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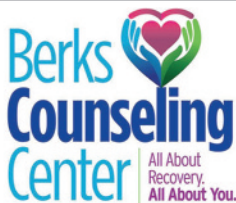
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IS IT TIME TO REVISIT THE RIGHT-TO-KNOW ACT?



LEGAL PERSPECTIVES

By Charles D. Garner, Jr., Esquire, Wolf, Baldwin & Associates, P.C.

It's hard to believe that in a few short years the new "Right-to-Know Act" will be twenty years old. The law was enacted in early 2008, with an effective date of January 2009. At the time the law provided a major overhaul to the prior law since the new "Act" made a broad presumption that any record of an agency was a public record and generally shifted the burden to the agency to show that the records were not subject to disclosure either through some statute or one of the enumerated exceptions in the new law. However, as with most legislation, the law typically does not keep up with technology and its advances, as well as changes in our society.

It is fair to assume that when the new "Act" was being drafted in the years prior to 2008, most of the records were likely in paper form which would include letters, minutes, ordinances, agreements and similar writings when the use of paper was prevalent. Fortunately, even nearly twenty years ago, the state legislature had the foresight to define a record as follows:

"Information regardless of its physical form or characteristics, that documents a transaction or activity of an agency and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency..."



Thus, records were considered records regardless of their physical form. Obviously, today many records are archived in some type of electronic format which was not likely to have existed twenty years ago. No one could have envisioned the continued evolution of technology so that records such as emails, texts, social media postings, video footage, audio recordings, and other such non-paper records would be so commonplace and typically be requested as part of a public records request.

The implementation of the Right-to-Know law in 2009 did place an additional burden on all municipalities since it required the appointment of a Right-to-Know Officer and created a rather extensive appeal process through the State Open Records Office.

(Continued on page 42)

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