

## OOB Confirms that Records Created or Obtained through the Safe2Say Something Program are Not Public Records

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In *Maciejewski v. Southern Columbia Area School District*, AP 2019-1094 (Sept 16, 2019), the Request sought all emails between 10 District email addresses over a 14-day time frame. The District argued that certain responsive emails were subject to confidentiality provisions contained in the Public School Code.

With regard to the Pennsylvania Attorney General's Safe2Say Something Program, the Public School Code provides as follows:

Section 1304-D. Confidentiality.

(a) Disclosure. — A record created or obtained through the implementation or operation of the [Safe2Say Something] program shall be confidential. A person may not disclose a record of the program except:

(1) To provide notice to the appropriate law enforcement agency, school entity and organization ....

(2) Upon order of the court as provided in section 1306-D.

(b) Right-to-Know. — A record of the program: (1) shall not be subject to the act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law ....

(c) Penalty. — An individual who discloses a record in violation of this section commits a misdemeanor of the third degree.

24 P.S. 13-1304-D.

Under the RTKL, a record is not a public record (and subject inspection and copying) if it is exempt from being disclosed by any Federal or State law or regulation or judicial order or degree. See 65 P.S. § 67.102 (definition of "public record"). Accordingly, because Section 1304-D of the School Code prohibits the release of Safe2Say Something records, the OOB concluded that emails sent from the server for the Pennsylvania Attorney General's Safe2Say Something Program notifying the District that tips had been submitted to the hotline were exempt.

This case is important because while agencies sometimes have discretion to provide otherwise exempt records, they do not have discretion when publication is prohibited by law, like the School Code. Accordingly, agencies should work with their solicitors prior to releasing records to confirm that disclosure is permitted.

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.