



pennsylvania
OFFICE OF OPEN RECORDS

Executive Director
Office of Open Records
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225

Re: Right to Know Law Appeal - Denial or Partial Denial by Agency

Dear Executive Director:

This is an appeal under the Pennsylvania Right to Know Law, 65 P.S. §67.101. I requested documents from Pa. Gaming Control Bd.. The Agency denied or partially denied my request for information. I am appealing the denial of my request, under section 1101 of the Law and provide the following information in accordance with the Law:

Requester's name: Paul Boni
Address/City/State/Zip: 325 Chestnut Street, Suite 1109
Date of Right to Know request: 10/2/09 Date of Agency Response: 10/8/09
Telephone and fax number: 215-989-0034 and 215-989-0035 (fax)
Concise statement of facts (may attach additional pages if necessary)

See attached Statement of Facts

Name and address of Agency: Pa.. Gaming Control Bd., Box 69060, Harrisburg, PA 17106-9060

Name and title of the Agency official who denied the request for information:

Andrew Bender, Open Records Officer

Description of the records requested: See attached Statement of Facts

List any grounds upon which the requester asserts that the record is a public record:

See attached Grounds for Appeal

Address any grounds relied upon by the Agency for denial of the request:

See attached Grounds for Appeal

Respectfully Submitted, Paul Boni (must be signed)

10/30/09

Required documents to include with appeal – copies of original RTK request, Agency denial

Concise Statement of the Facts:

On September 1, 2009, after a public evidentiary hearing, the Pennsylvania Gaming Control Board (PGCB) issued an Order to the Foxwoods Casino requiring the casino to submit to the PGCB, on various dates, certain plans, updates, timetables and other information concerning the casino's ability to design its facility, obtain construction permits and secure financing to build on a particular parcel of land in the City of Philadelphia. Nothing in the Order suggests that the submittals are to be kept from the public.

According to Paragraph 3 of the September 1, 2009 Order, the casino was to have submitted its first package of information on October 1, 2009. The media reported that Foxwoods stated it did in fact meet its deadline. The requester submitted a Right-to-Know-Act request on October 2, 2009, which was denied by the PGCB on October 8, 2009.

The parcel of land is within a few hundred feet of a densely populated residential community and, therefore, the information is highly valuable to the public at large. The requester is an attorney representing Casino-Free Philadelphia, a grass roots group whose goals include advocating for transparency in the State government's efforts to impose casinos into the City of Philadelphia and, also, providing to the public relevant information concerning such matters. Information is disseminated via blast emails to thousands of people in Philadelphia who subscribe to Casino-Free Philadelphia's emails as well as posted on the Casino-Free Philadelphia website, at www.CasinoFreePhila.org.

Grounds for Appeal

The PGCB's denial claims that this information is investigative in nature, pursuant to 4 Pa.C.S. Section 1517. We believe that is incorrect. We do recognize that, under the PGCB's application processes, the Bureau of Investigations and Enforcement (BIE), as enabled by Section 1517, conducts investigations into the criminal backgrounds of applicants and other confidential matters, pursuant to Section 1310, and that such matters are confidential pursuant to Section 1206(f) (making confidential "all information submitted by an applicant pursuant to section 1310(a) or obtained by the board or the bureau as part of a background investigation from any source"). All of this has already occurred long ago and the requester does not seek such information.

Rather, the requester seeks information that is not investigative in any sense of the word (or the law). Here, Foxwoods already has its licensee and the PGCB is now engaged in obtaining status reports as to the progress of the effort to construct the casino. Public evidentiary hearings were held during which many of these issues were discussed and the PGCB is now simply requiring status reports. There is nothing investigatory about this information. This is not information generated by the PGCB. The ability to obtain permits, construct the facility and obtain financing is a result of Foxwoods own information and of communications with many third parties.

Much if not all of the requested information will be reviewed not just by the BIE but by the Board (in a non-investigatory manner). Indeed, pursuant to Paragraphs 1, 8 and 9 of the Order, the same information is required to be provided to the Board.

Further, on October 16, 2009, Foxwoods submitted a status report to the Board pursuant to Paragraph 1 of the Order. In the third paragraph of that letter, which is posted publicly at http://planphilly.com/sites/planphilly.com/files/LETTER_DATED_10-16-09_RE_INITIAL_PLAN.pdf, Foxwoods writes as follows: "For sake of consistency with the monthly updates Foxwoods is submitting to the BIE, and for the Board's ease of reference in reviewing Foxwoods' progress in its development efforts going forward, this written plan addresses in turn each of the following aspects of developing the licensed facility: (a) plans and efforts to develop and construct the facility; (b) efforts and progress to obtain financing to develop the facility; and (c) status of required licenses, certifications, and permits to construct and develop the facility." This is the same description of the information currently being requested. To that extent, any confidentiality is waived. At a minimum, the requested information should be disclosed with redactions for any information that can qualify for confidentiality, which we doubt.

The PGCB also recites various exemptions under the Right to Know Act, however, those exceptions are inapplicable here. We do not seek (b)(3)(iii)-type construction documents that disclose critical systems (indeed, Foxwoods admits in its October 16th letter that it has no construction documents); we do not seek (b)(6)(A)-type information concerning personal financial information (indeed, Foxwoods admits in its October 16th letter that it does not have any financing); and, of course, the investigative exemption in (b)(17) is inapplicable because this does not involve an investigation.

