

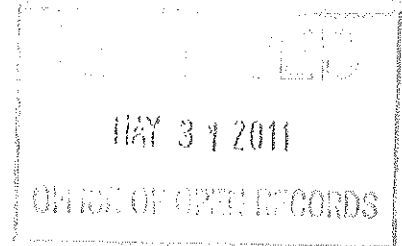


1600 Market Street  
25<sup>th</sup> Floor  
Philadelphia, PA 19103  
215.391.4300 • Fax 215.391.4350  
www.bowmanltd.com

*A certified Minority Business Enterprise*

Crystal M. Lacey, Esquire  
[clacey@bowmanltd.com](mailto:clacey@bowmanltd.com)  
215.391.4324 direct dial

May 26, 2011



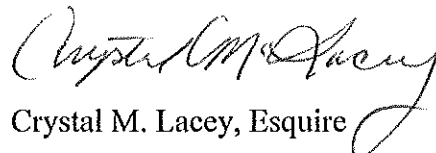
Geoffrey R. Johnson, Esquire  
Law Offices of Sprague & Sprague  
135 South 19<sup>th</sup> Street  
Suite 400  
Philadelphia, PA 19103

**RE: *Pennsylvania Convention Center Authority v. Geoffrey Johnson***  
***May Term, 2011, Case ID# 02877***

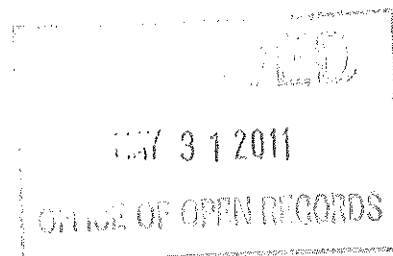
Dear Mr. Johnson:

Enclosed please find the Notice of Appeal that we filed on behalf of our client in reference to the above captioned matter.

Sincerely,

  
Crystal M. Lacey, Esquire

CML/vb  
Enclosures  
cc: Audrey Buglione, Esquire



Court of Common Pleas of Philadelphia County  
 Trial Division  
**Civil Cover Sheet**

For Prothonotary Use Only (Docket Number)  
**MAY 2011** **002877**  
 E-filing Number: 1105042170

MAY 31 2011  
 OFFICE OF OPEN RECORDS

PLAINTIFF'S NAME PENNSYLVANIA CONVENTION CENTER AUTHORITY		DEFENDANT'S NAME GEOFFREY JOHNSON	
PLAINTIFF'S ADDRESS 1101 ARCH STREET PHILADELPHIA PA 19107		DEFENDANT'S ADDRESS 135 SOUTH 19TH STREET SUITE 400 PHILADELPHIA PA 19103	
PLAINTIFF'S NAME		DEFENDANT'S NAME	
PLAINTIFF'S ADDRESS		DEFENDANT'S ADDRESS	
PLAINTIFF'S NAME		DEFENDANT'S NAME	
PLAINTIFF'S ADDRESS		DEFENDANT'S ADDRESS	
TOTAL NUMBER OF PLAINTIFFS 1	TOTAL NUMBER OF DEFENDANTS 1	COMMENCEMENT OF ACTION <input type="checkbox"/> Complaint <input type="checkbox"/> Petition Action <input checked="" type="checkbox"/> Notice of Appeal <input checked="" type="checkbox"/> Writ of Summons <input type="checkbox"/> Transfer From Other Jurisdictions	
AMOUNT IN CONTROVERSY <input type="checkbox"/> \$50,000.00 or less <input type="checkbox"/> More than \$50,000.00	COURT PROGRAMS <input type="checkbox"/> Arbitration <input type="checkbox"/> Mass Tort <input type="checkbox"/> Commerce <input type="checkbox"/> Settlement <input type="checkbox"/> Jury <input type="checkbox"/> Savings Action <input type="checkbox"/> Minor Court Appeal <input type="checkbox"/> Minors <input type="checkbox"/> Non-Jury <input type="checkbox"/> Petition <input type="checkbox"/> Statutory Appeals <input type="checkbox"/> W/D/Survival <input checked="" type="checkbox"/> Other: AGENCY APPEAL		
CASE TYPE AND CODE 51 - MISC ADMINISTRATIVE AGENCY			
STATUTORY BASIS FOR CAUSE OF ACTION			
RELATED PENDING CASES (LIST BY CASE CAPTION AND DOCKET NUMBER)		IS CASE SUBJECT TO COORDINATION ORDER? YES    NO	
		FILED PRO PROTHY MAY 25 2011 M. TIERNEY	
TO THE PROTHONOTARY: Kindly enter my appearance on behalf of Plaintiff/Petitioner/Appellant: <u>PENNSYLVANIA CONVENTION CENTER AUTHORITY</u> Papers may be served at the address set forth below.			
NAME OF PLAINTIFFS/PETITIONER'S/APPELLANT'S ATTORNEY MICHAEL A. BOWMAN		ADDRESS BOWMAN KAVULICH, LTD 1600 MARKET ST 25TH FLOOR PHILADELPHIA PA 19103	
PHONE NUMBER (215) 391-4300	FAX NUMBER (215) 391-4350		
SUPREME COURT IDENTIFICATION NO. 81762		E-MAIL ADDRESS mbowman@bowmanltd.com	
SIGNATURE OF FILING ATTORNEY OR PARTY MICHAEL BOWMAN		DATE SUBMITTED Wednesday, May 25, 2011, 12:26 pm	



