

IN THE MATTER OF

DANIEL SMITH,
Requester,

v.

RTKL Appeal No. 2016-03

PENNSYLVANIA
LEGISLATIVE REFERENCE
BUREAU,
Bureau

FINAL DETERMINATION

INTRODUCTION

Daniel Smith (Requester) submitted a request to the Pennsylvania Legislative Reference Bureau (LRB) pursuant to the Act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law, 65 P.S. §§ 101 *et seq.* (RTKL), seeking access to the following information and records:

“Please provide "Legislative records" as defined under 65 P.S. §67.102 relating to definitions "Legislative records" in accordance with the following four(4) criterion: Numbers (6), (7), (18) and (19): (6) the minutes of, record of attendance of members of a public hearing or a public committee meeting and all recorded votes taken in a public committee meeting; (7) transcript of public hearing; (18) proposed regulations, final-form regulations and final-omitted regulations submitted to a legislative agency; and (19) the results of public opinion survey, polls, focus groups, marketing research or similar efforts, designed to measure public opinion funded by a legislative agency; hence, the four(4) criterion IS TO BE APPLIED TO EACH OF THE FOLLOWING LEGISLATIVE RECORDS IDENTIFIED AND REQUESTED BELOW:

1. Act No. 345, December 30, 1974, P.L. 1052, No. 345;
2. Act No. 334, December 6, 1972, P.L. 1482, No. 334;
3. Act No. 142, October 5, 1980, P.L. 693, No. 142;
4. Act No. 230, November 25, 1970, P.L. 707, No. 230;
5. Act No. 32, November 17, 1995, P.L. 1118, No. 32; and
6. Pennsylvania Department of Corrections Inmate Handbook(s) 2013, 2014, 2015, and 2016 and 2017 for SCI-Benner Township Promulgated[sic] by

the Department of Corrections.”

The LRB granted the request in part and was informed the copying fees for the LRB documents.

The Requester appealed.

Requester’s appeal was received by the LRB on December 6, 2016. For the reasons set forth in this Final Determination, the appeal is denied and the LRB is not required to take any further action on the request.

FACTUAL BACKGROUND

On November 15 2016, the LRB received a written request from Requester seeking copies of documents described above. On November 15, 2016, the LRB granted the request in part and “denied” the request in part.

The response to Requester included the following:

“The Pennsylvania Legislative Reference Bureau has received your request for documents. Be advised that effective May 9, 2009, the Legislative Reference Bureau charges a fee of \$0.25 per page for copies of all requested documents. The total number of pages in your request is:

Act 334 of 1972 totals 131 pages for a total owed of \$ 32.75.

Act 345 of 1974 totals 15 pages for a total owed of \$ 3.75.

Act 142 of 1980 totals 86 pages for a total owed of \$ 21.50.

Act 230 of 1970 totals 7 pages for a total owed of \$ 1.75.

Act 32 of 1995 totals 8 pages for a total owed of \$ 2.00.

A check may be made out to the **Commonwealth of Pennsylvania**. In the alternative, copy of Title 18 can be purchased. We have enclosed information regarding the purchase of various titles of the Pennsylvania statutes.

The Legislative Reference Bureau does not publish the Pennsylvania Department of Corrections Inmate Handbook and, as such, does not have to provide this document under the provisions of the Right to Know Law.”

Requester was informed the copying fees for the LRB documents which are LRB

documents totaled \$61.75 and he was instructed to return payment to the Right-to-Know officer of the LRB.

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." *SW13 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. Commw. 2010), *aff'd*, 621 Pa. 133, 75 A.3d 453 (2013).

The LRB is required by section 503(c)(1) of the RTKL to to address all appeals from the response of its open records officer. In performing that duty, the LRB must appoint an appeals officer. *See* 65 P.S. § 503(c)(1). 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. 65 P.S. §1102(a)(2). LRB has the necessary, requisite information and evidence before it to properly adjudicate this appeal.

The LRB is a legislative agency subject to the RTKL and, as such, is required to disclose its legislative records. 65 P.S. § 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. 65 P.S. § 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. 65 P.S. § 901. The legislative agency bears the burden of proving by a

preponderance of the evidence the applicability of any cited exemption. See 65 P.S. § 708(a)(2). The 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. Scolbro*, 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)).

