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Directors

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## Commonwealth Court Addresses Responsive Material Held by Third-Party Contractors

*By: Michael G. Crotty, Esquire & Robert M. Tucker, Esquire  
Siana, Bellwoar & McAndrew, LLP*

What must a municipality Right to Know Officer do when confronted with a Right to Know request seeking information held by a third party contractor? While the common refrain is that documents held by third party contractors can qualify as "public records" under the Act, many questions arise as to putting this requirement into practice. Who determines whether an exemption from disclosure applies - the RTK Officer, the third party contractor, or both? Can an RTK Officer be liable if the third party contractor refuses to provide the requested material? Does the RTK Officer have subpoena power to compel a third party contractor to provide the requested material?

These and more questions were clarified by the Commonwealth Court in its recent decision of Drack v. Hamilton, CmwltH Ct. Docket No. 2128 C.D. 2014. Ultimately, the Court held that: the RTK Officer has an obligation to request the materials in good faith, after which it need not undertake extraordinary legal action to secure materials that a third party contractor refuses to provide on the basis of a claimant exemption.

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## Free On-line Continuing Education Credits Available for Water and Wastewater Treatment Operators

PIRMA's online training center, Public Entity University, has 19 courses approved by the Pennsylvania Department of Environmental Protection for continuing education credits. These credits are available anytime, anywhere with no cost to the member.

In order to access Public Entity University:

Please See "*Free On-Line Continuing Education Credits*"... on page 3

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In Drack, Earle Drack submitted a RTK request to the Borough in 2013. He sought, among other things, “[a] copy of the exact procedures actually used to calibrate the Borough’s wireless [speed timing device] in the past 60 days.” The Borough’s RTK Officer reached out to the third party contractor who manufactured and calibrated the speed timing device. The contractor asserted that the particular calibration procedures were proprietary and not subject to disclosure.

Drack filed an appeal to the Office of Open Records (“OOR”), during which proceedings the Borough submitted an affidavit stating that the calibration procedures are performed by the third party contractor who manufactures the speed timing device, and the contractor has claimed the requested information was proprietary and not subject to disclosures. The OOR ultimately rejected this assertion, holding that the documentation was a public record and was not exempt as confidential/proprietary. The OOR then ordered the materials produced within thirty (30) days.

Following the OOR’s determination, the Borough requested that the contractor produce the documents responsive to the RTK request. The third party contractor did not immediately comply, after which Drack filed a complaint seeking to compel the Borough’s compliance. The Borough then joined the contractor as a party to the matter, and the third party contractor provided the affidavit of its Vice-President and a single document entitled “ENRADD Test v10.0” responsive to the RTK request. The affidavit stated that the calibration procedures used for the speed timing device were set forth in Title 67 of the Pennsylvania Code, Section 105.56.

Based on the above response by the third party contractor, the trial court granted a Motion to Dismiss by the Borough on the grounds that the responsive RTK requested documents had been produced. The trial court concluded that the identification of the relevant Pennsylvania Code section and the production of the “ENRADD Test



v1.0” document were satisfactory to the request of Drack, thus making the complaint moot. Drack appealed to the Commonwealth Court.

The Commonwealth Court affirmed the trial court, offering three (3) notable holdings. **First**, the Commonwealth Court held that the RTKL does NOT require a municipality to take extraordinary legal action (such as filing an action against a third-party contractor) to obtain documents pursuant to a RTK request. Section 1302 of the RTKL clearly states that the municipality *or* the requestor *may* file a petition for review. Accordingly, the Commonwealth Court ruled that it was well within the Borough’s rights to allow Drack to pursue further action.

**Second**, the Commonwealth Court held that a municipality is not required to identify exactly which part of a produced document is responsive to a request. The RTK officer is required to supply the requested documents, but is not required to interpret or codify them for the requester. The RTKL requires the production of responsive and disclosable documents but it does not impose an obligation on an agency to specifically identify the part of the produced document that is responsive to the RTK request.

**Lastly**, the Commonwealth Court held that the Borough acted in good faith in 1) responding

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*"Free On-Line Continuing Education Credits"...* from page 1

1. Find your Operator's Client ID
2. Access the Resource eLibrary at [www.pirma.org](http://www.pirma.org)
  - Click on Public Entity University
  - Click on Student Center
  - Under My Profile, enter Operator's Client I.D. in the DEP Client I.D. field
  - Click on Water and Wastewater College
  - Click on Water Certifications for a list of the Pennsylvania DEP-approved courses
  - Start Training

For a complete list of instructions and DEP-approved courses, please visit the Water and Wastewater college, click on Water Certifications, and click Pennsylvania - Water and Wastewater Operators Instructions and Pennsylvania - Courses Approved for CEUs for Water and Wastewater Operators.