# **EXHIBIT A**



- 3) Any reports, analyses, memoranda and/or documents relating to the Customer Satisfaction Agreement and/or violations of the customer Satisfaction Agreement.

- .....
- 5) Any records of the retention of, billings from, or payment for attorneys or legal services arising out of any subpoenas or information requests directed to the Pennsylvania Convention Center Authority, the Pennsylvania Convention Center and/or any of their Board Members, Officers, Managers, Agents or Employees by a law enforcement agency, including but not limited to, the Department of Justice, the Office of the United States Attorney, the Pennsylvania Office of Attorney General, or the Federal Bureau of Investigation for the period 2006 to present.

("Request"). After extending the deadline to respond, the Authority, on March 24, 2011, denied Part 3 as not sufficiently specific and Part 5 as seeking records protected by attorney-client privilege.

On March 30, 2011, the Requester appealed to the OOR, asserting Part 3 is sufficiently specific because the referenced Agreement has been in effect since 2003 and the Request is therefore limited in duration. He also challenged application of attorney-client privilege, asserting records could be redacted, and noted that no records reflecting retention of counsel, which would not be protected, were provided.

The OOR invited both parties to submit information in support of their respective positions. During the appeal, the Authority provided records it considered responsive to Part 3. The Requester found the response incomplete as it did not include documents or communications with each of the unions that are subject to the agreement. The Authority also advised that it was not aware of any engagement and/or retention letters responsive to Part 5 and that it would, thus, be "very difficult (if not impossible) to identify and produce legal bills similarly responsive to [Part 5]." The Requester challenged this response, asserting the Authority has produced subpoenas and would know which law firms it had hired. The parties were invited to participate

in the OOR's informal mediation program to resolve the appeal. The agency indicated a willingness to do so; however, the Requester declined.

#### LEGAL ANALYSIS

The RTKL is "designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials and make public officials accountable for their actions." *Bowling v. OOR*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010). The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. § 67.503(a). An appeals officer is required "to review all information filed relating to the request." 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. The decision to hold a hearing or not hold a hearing is discretionary and non-appealable. *Id.* The law also states that an appeals officer may admit into evidence testimony, evidence and documents that the appeals officer believes to be reasonably probative and relevant to an issue in dispute. *Id.* Here, neither party requested a hearing and the OOR has the necessary, requisite information and evidence before it to properly adjudicate the matter.

The Authority is a Commonwealth agency required to disclose public records. 65 P.S. § 67.102; 65 P.S. § 67.301; *Berman v. Pa. Convention Ctr. Auth.*, 901 A.2d 1085, 1087 (Pa. Commw. Ct. 2006). Records in possession of a local or Commonwealth agency are presumed public unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. An agency bears the burden of proving the applicability of any cited exemptions. *See* 65 P.S. § 67.708(b). Section 708 of the RTKL clearly places the burden of proof on the public body to demonstrate that a record is exempt. In pertinent part, Section 708(a)(1) states: "[t]he burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency

receiving a request by a preponderance of the evidence.” 65 P.S. §67.708(a). Preponderance of the evidence has been defined as “evidence which as a whole shows that the fact sought to be proved is more probable than not.” BLACK’S LAW DICTIONARY 1064 (8th ed.); *see also Commonwealth v. Williams*, 567 Pa. 272, 786 A.2d 961 (2001).