The LRB hereby responds to the Requestor's appeal. The issue is whether requested information and documents fall within the statutory definition of a "legislative record." Under the RTKL, legislative agencies are only required to provide statutorily defined legislative records. See 65 P.S. §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.15 1) 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. 65 P.S. § 102.

In support of this appeal, Requestor presents the following grounds for relief which are serially addressed by the LRB:

Requestor's Ground for Relief #1

"The LRB's failure to acknowledge 24 other records and provide the same 24 public records in accordance under Legislative records Viz. see: 65 P.S. §67.102 relating to Definition "Legislative record" no-s "(6), (7), (18) and (19) ," which are clearly stipulated in the ORIGINAL WRITTEN REQUEST and was to be applied to each of the 6 specified legislative records."

Requestor's original request to the LRB did not specifically identify every requested document. Many of the requests were indefinite and confusing. The RTKL directs that a written request should identify or describe the records sought with sufficient specificity to enable the

agency to ascertain which records are being requested. 65 P.S. § 67.703. The LRB was able to identify some of the requested being its records. They are the:

- Act 334 of 1972.
- Act 345 of 1974.
- Act 142 of 1980.
- Act 230 of 1970.
- Act 32 of 1995.

The LRB furnished information to the Requestor to enable him to acquire a copy of these Acts with notification of the copying fees due.

The remaining content of the original request dated November 8, 2016 was presented in vague and unclear language. This prevented the LRB from furnishing a more detailed response. For example, the Requestor characterizes a part of his request as “24 other public records in accordance with my written request that are indicated under Legislative records Viz. see: 65 P.S. §67.102 relating to Definition "Legislative record" no-s "(6), (7), (18) and (19), which are clearly stipulated in the ORIGINAL WRITTEN REQUEST and was to be applied to each of the 6 specified legislative records.” As this excerpt illustrates, Requestor’s language was indefinite and confusing.

Requestor’s Ground for Relief #2

“That every public record of an agency shall, at reasonable times, be open for examination and inspection [this includes copying] by any, citizen of the Commonwealth of Pennsylvania. See: *Bargerson v. Department of Labor & Industry*, [May 4, 1988] 720 A.2d 500” and “.... you failed to determine if records are public before payment demand.”

Requestor’s reliance on *Bargerson v. Department of Labor & Industry*, 720 A.2d 500 (1998), decided under prior law, is inappropriate. In that case, the petitioner sought access to list of names and addresses of claimants and employers who were scheduled for hearings before unemployment compensation referees, notices of appeal, and notices of hearings pursuant to

RTKL. The court held that petitions for appeal and notices of hearings were not public records under the Act. *Bargerson* applied a balancing test and found that disclosure would constitute an invasion of personal privacy because the requested list included the addresses and social security numbers of claimants and employers and that dissemination of the information would not further any public interest.

The court did not address copying fees in its opinion. However, the RTKL provides that a legislative agency may charge fees for photocopying. 65 P.S. § 67.1307(b)(1)(iii). As such, the LRB imposes a fee for photocopying pursuant to the authority of the RTKL at \$.25 per page. 101 Pa. Code § 31.17. Requestor was so informed.

Any request under the RTKL “must ‘identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested.’ ” *Pennsylvania Dep’t of Educ. v. Pittsburgh Post–Gazette*, 119 A.3d 1121, 1124 (Pa. Cmwlth. 2015) (quoting Section 703 of the RTKL, 65 P.S. § 67.703). “An open-ended request that gives an agency little guidance regarding what to look for may be so burdensome that it will be considered overly broad.” *Montgomery Cnty. v. Iverson*, 50 A.3d 281, 283 (Pa. Cmwlth. 2012) (en banc).

Requestor’s Ground for Relief #3

Requestor alleges that he “requested 30 documents which are legislative records and are public records in that they are accessible to the citizens Pennsylvania under the right to know law at: 65 P.S. §67.701(a); 65 P.S. §67.303(a) and are defined at 65 P.S. §67.102 relating to “Legislative record.” viz. (6), (7), (18) and (19):

- (6) the minutes of record or attendance of members at a public hearing or a public committee meeting and all recorded votes taken in a public committee;
- (7) transcript of public hearing;
- (18) proposed regulation, final form regulations and final-omitter regulations submitted to a legislative agency; and
- (19) the results of public opinion survey, polls, focus groups, marketed research or similar efforts designed to measure public opinion funded by legislative agency.”

