

IN THE MATTER OF	:	
	:	
MICHAEL D. FERGUSON,	:	
Complainant	:	
	:	
v.	:	RTKL Appeal No. 2014-02
	:	
LEGISLATIVE DATA PROCESSING	:	
CENTER,	:	
Respondent	:	

FINAL DETERMINATION

INTRODUCTION

Michael D. Ferguson (Requester), an inmate at the State Correctional Institution, Fayette, submitted a request to the Legislative Data Processing Center (LDPC) pursuant to the act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law (RTKL), 65 P.S. §§ 67.101 *et seq.*, seeking information relating to his criminal convictions. LDPC denied the request and Requester appealed to the Legislative Reference Bureau (LRB). For the reasons set forth in this Final Determination, the appeal is denied and LDPC is not required to take any further action on the request.

FACTUAL BACKGROUND

On November 7, 2014, LRB received from the Open Records Officer of the Local Government Commission (LGC) an electronic copy of a handwritten letter dated October 30, 2014, from Requester. The subject line of the letter described the matter as “Appeal, Legislative Data Processing Center, Denial.” It included a three-page attachment that ostensibly contained a formal RTKL request to LDPC.¹

¹The correspondence from LGC did not include either the first page of the request or LDPC’s denial of the request. That information was later obtained from LDPC and consisted of a Standard Right-to-Know Request form completed by Requester on October 15, 2014.

The Open Records Officer of LGC issued a written decision dated November 10, 2014. The response stated that because of information contained in the Requester's letter "... we are uncertain whether your letter is an appeal from an earlier request made of the Legislative Data Processing Center, or an initial request of the Local Government Commission for the aforementioned records. In an abundance of caution, we have taken steps to respond below to both scenarios." The LGC then proceeded to deny the request and inform Requester of his right of appeal to LRB.

On November 25, 2014, the appeals officer of LRB submitted a letter to LDPC seeking information about whether LDPC originally considered the matter under the RTKL. After receiving a reply from LDPC on that date, which reply provided a copy of the original request and decision by LDPC, LRB proceeded to consider the appeal from the denial of the request by LDPC. The issue of LGC's denial of the request is not before the appeals officer because the time period for appeal has expired and the LRB has not received an appeal to date on that matter.

The original request to LDPC under the RTKL sought records relating to ten criminal offenses under which Requester was convicted. The last sentence of the request clarifies the types of records he seeks: "I'm requesting copies of the 'Senate Bills' with enacting clause seal on its face of the laws outlined on page one." The Requester did not identify the specific bill numbers and sessions of the General Assembly associated with the provisions of law he violated.

LEGAL ANALYSIS

“[T]he objective of the Right-to-Know Law ... is to empower citizens by affording them access to information concerning the activities of their government.” *SWB Yankees LLC v. Wintermantel*, 615 Pa. 640, 662, 45 A.3d 1029, 1042 (2012). Further, this important open-government law is “designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials, and make public officials accountable for their actions....” *Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Commonwealth Ct. 2010), *aff’d*, 621 Pa. 133, 75 A.3d 453 (2013).

LRB is required by section 503(c)(1) of the RTKL to hear appeals from all legislative agencies. *See* 65 P.S. § 67.503(c)(1). In performing that duty, LRB must appoint an appeals officer. The appeals officer has the legal duty to “[r]eview all information filed relating to the request” and may consider testimony, evidence and documents that are reasonably probative and relevant to the matter at issue. RTKL § 1102(a)(2), 65 P.S. § 67.1102(a)(2). The appeals officer may conduct a hearing to resolve an appeal. The decision to hold a hearing is discretionary and non-appealable. *Id.*; *Giurintano v. Department of General Services*, 20 A.3d 613, 617 (Pa. Commonwealth 2011). Here, neither party has requested a hearing and LRB has the necessary, requisite information and evidence before it to properly adjudicate the matter.