It is respectfully submitted that the PGCB is now characterizing this information as investigatory in nature for the sole purpose of trying to avoid public disclosure.

Within the next 7 days, pursuant to the Appeal procedures, the Requester will voluntarily submit the evidence or documents referred to herein, such as the Order, the October 16, 2009 letter and other documents.



PENNSYLVANIA GAMING CONTROL BOARD
P.O. BOX 69060
HARRISBURG, PENNSYLVANIA
17106-9060

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October 8, 2009

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Paul Boni
325 Chestnut St. Suite 1109
Philadelphia, PA 19106
paulboni@bonilaw.com

Re: Right to Know Law Request 09-028

Dear Mr. Boni:

This letter acknowledges receipt by the Pennsylvania Gaming Control Board of your written request for records under the Pennsylvania Right-to-Know Law, 65 P. S. §§ 67.101 et seq. Your request was received on October 2, 2009. A copy of your request is attached for reference. For purposes of this letter, the "identified records" are those identified in your letter.

We have reviewed your request for "All documents and records submitted to the Board, including to any of its bureaus, offices, or employees, by Philadelphia Entertainment & Development Partners, L.P. (PEDP), or any person acting on behalf of PEDP or any of its partners or investors, pursuant to the Board's September 1, 2009 Order..." We have determined that the identified records are not "public records" for purposes of the Right to Know Law; therefore, your request is denied.

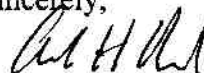
In its Order of September 1, 2009, the Board places requirements on PEDP to submit certain reports to the Board or the Bureau of Investigations and Enforcement ("BIE"). At issue in your letter are the reports due to BIE "beginning October 1, 2009." These reports are investigative in nature and, as such, are not public records. See 4 Pa.C.S. §1517.

More specifically, the reports submitted by PEDP to BIE pursuant to the Board's September 1, 2009 Order are confidential in accordance with the Gaming Act and cannot be released. See 4 Pa.C.S. §1206(f) and §1207. Additionally, the Right to Know Law exempts these records from disclosure under; 65 P.S. §67.708(b)(17) – record of an agency relating to a noncriminal investigation; 65 P.S. §67.708(b)(17)(iv) – record that includes information made confidential by law; 65 P.S. §67.708(b)(6)(A) – relating to personal financial information; and 65 P.S. §67.708(b)(3)(iii) – building plans or infrastructure records that could expose vulnerability of critical systems.

You have the right to appeal this denial of information in writing to Terry Mutchler Executive Director, Office of Open Records (OOR), Commonwealth Keystone Building, 400 North Street, 4th Floor, Harrisburg, PA 17120.

If you choose to file an appeal you must do so within 15 business days of the mailing date of this response. In order to appeal you must send to the OOR and simultaneously to me, in the same manner as the appeal is sent to the OOR (e-mail, fax, mail or hand delivery): 1) this response, 2) your request and 3) the appeal form that is available on the OOR website at: <https://www.dced.state.pa.us/public/oor/appealformgeneral.pdf>. You also should consult the Citizen's Guide to the Appeal Process on the OOR website: <https://www.dced.state.pa.us/public/oor/rtkcitizensguidetoappeals.pdf>.

Sincerely,



Andrew Bender
Open Records Officer
P.O. Box 69060
Harrisburg, PA 17106
717-346-8300 (phone)
717-346-8350 (fax)

Attachment:

LAW OFFICES OF PAUL BONI, P.C.

PAUL BONI, ESQUIRE
PAULBONI@BONILAW.COM

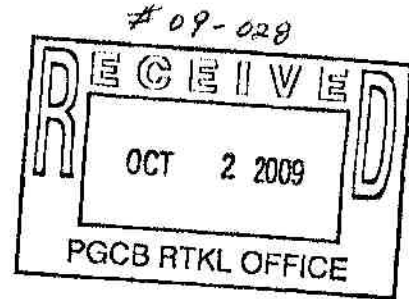
www.bonilaw.com

CONSTITUTION PLACE, SUITE 1109
325 CHESTNUT STREET
PHILADELPHIA, PA 19106
TEL: (215) 989-0034
FAX: (215) 989-0035

October 2, 2009

Via Fax: (717) 346-8350
Via email: pgcbriklrequests@state.pa.us
And via regular mail

Pennsylvania Gaming Control Board
ATTN: Open Records Office
303 Walnut Street, Strawberry Square
Verizon Tower, 5th Floor
Harrisburg, PA 17101-1825



Re: Right to Know Act Request

Dear Open Records Officer:

I enclose a request on the Board's Right-to-Know-Act form concerning Philadelphia Entertainment and Development Partners, L.P's submittals pursuant to the Board's September 1, 2009 Order. I am a legal resident of the Commonwealth of Pennsylvania.

If you would like to contact me in writing, I would prefer receiving your writing via email as it is expeditious.

Thank you for your attention to this matter.

Respectfully,

Paul Boni

Encl.

