

## Commonwealth Confirms that the Donor Exemption only Applies to Natural Persons and Not Corporations

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In *California U. of Pennsylvania v. Bradshaw*, 1491 C.D. 2018, 2019 WL 2305947, (Pa. Cmmw. May 31, 2019), the Commonwealth Court affirmed the Office of Open Records' conclusion that "only the identities of natural persons are exempt from disclosure under Section 708(b)(13) of the RTKL."

In this case, the Requester sought all records related to donations from a Corporation to the Foundation that manages donations of behalf of the University for a term of several years. The University denied the Request, arguing that the requested donation records are exempt from RTKL access pursuant to Section 708(b)(13) of the RTKL, 65 P.S. § 67.708(b)(13).

Section 708(b)(13) of the RTKL provides that the following records are exempt from disclosure:

Records that would disclose the identity of an *individual* who lawfully makes a donation to an agency unless the donation is intended for or restricted to providing remuneration or personal tangible benefit to a named public official or employee of the agency, including lists of potential donors compiled by an agency to pursue donations, donor profile information or personal identifying information relating to a donor.

65 P.S. § 67.708(b)(13) (emphasis added).

Since the donor in this case was a corporation, the question was whether corporations are included within the definition of "individual" as used in the RTKL. The University argued that because the word "individual" is not defined in the RTKL, it must be construed to include corporations as well as natural persons. The Commonwealth Court rejected this argument.

The Court began its analysis by reviewing the definitions contained in the Statutory Construction Act. While the RTKL does not define "individual," Section 1991 of the Act defines "individual" as a "natural person." 1 Pa. C.S. § 1991. The Act also defines "person" as "a corporation, partnership, limited liability company, business trust, other association, government entity (other than the Commonwealth), estate, trust, foundation or natural person." *Id.* Importantly, a corporation is a person, but not an individual under the Act and Section 1991 of the Act provides that these definitions should be used when interpreting statutes, unless context clearly indicates otherwise.

The court found that the surrounding context confirmed that RTKL intended to use the Act's definition of "individual" (*i.e.*, natural person) because the RTKL distinguishes between "individuals" and "persons" and that this distinction is deliberate. For example, when the term "individual" is used in Section 708 of the RTKL, it applies to natural persons only. See Section 708(b)(5) ("an individual's medical, psychiatric or psychological history"); Section 708(b)(7)(iii) ("test scores of individuals"); Section 708(b)(16)(vi)(E) ("life or physical safety of an individual,"); Section 708(b)(28)(i) ("an individual who applies for or receives social services,").

On the other hand, the Court determined that when the term "person" is used in the RTKL, it applies to phrases concerning both natural persons and other entities such as corporations. See Section 708(b)(16)(vi)(B) ("[d]eprive a person of the right to a fair trial or an impartial adjudication"); see *also* Section 708(b)(29) ("[c]orrespondence between a person and a member of the General Assembly").

Accordingly, the Court found that the context surrounding Section 708(b)(13) of the RTKL did not clearly indicate that the General Assembly intended to depart from the definitions set forth in Section 1991 of the Act. To the contrary, the court concluded that the context confirms that term “individual” in Section 708(b)(13), as in other RTKL exceptions, means “natural person,” as set forth in the Act. Therefore, the court affirmed the OOR’s determination that the records were not exempt under Section 708(b)(13) because the request sought records relating to donations by a corporation.

Given the sensitivity that accompanies soliciting donations, all officials and administrators should be aware that the donor exception set forth in Section 708(b)(13) will only apply to individuals and not to corporations.

If you have any questions or comments, please do not hesitate to contact Chris Voltz or any of the other Municipal and School Attorneys at Tucker Arensberg, P.C.