LDPC is a legislative agency subject to the RTKL and, as such, is required to disclose its legislative records. RTKL § 303(a), 65 P.S. § 67.303(a). A legislative record in the possession of a legislative agency is presumed to be available in accordance with the RTKL unless an exemption applies. RTKL § 305(b), 65 P.S. § 67.305(b). Upon receipt of a request under the RTKL, a legislative agency is required to assess whether a record is within its possession, custody or control and respond within five business days. RTKL § 901, 65 P.S. § 67.901. The

legislative agency bears the burden of proving by a preponderance of the evidence the applicability of any cited exemption. *See* RTKL § 708(a)(2), 65 P.S. § 708(a)(2). Preponderance of the evidence has been defined as “such proof as leads the fact-finder ... to find that the existence of a contested fact is more probable than its nonexistence.” *Pennsylvania State Troopers Association v. Scolforo*, 18 A.3d 435, 439 (Pa. Commonwealth 2011) (quoting *Department of Transportation v. Agricultural Lands Condemnation Approval Board*, 5 A.3d 821, 827 (Pa. Commonwealth 2010)).

Before considering whether an exemption applies for a record sought from a legislative agency under the RTKL, there is a more fundamental question: whether the record falls within the statutory definition of a “legislative record.” Only legislative records are required to be made accessible. *See* RTKL § 303(a), 65 P.S. § 67.303(a). If the record or document sought does not satisfy the definition of a legislative record, there is no need to discuss exemptions. In such a case, the record or document is not subject to the RTKL.

Section 102 of the RTKL provides the following pertinent definition:

"Legislative record." Any of the following relating to a legislative agency or a standing committee, subcommittee or conference committee of a legislative agency:

- (1) A financial record.
- (2) A bill or resolution that has been introduced and amendments offered thereto in committee or in legislative session, including resolutions to adopt or amend the rules of a chamber.
- (3) Fiscal notes.
- (4) A cosponsorship memorandum.
- (5) The journal of a chamber.
- (6) The minutes of, record of attendance of members at a public hearing or a public committee meeting and all recorded votes taken in a public committee meeting.
- (7) The transcript of a public hearing when available.
- (8) Executive nomination calendars.
- (9) The rules of a chamber.
- (10) A record of all recorded votes taken in a legislative session.

(11) Any administrative staff manuals or written policies.

(12) An audit report prepared pursuant to the act of June 30, 1970 (P.L.442, No.151) entitled, "An act implementing the provisions of Article VIII, section 10 of the Constitution of Pennsylvania, by designating the Commonwealth officers who shall be charged with the function of auditing the financial transactions after the occurrence thereof of the Legislative and Judicial branches of the government of the Commonwealth, establishing a Legislative Audit Advisory Commission, and imposing certain powers and duties on such commission."

(13) Final or annual reports required by law to be submitted to the General Assembly.

(14) Legislative Budget and Finance Committee reports.

(15) Daily legislative session calendars and marked calendars.

(16) A record communicating to an agency the official appointment of a legislative appointee.

(17) A record communicating to the appointing authority the resignation of a legislative appointee.

(18) Proposed regulations, final-form regulations and final-omitted regulations submitted to a legislative agency.

(19) The results of public opinion surveys, polls, focus groups, marketing research or similar efforts designed to measure public opinion funded by a legislative agency.

RTKL § 102, 65 P.S. § 67.102. There are numerous types of records of legislative agencies that fall within the definition of "legislative record." However, unless a record satisfies one of these types of enumerated types, it is not required to be produced by a legislative agency under the RTKL.

In this case, Requester seeks records relating to the criminal statutes under which he was convicted. Ten separate offenses are listed and Requester provides the specific citations to various provisions found in Title 18 of the Pennsylvania Consolidated Statutes. They are as follows: 18 Pa.C.S. §§ 901(c)(2), 903(a)(1), 2701(a)(1) and (3), 2705, 2706(a)(1), 2709(a)(1), 3701(a)(1)(ii), 3921(a) and 6105(a)(1).² Requester does not seek copies of the statutes

²It is noted that Requester cites 18 Pa.C.S. §§ 2706(a)(1)(ii) and 6105(a)(1)(ii). Since those specific provisions do not currently exist in the law, it is assumed that Requester intended to reference instead 18 Pa.C.S. §§ 2706(a)(1) and 6105(a)(1).

themselves. If he did so, they would not be one of the records enumerated in the definition of “legislative record.”

