



PNA LEGAL UPDATE

LEGAL AND LEGISLATIVE ISSUES AFFECTING THE NEWS INDUSTRY

A supplement to Headlines & Deadlines

Editorials

Temple News

Keep information public

The Times-Tribune (Scranton)

Keep public in public court records

Related: Property sale account disputed

Legislative Update

The Senate and House Appropriations Committees concluded hearings on Governor Tom Wolf's **2017-18 budget proposal** this week. Representative Rob Matzie (D-Allegheny, Beaver) introduced **House Resolution 136** honoring Sunshine Week, which runs March 12-18. If any PNA members have not yet responded to attend the PNA Day on the Hill on March 15th for Sunshine Week, it is not too late! We have numerous legislative leadership and Wolf Administration meetings set up for our members. If you are able to attend, please contact Holly Lubart as soon as possible at hollyl@pa-news.org or 717-703-3032.

The House of Representatives returns to session next week and plans to vote on several bills of importance to PNA including:

- **House Bill 27**, introduced by Rep. Martina White (R-Philadelphia), which would prohibit the release of the identity of a law enforcement officer involved in a "use of force" that results in serious injury or death. Unless criminal charges are filed, identity information may only be released if the officer consents, 30 days have passed, or after a completed official investigation, and even then, disclosure is completely within the discretion of the police, with no opportunity for challenge or review;
- **House Bill 99**, sponsored by Rep. David Zimmerman (R-Lancaster), which expands a borough's ability to bypass current bidding and public notice requirements "for emergencies." Councils will be required to state in a resolution the actual emergency and the nature of their procurement in the next public meeting; and
- **House Resolution 50**, introduced by Rep. Kate Harper (R-Montgomery) directing the Legislative Budget and Finance Committee to conduct a comprehensive review of the fiscal impact on Commonwealth agencies and local governmental agencies for implementation of the Right-to-Know Law and to make recommendations.

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Legal Hotline

Do you have a question for the Legal Hotline?

Contact 717-703-3080



LEGAL QUESTION?
CALL
717-703-3080

The Legal Hotline is not meant to be legal advice.

Legal Update PDF

Visit the PNA website for a **printable PDF** of this week's Legal Update.

Recorder of Deeds grants public access to judge's property records

A Lackawanna County judge recently purchased property, and the public records that show the details of the transaction were withheld by the Recorder of Deeds, who apparently relied on the Right to Know Law and advice of the Administrative Office of Pennsylvania Courts as a basis for denial. Access was granted after the judge asked for the records to be released. Read more from [The Times-Tribune \(Scranton\)](#)

PNA note: Access to property deeds is governed by the County Code, with fees for access set by Title 42. The County Code does not give Recorders discretion to withhold public access to deed records, and the RTKL does not apply where a more specific law governs access. There are no reported decisions allowing Recorders to apply RTKL exemptions to their records, and this policy is a significant departure from existing law, which would negatively impact a number of industries as well as the general public.

Bill to open collective bargaining introduced

Sens. Ryan Aument (R-Lancaster) and Scott Martin (R-Lancaster) plan to introduce [legislation](#) that would open collective bargaining processes under Pennsylvania's Sunshine Act and Right to Know Law. Read more from [LNP \(Lancaster\)](#)

Bill introduced to combat 'fake news' through education

Rep. Tim Briggs (D-Montgomery) has introduced [House Bill 661](#), which would require teaching "media literacy" in public schools for students in first through 12th grade. Read more from [The Sentinel \(Carlisle\)](#)

What to watch for on new overtime rule

The [Central Penn Business Journal \(Harrisburg\)](#) explores the stalled overtime rule and what to expect from the new administration.

Smartphone use at public meeting draws privacy concerns

A resident recorded much of the Wilkes-Barre Area School Board meeting Tuesday with his smartphone, and also captured what one board member was doing with his own smartphone during the meeting. There were no allegations that public business was being conducted by the board member, and board members raised concerns over invasion of privacy as a result of the recording. Read more from [The Times-Leader \(Wilkes-Barre\)](#)

Coming Events

Celebrate Sunshine Week with PNA!

