



**pennsylvania**  
OFFICE OF OPEN RECORDS

**FINAL DETERMINATION**

<b>IN THE MATTER OF</b>	:	
	:	
<b>JOSEPH PILCHESKY,</b>	:	
<b>Complainant</b>	:	
	:	
<b>v.</b>	:	<b>Docket No.: AP 2010-0136</b>
	:	
<b>LACKAWANNA COUNTY,</b>	:	
<b>Respondent</b>	:	

**INTRODUCTION**

Mr. Joseph Pilchesky (the “Requester”) filed a right-to-know request with Lackawanna County (the “County”), pursuant to the Right to Know Law (“RTKL”), 65 P.S. §67.101, *et. seq.*. He sought copies of invoices and billings related to payments for legal services. The County partially granted and partially denied the request asserting the attorney-client privilege. The Requester filed a timely appeal with the Office of Open Records (“OOR”).

For the reasons set forth in this Final Determination, the appeal is **denied** and the County is not required to take any further action.

**FACTUAL BACKGROUND**

The Requester submitted a request for records February 2, 2010 seeking the following:

Copies of any and all bills and/or vouchers, and/or invoices or any other documents that constituted the “back up” for the payment of \$8,631.75, relating to check number 78568, relating to your invoice number 10011, relating to Litigation defense/Professional Services, and your invoice number 10012, relating to Legal Services Controller’s Office.

On February 5, 2010, the County Solicitor, David J. Rinaldi, Esquire responded by granting access to the records with redaction of information he deemed protected by the attorney-client privilege. On February 16, 2010 the Requester timely appealed to the OOR challenging the redactions “regarding the nature of the matter or the case or the name of the case relating to invoices 10011 and 10012.”

The parties were invited to submit additional information in support of their respective positions. The County Solicitor submitted an affidavit, signed under the penalty of perjury, stating the following:

1. “The redacted portions of the documents provided to [the Requester] contain client requested attorney work product from which advice, litigation strategy, tactics and legal issues could be ascertained concerning past, pending or threatened litigation.” Rinaldi Affidavit, ¶ 11.
2. “The un-redacted portions of the documents provided [Requester] with the attorney, dates of service, amount of time and total disbursements related to Invoice Numbers 10011, 10012 from which payment was tendered by check 78568.” Rinaldi Affidavit, ¶ 12.
3. “Invoice 10011’s entries solely encompass professional legal service directly related to litigation while Invoice 10012’s redacted entries related specifically to services and advice related to areas which have or had the potential for litigation.” Rinaldi Affidavit, ¶ 13.

4. “All records in the possession of the [County] related to the [Requester’s] ...February 2, 2010 document requests, subject to access under the RTKL, were provided to the [Requester] and no other documents exist.” Rinaldi Affidavit, ¶ 15.

The record closed on February 26, 2010. The OOR received information from the Requester on March 3, 2010; however, it was not considered on appeal as it was untimely.

### **LEGAL ANALYSIS**

The Office of Open Records is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. §67.503(a). The Township is a local agency subject to the RTKL. *See* 65 P.S. § 67.302. The RTKL defines a “public record” as:

“A record, including a financial record, of a Commonwealth or local agency that: (1) is not exempt under section 708; (2) is not exempt from being disclosed under any other Federal or State law or regulation or judicial order or decree; or (3) is not protected by a privilege.”

65 P.S. §67.102.

A record in the possession of a local agency is presumed to be a public record unless: (1) the record is exempt under Section 708; (2) the record is protected by a privilege; or (3) the record is exempt from disclosure under any other federal or State law or regulation or judicial order or decree. *See* 65 P.S. 67.305.

The RTKL definition of “privilege” includes: “the attorney-work product doctrine, the attorney-client privilege” 65 P.S. §67.102. Generally, attorney invoices are public records, with the exception of the descriptions that reveal information protected by the attorney-client privilege in accordance with applicable case law interpreting the privilege in the context of legal invoices. Commonwealth Court has addressed the status of legal

invoices for litigation services stating: “...we hold that the description of litigation-related services in a solicitor's invoice is not accessible under either the [RTKL] or the Sunshine Act in the absence of consent from the client municipality” and “...it is not necessary for a trial court to read every invoice and evaluate every described service for the presence of attorney work product. Instead, all information from the solicitor relating to pending or impending litigation is inaccessible,” *Schenck v. Twp. of Center*, 893 A.2d 849, 855 (Pa. Commw. Ct. 2006) appeal dismissed as improvidently granted, *Schenck v. Twp. of Ctr.*, 975 A.2d 591 (Pa. 2009).

The County Solicitor, through his affidavit, states that the redacted entries (which include all of the descriptions under the column “Professional Services”) from Invoice 10011 “solely encompass professional legal service directly related to litigation.” Affidavit, ¶ 3. Therefore, the redactions to Invoice 1011 were proper and the appeal as to that Invoice is denied. Further, the redactions (which include only three of the descriptions under the column “Professional Services”) from Invoice 10012 related “specifically to services and advice related to areas which have or had the potential for litigation.” *Id.* Therefore, because the County has provided sufficient evidence that redactions from the invoices relate to litigation-related services the attorney-client privilege applies and the redacted information is exempt from disclosure under the RTKL.

### CONCLUSION

For the foregoing reasons, the appeal is **denied**. The County is not required to take any further action. This Final Determination is binding on the parties. Within thirty (30) days of the mailing date of this Determination, either party may appeal to the

Common Pleas Court of Lackawanna County. All parties must be served with notice of the appeal. The Office of Open Records also shall be served notice and have an opportunity to respond according to court rules. 65 P.S §67.1301. The parties are further advised that a copy of this Final Determination will appear on the Office of Open Records website, <http://openrecords.state.pa.us>

**FINAL DETERMINATION ISSUED AND MAILED: March 18, 2010**



---

**APPEALS OFFICER  
AUDREY BUGLIONE, ESQUIRE**

Sent to: Joseph Pilchesky, David Rinaldi, Esquire