans reflect only internal deliberations, not decisions. The Court further found that the requested documents are the type of communication that cannot be an account, voucher or contract or a decision document fixing rights or obligations of anyone.