After outlining his legal contention that the Title 18 provisions are unconstitutional because of the manner in which they are published, Requester states at the end of his written request that what he actually seeks is “copies of the ‘Senate Bills’ w/ enacting clause seal on its face of the laws” listed in his request. It is noted that the subject line on page two of his letter dated October 30, 2014, also states essentially the same thing.

Bills of the General Assembly are the second category of records enumerated in the definition of “legislative record.” Therefore, they are presumed to be subject to disclosure under the RTKL unless one of the exceptions in section 305(b) of the RTKL applies. Notwithstanding that fact, a Requester seeking copies of bills through the RTKL is required to “identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested” as required by section 703 of the RTKL. RTKL § 703, 65 P.S. § 67.703.

In this case, Requester does not provide bill numbers or indicate which session of the General Assembly enacted the ten different statutory provisions in question. Moreover, Requester does not include dates for his convictions that could potentially facilitate locating the correct version of the criminal statutes as of that moment in time. This additional specificity is necessary because the Consolidated Statutes are periodically amended by subsequent acts of the General Assembly and their publication in the multivolume set of the *Pennsylvania Consolidated Statutes* comprises only the most recent version of the law with amendments already applied.³ Reviewing the text of the relevant criminal provisions in Title 18 of the

³Prior to being published in the *Pennsylvania Consolidated Statutes*, an act of the General Assembly that affects a title of the Consolidated Statutes is printed in a volume of the *Laws of the*

Pennsylvania Consolidated Statutes does not yield the bill numbers from which the additions and changes to those provisions originated.

In order to determine which bills were the basis for the criminal statutes in question, extensive legal research must be performed. Furthermore, to make the information relevant to the Requester's specific convictions, dates from his criminal record are needed to find the corresponding acts of General Assembly and then the relevant bills. None of this information was provided by Requester to LDPC and LDPC has no duty under the law to conduct the legal research on behalf of Requester in order to fulfill the request. See *Askew v. Pennsylvania Office of the Governor*, 65 A.3d 989 (Pa. Commonwealth 2013), *appeal denied*, 621 Pa. 660, 72 A.3d 604. Consequently, it is concluded that the information provided to LDPC fails to "identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested" as required by section 703 of the RTKL. 65 P.S. § 67.703.

Therefore, LDPC is correct in its assertion that the request should be denied. It is acknowledged that LDPC's initial reason for denying the request did not specify this reason. However, the failure of LDPC to do so is not dispositive. See *Levy v. Senate of Pennsylvania*, 619 Pa. 586, 65 A.3d 361 (2013).

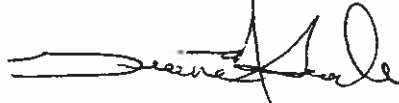
CONCLUSION

For the foregoing reasons, Requester's appeal is denied and LDPC is not required by the RTKL to take any further action. This Final Determination is binding on all parties. Within 30 days of the mailing date of this Final Determination, any party may appeal to the Commonwealth Court of Pennsylvania. RTKL § 1301(a), 65 P.S. § 67.1301(a). If a party

General Assembly of the Commonwealth of Pennsylvania, commonly referred to as the Pamphlet Laws.

appeals, it must serve notice of the appeal to all other parties and LRB. Pursuant to section 1303(a) of the RTKL, LRB has the right to respond. 65 P.S. § 67.1303(a).

FINAL DETERMINATION ISSUED AND MAILED: December 4, 2014

A handwritten signature in black ink, appearing to read "Duane M. Searle". The signature is stylized with a large, looped initial "D" and "S".

Duane M. Searle, Esq.
Appeals Officer