The LRB’s response to Requestor’s grounds for relief remains consistent. As noted, the

RTKL states that a written request should identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested. 65 P.S. § 67.703. The requestor's demand for records constitutes a voluminous and indefinite request. It is confusing, indefinite and without specificity.

Requestor's Ground for Relief #4

The LRB "failed/refused to provide your name with signature are required per 65 P.S. §67.903(3). Please indicate your name as required under statute law!"

A denial of a written request for access to documents under the RTKL is issued in writing and includes certain informative content. The content of a denial should include a description of the record requested, the specific reasons for the denial, including a citation of supporting legal authority; the typed or printed name, title, business address, business telephone number and signature of the open-records officer on whose authority the denial is issued; the date of the response and the procedure to appeal the denial of access. 65 P.S. §67.903.

The response from the LRB constitutes substantial compliance with the RTKL. The lack of the name of the right-to-know officer in the LRB response was harmless because the records were properly identified and made available or properly withheld. *Michak v. Dep't. of Pub. Welfare*, 56 A.3d 925 (2012). It is in the discretion of the LRB to refuse to release information which may affect the personal security of an individual. 65 P.S. § 67.708(b)(1)(ii). The Pennsylvania Constitution's guarantee of privacy in personal information precludes publication of the name of its right-to-know officer. Pa. Const. art. I, §§ 1, 8.

Requestor's Ground for Relief #5

"65 P.S. §67.903(2) requires an agency to state its specific reasons for denying a request, an agency may not change its basis for denial for a record on appeal." SEE: 65 P.S. §67.903(2), see: *Michak v. Dep't. of Pub. Welfare*, 56 A.3d 925, 2012 Pa. Commw. LEXIS 31 2(Pa. Commw. Ct. 2012). "

Requestor's reliance on *Michak v. Dep't. of Pub. Welfare*, 56 A.3d 925 (2012) is misplaced. In that case, the court recognized the mandate in the RTKL to identify or describe the records sought with specificity. 65 P.S. § 67.703. However, *Michak* held that where a requestor requests a specific type of record the requestor may not, on appeal, argue that an agency must instead disclose different records in response to the request.

Requestor also cites *Levy v. Senate of Pa.*, 619 Pa. 586, 65 A.3d 361 (2013). The holding in *Levy* directly opposes Requestor's position. In *Levy*, the Pennsylvania Supreme Court opined that an agency does NOT waive any reasons for non-disclosure not raised in its initial RTK written response. In doing so, the Court eliminated the per se waiver rule set forth in *Signature Information Solutions, LLC. v. Aston Township* 995 A.2d 510 (Commw. Ct. 2010) as unnecessarily restrictive.

Requestor's Ground for Relief #6

"The LRB has a duty to provide public records and legislative records if these are in your possession and its refusal constitutes the perpetration of various crimes", i.e., fraudulent concealment, tampering with public records, unsworn falsification to authorities

The Pennsylvania Criminal Code is enforced by Pennsylvania law enforcement agencies. The RTKL is not a criminal statute. Any violation of criminal law must be prosecuted under the guise of legal authority. Requestor's argument is meritless and requires no response.

Requestor's Ground for Relief #7

"Civil penalties may be recovered as you have denied/deprived me of my right-to-know."

Under the RTKL, civil penalties are imposed by the court only upon reversal of the final determination of the appeals officer and only if the agency receiving the original request willfully or with wanton disregard deprived the requester of access to a public record subject to

access or otherwise acted in bad faith under the provisions of this act; or the exemptions, exclusions or defenses asserted by the agency in its final determination were not based on a reasonable interpretation of law. 65 P.S. § 67.1304(a)(1); (2).

Again, Requestor's argument requires no response. Civil penalties are imposed by the court only under specific factual determination.

The LRB finds no support for the numerous stated grounds for granting this appeal. The LRB concludes that the information sought by Requester and sufficiently described by the Requestor has been addressed and will be furnished upon receipt of the copying costs. The other records requested cannot be interpreted according to the descriptions furnished as within the definition of a "legislative records" of the LRB.

CONCLUSION

For the foregoing reasons, Requester's appeal is denied and the LRB 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. 65 P.S. §1301(a). If a party appeals, it must serve notice of the appeal to all other parties.

FINAL DETERMINATION ISSUED AND MAILED: December , 2016

Lisa Kelly, Esq.
Appeals Officer