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promptly to the RTK request, 2) participated fully before the OOR, 3) made numerous efforts to obtain the requested documents; 4) and immediately joined the third-party contractor upon the filing of the mandamus action. The Court therefore held that the municipality would not be held liable with respect to the actions of a third party contractor in refusing to supply documentation on the basis of a claimed exemption. As long as a municipality acts in good faith to a RTK request, the Court held, a basis for the imposition of costs and penalties pursuant to Sections 1304 & 1305 of the RTKL does not exist.

If you have any questions about obligations under the RTKL of municipalities and third-party contractors or any other RTKL matter, the attorneys at Siana, Bellwoar & McAndrew, LLP would welcome the opportunity to speak with you.

SIANA, BELLWOAR & MCANDREW, LLP  
941 Pottstown Pike, Suite 200  
Chester Springs, PA 19425  
(610) 321-5500

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## Revised Liability Coverage Form



PIRMA revised the Pool's Legal Defense and Claim Payment Agreement. The new Agreement is going into effect for members as they renew in 2016. The document was changed in response to changes in the insurance industry and the municipal legal landscape. Many coverages that have been added over the years such as Solicitors Liability and Cyber Liability are now incorporated into the main coverage document. Members are encouraged to review the new form and contact the Pool's marketing and service agent, H.A. Thomson Company with any questions.

## Motorcycles Are Everywhere

Summer is here, motorcycles are everywhere. Please look twice and save a life!

With warmer weather come an ever increasing number of folks riding their motorcycles on our highways. From 2003 through 2013 motorcycle registrations have increased more than 53 percent. The appeal of riding on two wheels ranges from their versatility and lower operating cost to the 'fun factor'. While there are many advantages to riding motorcycles there is also danger. Motorcyclists face more dangers than most drivers and can be especially vulnerable to inattentive and careless drivers who are either negligent or refuse to share the road with them. Please follow these tips to help reduce the number of motorcycle accidents:

- Look out for motorcycles. Bikes are smaller and are therefore more difficult to see. After an accident, many drivers remarked that they never 'saw' the motorcyclist and pulled directly into their path.
- Be mindful of intersections. In Pennsylvania the majority of all vehicle/ motorcycle incidents occur at intersections.
- When following or passing motorcycles treat them as a full-size vehicle. Give them plenty of room.
- Always signal your intentions to let everyone on the road know what you're doing.
- Limit distractions while driving. The phone call or text message can wait and is surely not worth anyone's life.



## Stephanie Mason

Stephanie Mason recently resigned from the PIRMA Board due to the time constraints of work and other Board positions she holds. The PIRMA Board wishes to thank her for her valuable contributions over the years.

The PIRMA Board encourages members to consider nominating qualified individuals to serve on the PIRMA Board of Directors. The Board holds three meetings per year and is charged with overseeing the operations of PIRMA and its' service providers.

## PIRMA – Hospitality Rooms

PIRMA was pleased to host hospitality events for members attending the Township Convention in April and the recent Borough Convention. The venue provided a great opportunity for members to meet one another and talk to Board members and service providers. As a member owned Pool, PIRMA is committed to communicating with its members.

## Loss Control and Risk Management Awards

Recently the 2015 Loss Control and Risk Management Awards were presented to 10 members. The Awards are based on a member's loss history and usage of the PIRMA eLibrary. The online eLibrary offers access to DVDS and streamed videos, PowerPoint presentations to download, hundreds of documents, and online training.

The 2015 winners are:

Paradise Township  
Strasburg Borough  
Valley Forge Sewer Authority  
Mahanoy Township Authority  
Delaware Township  
Laureldale Borough  
West Brandywine Township  
West Grove Borough  
Maidencreek Township  
Gregg Township Municipal Authority

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PIRMA Safety Award presented to Mahanoy Township Authority

PIRMA Safety Award presented to Valley Forge Sewer Authority



PIRMA Safety Award presented to West Brandywine Township

## Flammable and Combustible Liquid Storage

Flammable and combustible liquids are found in just about every workplace environment. These include your fuels (gas and diesel), aerosols, solvents, lubricants and paints. The larger the quantity of flammable and combustible liquids being stored on hand provides an increased fire hazard risk to the municipality. To help reduce the risk, the municipality should take proper steps to ensure these materials are properly and safely stored in their facility(s). NFPA 30 - Flammable and Combustible Liquids Code provide guidelines to assist in their safe storage. Flammable and Combustible liquids are divided into their classifications based on the degree of hazard that is scientifically tested on the materials flash point and boiling point. The basic difference between the definitions is how easily the liquids' vapors are ignited. For example gasoline is more easily ignited than diesel fuel or kerosene.

The first step in reducing the fire risk is to make sure that the material is stored in proper containers. This can include the originally designed container, i.e. aerosol can, paint can, or a liquid storage container. Storage containers or safety cans are specifically designed to control liquids vapors and range in capacity up to 5 gallons. The safety can is generally tested and approved by Underwriters Laboratories to demonstrate that the safety can is leak proof, will automatically vent excessive pressures and have automatic closing dispensing and filling openings. All storage cans should be clearly marked to indicate their contents, be it either gas, diesel or kerosene.



