

# **Bond Case Briefs**

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## **PUBLIC RECORDS - MAINE**

### **Blue Sky West, LLC v. Maine Revenue Services**

**Supreme Judicial Court of Maine - August 20, 2019 - A.3d - 2019 WL 3926146 - 2019 ME 137**

Taxpayer brought action against Department of Administrative and Financial Services (DAFS) and Maine Revenue Services (MRS), with county named as a party in interest, seeking a declaratory judgment that records associated with MRS's valuation of taxpayer's wind power project in unorganized territory of county were not subject to disclosure pursuant to county's Freedom of Access Act (FOAA) request.

County filed a cross-claim seeking judicial review of DAFS's denial of its records request from a subsequent year. The Superior Court entered a judgment concluding that records from first but not second year were subject to disclosure. County appealed and taxpayer cross-appealed.

The Supreme Judicial Court held that:

- Records from first year lacked the requisite labeling to qualify for FOAA exemption for records that were designated confidential by statute;
- Records from first year did not qualify for FOAA exemption for trade secrets; and
- Records from second year comprised clearly labeled confidential and proprietary information protected from disclosure.

Supreme Judicial Court would review trial court's judgment, not as a summary judgment, but as one that rested on the stipulated facts and the court's evaluation of those facts, in Freedom of Access Act (FOAA) dispute in which taxpayer sought a declaratory judgment and county, as the requestor and a named interested party, filed cross-claim seeking judicial review of Department of Administrative and Financial Services' (DAFS) denial of its request, even though parties presented their contentions nominally as cross-motions for summary judgment, where parties did not cite the summary judgment standard and did not assert that there were factual disputes that needed to be adjudicated other than through application of dispositive legal principles to facts garnered from the stipulated record.

Trial court was entitled to accept additional evidence and adjudicate the matter de novo, rather than act in its usual intermediate appellate capacity in reviewing final agency action, on taxpayer's appeal from Department of Administrative and Financial Services' (DAFS) grant of county's Freedom of Access Act (FOAA) request concerning records of valuation of taxpayer's wind power project in unorganized territory of county; FOAA did not require DAFS to conduct an adjudicatory hearing prior to determining whether the requested records needed to be made available to county for inspection, the administrative record was devoid of any factual findings, and the DAFS summarily stated its decision.

Supreme Judicial Court would directly review the trial court's judgment and not the decision of Department of Administrative and Financial Services (DAFS) on taxpayer's appeal from Department of Administrative and Financial Services' (DAFS) grant of county's Freedom of Access Act (FOAA) request concerning records of valuation of taxpayer's wind power project in unorganized territory of

county, where, with the parties' acquiescence, the trial court chose to address taxpayer's request for review de novo rather than in an appellate capacity.

Records associated with Maine Revenue Services' (MRS) valuation of taxpayer's wind power project in unorganized territory of county were not exempt from disclosure to county under Freedom of Access Act (FOAA) exemption for records that were designated confidential by statute, where taxpayer's parent company failed to clearly label records as proprietary and confidential at time records were provided to MRS, even though taxpayer sent letters to Department of Administrative and Financial Services (DAFS) months later identifying the records as confidential.

Records associated with Maine Revenue Services' (MRS) valuation of taxpayer's wind power project in unorganized territory of county were not exempt from disclosure to county under Freedom of Access Act (FOAA) as containing trade secrets within meaning of rules governing privileged material, where records did not contain the agreements between taxpayer and its vendors and only set forth an itemized list of project costs that were paid to vendors pursuant to negotiated written agreements that required taxpayer and vendors to maintain the confidentiality of the agreements' terms.