

# Open Records Battle Resolved ... But The War Rages On



criminal court documents, but also as potentially filling a gap in still-developing RTKL case law. Open records advocates anticipated a favorable result for the plaintiffs that could lead to added government transparency. Private businesses watched with interest as the case progressed for two years, hoping the court's opinion would support increased protection for agency records, such as government contracts or vendor invoices, which may include commercial business information.

As so often happens, the parties settled the lawsuit in October 2022 without the much-anticipated court decision. Under the settlement agreement, York County agreed to establish a new (and publicly available) internal policy setting forth the types of records that are accessible by the public, as well as the methods, fees and timing for responding to records requests. York County agreed to pay the plaintiffs legal costs, and all mandates of the settlement were fulfilled and implemented by the end of 2022.

So, what does the resolution of the York County case mean for business owners in Pennsylvania? Currently, not much. Although the settlement agreement established practices for RTKL requests to the York County Clerk of Courts, it did little to provide any precedent for other public records disputes across the Commonwealth. Litigants must continue to cite the relatively thin library of RTKL decisions in state courts — or rely by analogy on the merely instructive federal decisions governing FOIA.

Pennsylvania businesses should keep an eye on how the Commonwealth continues to shape RTKL so that they may remain in compliance while also safeguarding valuable trade secrets and protecting their business interests. We will do our part to keep you updated.

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In the *York Daily Record* case, statewide media organization Spotlight PA joined several local media sources in suing the Clerk of Courts for allegedly withholding public records, redacting nonconfidential information from disclosed documents, and engaging in practices that blocked the public's access. The Clerk of Courts countered that court personnel had made a few isolated errors when responding to specific requests but had otherwise complied with the open records requirements established by the Administrative Office of Pennsylvania Courts (AOPC). Specifically, York County asserted that, under the RTKL and the AOPC's Rules of Judicial Administration, the court was not required to release the records in question because only "financial records" of a judicial agency — for example, account statements, contracts, invoices or other documentation of the receipt or expenditure of funds appropriated to the court — are subject to disclosure in response to open records requests.

Open records officers in state and local agencies viewed the York County case not only as adjudicating the narrow question of the media's access to

The right to access public records in Pennsylvania is governed by the Right to Know Law (RTKL), the Commonwealth's version of the federal Freedom of Information Act (FOIA). RTKL is critical for both discovering and protecting public records, but a legal battle over RTKL's scope has been waged in state courts since the law was enacted just over 15 years ago. As noted in our May 2021 Legal Brief (Vol. XXXIV, No. 5), *York Daily Record et al. v. Byrnes*, arguably the most notable RTKL case to date, involved the York County Clerk of Courts defending an action in federal court in Harrisburg by local news sources seeking to gain access to previously sealed court records. This Legal Brief provides an update on that litigation.