

WEST PENNSBORO TOWNSHIP

2150 Newville Road, Carlisle, PA 17015-7746 • Phone: (717) 243-8220 • Fax: (717) 243-1592



March 24, 2009

Executive Director
Office of Open Records
400 North Street
Harrisburg, PA 17120

RE: REQUEST FOR ADVISORY OPINION

Dear Ms. Mutchler,

I am requesting your opinion on a right-to-know issue. The issue I wish to have an opinion on has come up in discussion via email with a resident, but the information has not yet been officially requested, but very much anticipated. There is no legal action pending with this request.

This past year, West Pennsboro Township received a matching grant from DCNR (\$125,000) for expansion of our existing municipal park. The matching portion of the grant was to be monies from our Developers Fund, a portion from General Fund, and "in kind" match of materials and labor provided by Township Employees.

At this time, the project is ongoing, and final figures have yet to be determined. Until the grant is closed, and only then can I determine final layout costs that would be accurate. Since West Pennsboro Township bid the project with materials being provided by West Pennsboro Township, we do not have to ability to determine fair market value of these materials until actual purchase of the materials occurs.

I would like to have an opinion as to whether this information would require release in an "incomplete form". At time of grant closure, this information would then be in, or near, a state of completion.

I would like to thank you in advance of your assistance regarding this matter. If you should have any questions regarding this correspondence, please do not hesitate to contact me.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "John M. Epley".

John M. Epley
West Pennsboro Township
Manager

cc: file-Right-To-Know Law



October 27, 2009

John M. Epley, Manager
West Pennsboro Township
2150 Newville Road
Carlisle, PA 17015-7746

Re: Advisory Opinion Request

Dear Mr. Epley:

Thank you for your letter asking for an Advisory Opinion pursuant to the Right-to-Know Law, 65 P.S. §§67.101, *et seq.*, (RTKL). I have attached a copy of your letter for your convenience.

You asked the OOR to interpret if the RTKL would require release of information on an ongoing project in an "incomplete form" or if the release of information that may be requested could be withheld until the project completion.

Please be advised that the OOR has decided not to grant this request for an Advisory Opinion at this time. We are declining to accept this request because *the request seeks response to general questions without presenting sufficient specific facts to which the law may be applied*. However, the OOR provides the following guidance with respect to the questions you pose.

However, generally speaking, financial records are the most public of all records. The RTKL defines the term "record" as "Information, regardless of physical form or characteristics, that documents a transaction or activity of an agency and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of an agency. The term includes a document, paper, letter, map, book, tape, photograph, film or sound recording, information stored or maintained electronically and a data-processed or image-processed document."

Specifically, the term "financial record" is defined in the RTKL as: "Any of the following: (1) Any account, voucher or contract dealing with: (i) the receipt or disbursement of funds by an agency; or (ii) an agency's acquisition, use or disposal of services, supplies, materials, equipment or property; (iii) the salary or other payments or expenses paid to an officer or employee of an agency, including the name and title of the officer or employee; (iv) a financial audit report. The term does not include work papers underlying an audit."

The statutory exceptions to the law expressly do not apply to financial records except in limited circumstances (personal security, homeland security, public safety, medical information, personal information, criminal investigation records and non-criminal investigation records.). 65 P.S. § 67.708(c). This means that if the records fit within the definition of financial records, they can only be withheld if one of the eight identified exemptions apply.

The kinds of records you describe – either the Department of Conservation and Natural Resources grant itself, your agency’s budget for the municipal park expansion project or anything else reflecting an account, voucher or contract dealing with the receipt or disbursement of funds or the acquisition, use or disposal of services, supplies, materials, equipment or property are most likely public records and may not be withheld. But of course, you must evaluate every request specifically and consult with your solicitor, as there might be nuances that impact this general rule.

Thank you for your inquiry. We will reflect this response on the OOR website.

Respectfully,

A handwritten signature in black ink, appearing to read 'mw', with a long, sweeping horizontal stroke extending to the right.

Corinna V. Wilson
Chief Counsel