**1. Part 3: Records Related to Agreement**

The Requester argues the Authority’s response is incomplete as it does not include records related to five of the unions subject to the agreement. The Authority did not assert that additional records do not exist. Therefore, the Authority is required to provide any additional correspondence or records that have not been provided.

**2. Part 5: Engagement Letters and Legal Invoices**

**A. Existence of Records**

The Authority asserts it is not aware of any engagement and/or retainer letters and consequently would find it difficult or impossible to identify and produce legal bills. Under the RTKL, a sworn affidavit may serve as sufficient evidence of the nonexistence of responsive records under the RTKL. *See Sherry v. Radnor Twp. Sch. Dist.*, No. 265 C.D. 2010, 2011 Pa. Commw. LEXIS 156 at \*13-15 (Pa. Commw. Ct. Apr. 4, 2011); *Moore v. OOR*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). In the present case, however, the Authority’s assertion was neither sworn nor signed under penalty of perjury. As a result, the OOR finds that the Authority failed to provide sufficient evidence demonstrating that no responsive records exist with respect Part 5.

The OOR is mindful that an agency cannot produce records that do not exist within its “possession, custody or control” and, accordingly, is not ordering the creation of any records listed in the Request. Absent an agency’s provision of a sufficient evidentiary basis as to whether any responsive records exist in the first place, however, the OOR will order the

disclosure of responsive public records. *See generally Sindaco v. City of Pittston*, OOR Dkt. AP 2010-0778, 2010 PA O.O.R.D. LEXIS 755; *Schaefer v. Delaware County*, OOR Dkt. AP 2010-0752, 2010 PA O.O.R.D. LEXIS 735.

B. Attorney-Client Privilege

The OOR gives paramount respect to the attorney-client privilege and recognizes the importance of vociferously guarding it. Here, the Authority fails to provide any evidentiary or legal support to demonstrate the applicability of a privilege to protect the entirety of the legal invoices. "Legal invoices are public records, aside from descriptions of services related to litigation." *Boyd v. Phillipsburg Borough*, OOR Dkt. AP 2010-0885, 2010 PA O.O.R.D. LEXIS 951 (citing *Bari v. Phila. Hous. Auth.*, OOR Dkt. AP 2010-0848, 2010 PA O.O.R.D. LEXIS 823 and *Glunk v. West Jefferson Hills Sch. Dist.*, OOR Dkt. AP 2010-0307, 2010 PA O.O.R.D. LEXIS 307); *see also Bd. of Supervisors of Milford Twp. v. McGogney*, No. 2387 C.D. 2009, 2011 Pa. Commw. LEXIS 6 (Pa. Commw. Ct. Jan. 6, 2011). Consequently, the Authority is required to release responsive invoices, subject to permissible redaction of all privileged descriptions of litigation-related services.

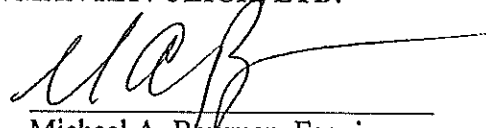
CONCLUSION

For the foregoing reasons, Requester's appeal is granted in part and denied in part and the Authority is directed to provide to Requester all responsive records with permissible redaction of the descriptions of litigation-related services only, within thirty (30) days. This Final Determination is binding on all parties. Within thirty (30) days of the mailing date of this Final Determination, any party may appeal or petition for review to the Commonwealth Court. 65 P.S. §67.1301(a). All parties must be served with notice of the appeal. The Office of Open Records

Audrey Buglione, Esquire  
Pennsylvania Office of Open Records  
Commonwealth Keystone Building  
400 North Street, 4<sup>th</sup> Floor  
Harrisburg, PA 17120-0225

**BOWMAN KAVULICH, LTD.**

BY:



Michael A. Bowman, Esquire  
Crystal M. Lacey, Esquire

Dated: May 25, 2011

Case ID: 110502877