The second step to further reduce the risk of a fire is to have the safety cans and containers stored in a Flammable Liquid storage cabinet, when they are not in use. The cabinet should meet the design criteria as outlines in NFPA 30. The cabinets are yellow in color and marked "Flammable-Keep Fire Away". Each cabinet has a designated capacity that is based on the type of material to be stored and the size of the containers to be stored. The cabinets should also have a catch basin for any spilled or leaking material. The cabinets are also available for the storage of 55 gallon drums as well. The cabinet may be installed so it is vented to the outside of the building to release any vapors from the stored material.

The municipality should review their overall operations and verify that flammable or combustible liquids are being properly stored. If necessary safety cans and/or flammable liquid storage cabinets should be obtained to assist in reducing the fire risk.

## Member Educational Session and Board Meeting Gettysburg – September 15<sup>th</sup>

The PIRMA Board plans to hold an educational session open to any PIRMA member that wishes to attend. Anticipated topics include; drones, employment related lawsuits and prevention, police body cameras, and social media usage. There will also be a review of the operations and history of PIRMA. Following lunch, members can observe the Board of Directors meeting.

Please contact Betty Stone at [bstone@hathomson.com](mailto:bstone@hathomson.com) if you plan on attending. Members who attend the session will receive a loss control credit on their next renewal bill.

Currently the meeting is planned for 10am at the Wyndham in Gettysburg. More details will follow.

## 24 Hour Claim Reporting

### Property, Auto and Liability Claims Report to:

Jo Ann Sopko  
Phone: 800-362-1011 - Ext. 155  
Fax: 610-321-1001  
Email: [jmsopko@irmclaim.com](mailto:jmsopko@irmclaim.com)



### Workers' Compensation Claims Report to:

EMC  
Report to: ACS Claims Service  
Phone: 800-258-3675

AmeriHealth  
Phone: 800-335-5972

# Online Resource Library

## Access and Registration

- Log onto [pirma.org](http://pirma.org)
- Click "Loss Control Resource Library"
- **Not Yet Registered?** Click on "Register" and complete the registration form. Once membership has been verified, you will receive an Activation Notice by e-mail containing your username and password.
- **Already Registered?** Simply enter your username and password, then click "Login".
- **Forgot Password?** Click on "Forgot Password" and enter your e-mail address. Once your e-mail address has been verified, your username and password will be e-mailed to you.

## Search Function

The entire site is searchable from the home page. For example, if you are not certain of the location of your resource, merely type in the topic, such as "fire" (less is more), in the search field. All resources with the word "fire" in the title or description will be listed.

*(Please note the content disclaimer.)*

### SECTION 1 - MULTIMEDIA LIBRARY

Access thousands of videos and DVDs at no cost to you. Requested resources arrive in the mail, use them for up to 14 days, then simply return them in the postage-paid envelope provided.

### SECTION 2 - VIDEO STREAMING

**NEW FEATURE!** Access nearly 300 safety videos from any computer that has a web browser. Video streaming offers the benefit of viewing them at your convenience.

### SECTION 3 - DOCUMENTS LIBRARY

Download, save and customize thousands of Loss Control documents including articles, manuals, checklists, policies, procedures, and much more!

### SECTION 4 - PRESENTATION LIBRARY

Download, save and customize hundreds of PowerPoint training presentations. Many of the PowerPoint presentations also contain speaker notes.

### SECTION 5 - TRAINING LIBRARY

Access more than 500 Online Training Courses available to Members 24 hours a day, 7 days a week.

### SECTION 6 - RECOMMENDED LINKS

Obtain numerous links to web sites for safety, loss control and risk management organizations, agencies, services, associations, and products.

## PIRMA Service Providers

Marketing and Loss Control - H.A. Thomson Company

General Counsel - Siana, Bellwoar & McAndrew, LLP

Auditing - Plante & Moran, PLLC

Claims Service Provider - Integrated Risk Management

Administration - York Risk Pooling

Investment Manager - Wilmington Trust

## Speakers Available

Please keep us in mind if you are in need of a speaker for your meetings. We often speak at COG, State and County Association, and other local government meetings. There are numerous topics we can address including:

- ◆ Self-Insurance Pooling as an Alternative to Insurance
- ◆ Safety and Risk Management
- ◆ Protecting Your Community from Lawsuits
- ◆ Pennsylvania's Governmental Immunity Law
- ◆ Workers Compensation
- ◆ Volunteer Fire and Ambulance Company Insurance Issues
- ◆ Liability Risks from Streets and Road



## PIRMA's Newest Members

- Summit Township, Potter County
- Ridgway Township Municipal Authority, Elk County

Over 600 Members throughout the Commonwealth!

## Comments & Questions

Please send your comments or questions to Andrew DiProspero at [adiprospero@hathomson.com](mailto:adiprospero@hathomson.com).