

PRESS RELEASE

This release is to provide important information and context missing from the article published by Spotlight PA and to explain Tulpehocken Township's reasoning for denying access to drafts of a zoning ordinance amendment that the Township's professional consultants were in the process of preparing. Under Pennsylvania's Right-to-Know Law, documents are presumed to be public records, accessible to the public upon request, unless they fall under one of the exceptions to disclosure listed in the law. Draft ordinances fall within one of the listed exceptions to public disclosure and therefore are not required to be disclosed until the Township takes official action to begin the enactment process. Specifically, Section 708(b)(9) of the Right-to-Know Law provides that the draft of a bill, resolution, regulation, statement of policy, management directive, ordinance or amendment thereto prepared by or for an agency is exempt from access by a requestor. While this is what the law provides, in certain circumstances the Township could choose to disclose documents even when the Township is not required to disclose them under the Right-to-Know Law. However, there are several practical reasons for the Township not to disclose early versions of potential ordinances. Public disclosure of incomplete, partial, and unrefined draft ordinances would provide an unhelpful, confusing version of information which may never reach a level of development to be seriously considered for enactment. During the document development stage of the process, the Township should be able to work freely with legal counsel, the zoning officer, and the municipal engineer to prepare and revise drafts until the Township determines that it has an Ordinance which may address the needs of the Township. During this time, the Township, in dialogue with its consultants, may review multiple versions of a proposed ordinance. If the Township was required to provide these drafts to any citizen makes a Right-to-Know request for them, it would create needless confusion and delay as the Township would need to explain and justify each revision of the draft regardless of how

minor and regardless of whether the concepts under discussion have only a slight chance of being considered for enactment.

The article published by Spotlight PA involves a Right-to-Know Law request that was made by a resident due to the Board of Supervisors including the discussion of the working draft zoning ordinance amendment on its agenda. The Board was required by the Sunshine Act to list on its agenda the working draft ordinance concerning agritourism, short term rentals, and agritainment in order to discuss the latest draft and how it could be revised to better address the needs of the Township. Without having the topic on the agenda, no discussion could have occurred. The Sunshine Act permits residents to make public comments on items contained on the agenda. This occurred at the meeting, and residents offered insightful comments on the topics addressed in the proposed ordinance. However, the Sunshine Act does not require the Board to provide to citizens all documents the Board receives for review, even if those documents are discussed publicly by the Board. To do so would ignore the exceptions to disclosure contained in the Right-to-Know Law. If every document received by the Board of Supervisors were required to be distributed, it would need to provide every bid for equipment purchases or outside work prior to awarding a contract, even though the Right-to-Know Law only requires disclosure of such documents after a contract is awarded or rejected by official action. Similarly, disclosure of every document would require production of draft budgets during the review process. Such a result risks lengthening time sensitive processes and delaying required actions.

Further, as per the Second Class Township Code, all residents have the opportunity to examine all draft ordinances prior to any approval decision by the Board of Supervisors. The Township is required by the Second Class Township Code to advertise its intent to consider approval of a draft ordinance

prior to the publicly advertised meeting when approval of the draft ordinance will be considered. The advertisement of the proposed ordinance informs the public that the proposed ordinance is available for review and instructs the public how it may receive a copy for review. In addition, since the request in this matter dealt with a zoning ordinance amendment, Pennsylvania's Municipalities Planning Code (MPC) specifically provides for two published public notices and a public hearing before the governing body of a municipality may consider enactment of a zoning ordinance amendment. The MPC requires a zoning ordinance to be available for inspection when the ordinance is advertised. At that time, the resident may inspect and review the ordinance, giving the resident ample time to review the ordinance and prepare any comments he or she may have on the proposed zoning ordinance amendment prior to the public hearing and consideration of enactment.

In this matter, the Right-to-Know Law requests being challenged by the Township are those that require production of documents which are plainly exempt from mandatory disclosure pursuant to the Right-to-Know Law. Furthermore, there are significant practical concerns about publicly distributing incomplete, partial, and unrefined early drafts of potential ordinances. Furthermore, production of the requested documents would exceed the legal requirements mandated by the Second Class Township Code and the Municipalities Planning Code. For these reasons, the Township determined that it was in the Township's best interest to enforce the statutory provisions of the Right-to-Know Law and not disclose the draft ordinance.