

OOB Holds that Zoning Permit Application is not Exempt under the Pennsylvania Uniform Construction Code

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The 30 exceptions set forth in Section 708(b) of RTKL are not an exhaustive list of records that can or must be withheld from disclosure under the RTKL. Instead, Section 102 of the RTKL contains a catch-all, stating that any record that is “exempt from being disclosed under any Federal or State law or regulation or judicial order or decree” is not a public record under the RTKL. 65 P.S. § 67.102. See also 65 P.S. § 67.306 (“Nothing in this act shall supersede or modify the public or nonpublic nature of a record or document established in Federal or State law, regulation or judicial order or decree”).

This blog will identify laws that Open Records Officers should know about to avoid accidentally disclosing records that must remain private. One example that municipal Open Records Officers should be aware of is set forth in the Pennsylvania Uniform Construction Code (“UCC”). Section 403.85(e) of the UCC provides, in part:

The Department [of Labor and Industry], a municipality and a third-party agency acting on behalf of a municipality may prohibit release of *applications received, building plans and specifications, inspection reports and similar documents* to the public under ... the Right-to-Know Law....

34 Pa. Code § 403.85(e). The UCC applies to:

the construction, alteration, repair, movement, equipment, removal, demolition, location, maintenance, occupancy or change of occupancy of every building or structure which occurs on or after April 9, 2004, and all existing structures that are not legally occupied.

34 Pa. Code § 403.1. Read together, the UCC exempts from disclosure under the RTKL applications received, building plans and specifications, inspection reports and similar documents in the municipality’s possession that are related to the construction, alteration, repair, movement, equipment, removal, demolition, location, maintenance, occupancy or change of occupancy of every building or structure which occurs on or after April 9, 2004.

The scope of the UCC was recently addressed by the Office of Open Records in *Bertil v. City of Philadelphia Department of Licenses and Inspections*, AP 2019-0675 (May 29, 2019). In this case, the Requester sought a certain zoning permit application.

Pursuant to Section 403.85(e) of the UCC, the OOR has denied requests for copies of building permit applications building plans, floor plans, site plans inspector reports and all final inspections. However, not all permit applications are within the scope of and protected by the UCC. In *Schranghamer v. Falls Twp.*, AP 2016-0348, the OOR stated that while building permit applications are protected by the UCC, other permit applications are not. Similarly, in *Walkauskas v. Town of McCandless*, AP 2013-1195, the OOR found that applications for zoning permits are not exempt under the UCC. Accordingly, in *Bertil*, the OOR held that the requested zoning permits were public records and ordered their disclosure because nothing in the UCC expressly applies to zoning matters.

The determination as to whether records are covered by the UCC is fact sensitive and determinations must be made on a case by case basis. Accordingly, Open Records Officers, should work with their solicitors and employees in their agency’s permitting departments before making a decision to release documents that may be exempt under the UCC or other

exception or law.

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.