

**[J-165-2000]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**MIDDLE DISTRICT**

GERALD J. LAVALLE AND RICHARD A.	:	No. 18 MAP 2000
KASUNIC, INDIVIDUALLY AND IN THEIR	:	
CAPACITIES AS ELECTED MEMBERS	:	Appeal from the Order of the
OF THE SENATE OF THE GENERAL	:	Commonwealth Court entered on
ASSEMBLY OF PENNSYLVANIA,	:	8/18/1999 at 878 CD 1998 affirming the
	:	decision of the Office of General Counsel
Appellants	:	entered on 2/27/1998.
	:	
	:	
v.	:	
	:	SUBMITTED: October 26, 2000
	:	
OFFICE OF GENERAL COUNSEL OF	:	
THE COMMONWEALTH OF	:	
PENNSYLVANIA,	:	
	:	
Appellee	:	

**CONCURRING OPINION**

**MR. JUSTICE CAPPY**

**DECIDED: April 20, 2001**

I join the majority opinion. I agree with the majority that there is no indication in the Right to Know Act (“Act”) that the General Assembly intended “to subject the internal, deliberative aspects of agency decision making to mandatory public scrutiny.” Majority slip op. at 12. The plain language of the Act does not support the argument of Appellants that documents created in the deliberative process of the agency are subject to mandatory disclosure.

Furthermore, while I acknowledge that the majority does not adopt the deliberative process privilege, *id.*, it is my strong belief that this court should recognize the existence

of such a privilege. The significant policy considerations militating in favor of the adoption of such a privilege are evident in the matter sub judice. Were we to expand the scope of the Act to reach documents related to the internal deliberative process of the agency, there would be a deleterious effect on the candor necessary for an agency to arrive at reasoned decisions. Because of this chilling effect on the free exchange of ideas, the ultimate conclusions drawn by the agency would not be as well informed. This, in my opinion, would be a sorry state of affairs. As I believe that adoption of the deliberative process privilege would assure that the open exchange of ideas in a government entity would continue unimpeded, I would expressly endorse the privilege in this matter.

Mr. Justice Castille joins this concurring opinion.