

# Bond Case Briefs

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## **RIGHT TO KNOW LAW - PENNSYLVANIA**

### **Municipality of Monroeville v. Drack**

**Commonwealth Court of Pennsylvania - July 16, 2013 - Not Reported in A.3d - 2013 WL 3716891**

This was an appeal from the Allegheny County Court of Common Pleas' (trial court) order that denied access to speed-timing device calibration information in possession of a third-party contractor requested pursuant to the Right-to-Know Law (RTKL). The Municipality of Monroeville from whom the information was requested, asserted it did not possess the records. Rather, the information was in the possession of a private contractor, YIS/Cowden Group, Inc. (YIS). Although it reasoned the records pertained to a governmental function, the trial court held the information was not accessible under the RTKL because it did not directly relate to a governmental function. Based upon its case law, the appeals court reversed the trial court's holding in that regard.

Ultimately, Municipality is responsible for the accurate calibration of the speed timing devices it elects to use. Municipality's contract with YIS for calibration services is necessary to perform its speed law enforcement role. Therefore, this contracted function is inseparable from a governmental purpose. Consequently, the appeals court agreed with the trial court's conclusion on this prong.

The court next considered whether the records sought directly related to the performance of the governmental function. The records cannot be incidental to preparation for the contract, or to the contractor's day-to-day operations unrelated to the services performed. The records must "directly relate" to carrying out the governmental function.

Training records of how technicians are trained to calibrate the speed timing devices directly relate to the function of calibrating the devices. How the devices are calibrated is relevant to calibration services, and training technicians to calibrate them is necessarily and directly tied to the calibration. Accordingly, the court held that the training materials, including notes, directly related to the governmental function, and are reachable under Section 506(d).

However, that did not end the inquiry. Only "public records" that are not protected by any exemption are accessible under the RTKL. During Municipality's appeal before the trial court, YIS claimed the training notes are exempt as proprietary. Municipality put the trial court on notice of this defense in its Petition for Review, and briefed it as directed by the trial court after YIS raised the exception.

In light of the foregoing, the court remanded to the fact-finder (here, the trial court) to consider the affirmative defenses preserved in the proceedings before it, specifically the proprietary exemption.