



EDUCATION PRACTICE

# ALERT

## RIGHT TO KNOW LAW: TAX CERTIFICATIONS

By A. Kyle Berman

On December 4, 2009, Judge Bernard A. Moore of the Montgomery County Court of Common Pleas issued an order overturning a decision by the Office of Open Records (OOR). Although a county court, this decision could impact the way taxing agencies interact with their tax collectors.

Prior to January 1, 2009, the effective date of the new Right to Know Law (RTKL), businesses involved in real estate closings would generally request “tax certifications” to obtain a reliable statement of the amount of taxes owed on a property. The cost of these certifications varied by tax collector and sometimes by taxing agencies, but ranged anywhere from \$10 to \$50. For some school districts, these certifications were a significant source of income.

With the new RTKL, at least one company decided to vastly reduce or eliminate this expense by instead directing Right to Know requests to the various taxing agencies. The requests were for documents such as ‘print-screens’ of tax information.

Many taxing agencies, including Lower Merion, chose to fight this practice and denied the requests. Thereafter, in its defense to the OOR, Lower Merion claimed the Tax Collector was neither an arm of the township, nor – under the *Hykel* case<sup>1</sup> – itself an agency bound by the terms of the RTKL. Therefore, the requester only had a right to those records on-hand at the township, but could not force

the township to obtain further records from the Tax Collector. The OOR disagreed, saying that while a Tax Collector is admittedly not an agency subject to the RTKL, the township had a duty to obtain the records and supply them to the requester. The township appealed to the Montgomery County court.

In his opinion reviewing the OOR’s decision, Judge Moore (who was also the trial judge in *Hykel*), overruled the OOR’s findings. He found that because the Tax Collector is only required by statute to provide the taxing agency with certain information, and then only on a particular schedule, the township only had to provide the information it already possessed.

Some tax collectors have a practice of giving more tax information to the taxing bodies than is required under the law, and giving it sooner. This gives the agency more information relating to its revenues, but has also made that information subject to RTKL requests where it otherwise would not be. Hereafter, each agency in this situation will need to weigh how it would like to confront this issue.

Please contact A. Kyle Berman at 610.397.7980 or [aberman@foxrothschild.com](mailto:aberman@foxrothschild.com) or any member of the Education Law Group on [www.foxrothschild.com](http://www.foxrothschild.com) should you have further questions or would like Fox Rothschild to assist you in responding to similar Right to Know issues.

<sup>1</sup> Current Status Inc. v. Hykel, 778 A.2d 781 (Pa. Commw. 2001)

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