

Bond Case Briefs

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Finnerty v. Pennsylvania Department of Community and Economic Development

Commonwealth Court of Pennsylvania - April 25, 2019 - A.3d - 2019 WL 1797668

Requester of records petitioned for judicial review of final determination by Office of Open Records under the Right-to-Know Law (RTKL) following partial denial of request for documents exchanged between Department of Community and Economic Development and outside contractors.

The Commonwealth Court held that:

- Record clearly established contractual relationship between contractor and department, and
- In a matter of first impression, predecisional, deliberative information shared between department and contractor constituted information “internal to the agency” under Right-to-Know Law.

In order to claim the internal, predecisional deliberation exception under the Right-to-Know Law (RTKL), the agency, which bears the burden of proof by a preponderance of the evidence, must show: (1) the information is internal to the agency, (2) the information is deliberative in character, and, (3) the information is prior to a related decision, and thus, predecisional.

Record clearly established contractual relationship between Department of Community and Economic Development and outside consulting firm for purposes of implementing city recovery plan pursuant to Act 47; department issued request for proposals (RFP) seeking to continue firm’s recovery plan for city, and firm’s response, which was incorporated into contract, noted that it would subcontract legal and financial work and that subcontractors would be paid by department.

Predecisional, deliberative information that was shared between Department of Community and Economic Development and non-agency consultant, with whom department contracted for purposes of preparing recovery plan for city’s financial problems, constituted information “internal to the agency” under Right-to-Know Law, and thus, withholding of records from requester was proper; frank exchange of ideas and opinions between department and consultant facilitated administrative decision making process and assisted department in making fully informed decisions.