Join the PNA, PSATs, and Office of Open Records at Widener University on March 14 for a free panel discussion and luncheon in honor of Sunshine Week. The panel will feature discussion on the Right to Know Law in Pennsylvania, including what's working and what needs to be changed. CLE credits may be offered for a fee. [Sign up to attend today!](#)

PBI Sunshine Week panel features PNA staff

PNA President Teri Henning and Media Law Counsel Melissa Melewsy, among others, will provide commentary and insight about Pennsylvania's Sunshine Act during a PBI panel held March 15. To register for the simulcast, live webcast, or to attend in person, visit the [PBI CLE Catalog website](#). Three CLE credits are available.

PNA, LNP partner with WITF and Elizabethtown College for discussion on trust and transparency

With the nation engaged in an intense debate about the news media, LNP Media Group, Inc., WITF, Elizabethtown College, and the Pennsylvania NewsMedia Association are hosting a program called "Trust, Transparency and the News" from 7 to 8:30 p.m., March 20, in Gibble Auditorium at Elizabethtown College. The event is free to the public, but registration is required. Visit www.witf.org/events to do so in advance.

PNA's America East features Ethics and Media Law session

Just as it has upended everything else, the digital revolution has forced radical new thinking about media ethics and media law. Copyright, fair use, libel, sourcing - all of these key issues (and more) are in a state of evolution. Learn from [Craig Staudenmaier](#) and [Elizabeth Seidlin-Bernstein](#) about developments in ethics and the law and how news organizations are adapting to this fast-changing landscape. [Read more here](#)

Q: What is the law that protects confidential sources, and what does it mean for journalists in our newsroom?

A: Pennsylvania's Shield Law offers robust protection against compelled disclosure of confidential source information, and federal law offers more limited protections based on a qualified right under the First Amendment.

The **Pennsylvania Shield Law**, states:

No person engaged in, connected with, or employed by any newspaper of general circulation or any press association or any radio or television station, or any magazine of general circulation, for the purpose of gathering, procuring, compiling, editing or publishing news, shall be required to disclose the source of any information procured or obtained by such person, in any legal proceeding, trial or investigation before any government unit.

This law provides journalists with an absolute privilege against the compelled disclosure of confidential sources of information. The Shield Law has been interpreted by the courts to include not only the names of reporters' confidential informants, but also documents, unpublished materials, inanimate objects, and all sources of information obtained by reporters that would disclose a confidential source. In cases where Pennsylvania law applies, reporters cannot be required to produce the names or identities of their informants, documents that would disclose their informants (such as invoices or letters), or other sources of information, even if they are subpoenaed to do so.

There are a few points about the Shield Law that journalists must understand. First, only confidential source information is protected. Once the source or the information is no longer confidential, such as once it is published or revealed to others, the protection ceases as to that information. Second, unpublished documentary information (including a reporter's notes) has been found discoverable by a plaintiff in a libel action where the documentary evidence did not reveal the identity of a confidential source. Journalists can redact any such evidentiary documents to eliminate confidential sources of information.

There is no federal Shield Law, but reporters have successfully argued in federal courts against compelled disclosure of confidential information based on a qualified First Amendment privilege. Courts in the Third Circuit analyze this qualified right by balancing the need for confidentiality versus the interest in disclosure. In a criminal matter, a party seeking information from a reporter must: 1) show efforts to obtain information from other sources; 2) show that the information can only be obtained from the journalist; and 3) show that the information is crucial to the claim. See *US. v. Criden*, 633 F.2d 346 (3d Cir. 1980). Journalists involved in state civil and criminal proceedings where the Shield Law is not applicable can raise First Amendment privilege defenses, but journalists should be aware that state courts typically follow Third Circuit precedent holding the constitutional privilege is slightly weaker in criminal cases because of the competing constitutional rights such as the right to fair trial and the need to address criminal activity. See ***Commonwealth v. Bowden***, 838 A.2d 740 (Pa. 2003).

You can learn more about the Pennsylvania Shield Law in the **PNA Newspaper Handbook** and from the **Reporters Committee for Freedom of the Press**.

As always, this is not intended to be, nor should it be construed as, legal advice. Please contact the PNA Legal Hotline at (717) 703-3080 or your organization's corporate counsel if a journalist receives a subpoena seeking confidential information.

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