

IN THE MATTER OF

ROBERT REDDING  
Complainant

v.

RTKL Appeal No. 2017-01

PENNSYLVANIA  
COMMISSION ON  
SENTENCING  
Respondent

## FINAL DETERMINATION

### INTRODUCTION AND FACTUAL BACKGROUND

Robert Redding (Requester) submitted a request to the Pennsylvania Commission on Sentencing (Sentencing) 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 information relating to “pamphlet laws” that were passed by the General Assembly.

On March 21, 2017, Sentencing received the written request from Requester seeking copies of documents described above. Sentencing “denied” the request dated March 22, 2017 for the reason that the record request was not a legislative record of Sentencing.

The response from Sentencing contained the following:

“Please note the following as it pertains to the Commission's responsibility in responding to RTK requests and legislative records. While the Commission is an agency of the General Assembly, the requested information is not a record created by, or in the possession, custody, or control of the Commission. Please contact the Legislative Reference Bureau (LRB) Right-to-Know Officer for the requested information. You will find contact information for the LRB below. For your record, a copy of your RTK request has been enclosed.”

The Requester was also notified of the right to appeal the decision to the Legislative Reference

Bureau (LRB).

Requester chose to appeal to the LRB. Requester's appeal was received by the LRB on April 11, 2017. In his appeal, Requestor deviates from his original request for pamphlet laws to include the inquiry, "How can charges the Bucks County District Attorney's Office brought forth not be a part of the legislative record?" Requestor then asserts his sentence is illegal if it is not a part of the legislative record.

For the reasons set forth in this Final Determination, the appeal is denied and Sentencing is not required to take any further action on the request.

#### 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. Commonwealth 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. § 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. 65 P.S. §1102(a)(2). LRB has the necessary, requisite information and

evidence before it to properly adjudicate the matter.

Sentencing 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)).

Under the RTKL, legislative agencies are required to provide statutorily defined legislative records only. 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 co-sponsorship 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. There are various forms of records of legislative agencies that fall within the definition of "legislative record." However, unless a record satisfies one of the enumerated forms, it is not required to be produced by a legislative agency under the RTKL. Requestor did not request a record of Sentencing.

The requestor's statements regarding his sentence were initially introduced in his appeal to the LRB. The appeal was not an original right to know request to the LRB for documents. The jurisdiction of the judicial branch of government is relevant to the inquiry. The Pennsylvania Judiciary exists separately from the Legislature. The requestor's inquiry should be directed to the courts of Pennsylvania.

In the spirit of the RTKL, the LRB advises Requestor to submit an original request for the pamphlet laws to the LRB as originally advised by Sentencing. The Legislative Reference Bureau is a component of the Legislative branch of government. The Legislative Reference Bureau will provide copies of Pennsylvania bills and statutes when it is given explicit bill numbers or statutory cites. Effective May 9, 2009, the Legislative Reference Bureau charges a fee of \$0.25 per page for copies of all requested documents.

#### CONCLUSION

For the foregoing reasons, Requester's appeal is denied and Sentencing 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 and LRB. Pursuant to section 1303(a) of the RTKL, LRB has the right to respond.

FINAL DETERMINATION ISSUED AND MAILED: May 2, 2017

---

Suellen M Wolfe, Esq.  
Appeals Officer