IN THE SENATE OF PENNSYLVANIA

Appeal of Krawczeniuk	:	Senate RTK Appeal 04-2009

OPINION
November 23, 2009

Statements of Fact

By request dated September 22, 2009, Mr. Borys Krawczeniuk (Appellant), a writer with the Scranton Times-Tribune, sought access to "... a copy of any memorandums, communications, notes, letters, instructions, e-mails or other correspondence or work product produced for the state Senate by the following contractors: James Moran, Patrick Solano, Hardy Williams, Brian J. Cali, Lt. Col. Harold Donahue and Joseph R. Clapps." This request was made pursuant to the recently enacted Right-to-Know Law, Act of February 14, 2008, P.L. 6, 65 P.S. §67.101 et seq. (the Act).

Appellant was provided access to copies of these actual contracts. The individual contracts specified the following duties to be performed. Mr. Moran was engaged to, "perform research on policies, programs or legislation in PA, other states or the federal government for Senator Robert J. Mellow... for possible

introduction of legislation or for comment on or suggestion of regulations, executive orders or statements of policy." Mr. Solano agreed to, inter alia, "... provide expertise and consulting services to the Senate Majority Leader and other Leaders and Members of the Republican Caucus regarding economic and environmental issues coming before the Senate..." Mr. Williams was engaged in his capacity as an attorney to provide professional counsel. Mr. Cali was also engaged to provide legal counsel. Colonel Donahue's contractual duties included, "...advice on military and veterans affairs issues, nominations, appointments, legislation and regulations..." Finally, Mr. Clapps contracted to, "Gather, publish and disseminate information to members of the Pennsylvania Senate Democratic Caucus which will assist constituents who are serving as primary care givers to their grandchildren."

By letter dated September 24, 2009, the Senate's Open Records Officer, W. Russell Faber, denied Appellant's request concluding that the records were not accessible legislative records under the Act. By letter dated October 15, 2009, Appellant has appealed the denial to this office. At the joint request of the parties, a two week continuance was granted in this case.

Discussion

Section 102 of the Act defines the Senate as a "legislative agency." Section

303(a) of the Act states that, "A legislative agency shall provide legislative records in accordance with this act." At issue in this appeal is whether or not the documents and records requested by Appellant are legislative records.

The definition of legislative records contained in Section 102 includes financial records of the Senate and Appellant first contends the records he seeks are financial records. The definition of a financial record in Section 102 is, inter alia:

> "1. Any account, voucher or contract dealing with:
> (i) the receipt or disbursement of funds by an agency; or
> (ii) an agency's acquisition, use or disposal of services, supplies, materials, equipment or property..." (Emphasis is added.)

The threshold inquiry in this appeal must be whether or not the records sought by Appellant are actually and specifically accounts, vouchers or contracts. The answer must be no.

The requested records are memorandums, communications, notes, e-mails, letters, instructions, work product or any other correspondence. These types of documents would not be considered accounts, vouchers or contracts. The scope of the Appellant's request is broad to the extent that he seeks access to any document that might exist as a result of the contractual relationship between the Senate or a senator and a contractor. The statute defines an accessible financial record much more narrowly.

It is a basic premise of statutory construction that the intention of the

General Assembly must be ascertained and given effect. Craley v. State Farm Fire and Casualty Co., 586 Pa. 484, 895 A.2d 530 (2006). The legislative intent is best gleaned from the clear and plain language of the statute. Bowser v. Blom, 569 Pa. 609, 807 A.2d 830 (2002). And, "... when the words of a statute are clear and free from all ambiguity, they are presumed to be the best indication of legislative intent." Walker v. Eleby, 577 Pa. 104 at 123, 842 A.2d 389 at 400 (2004).

The section of the Act at issue in this appeal is very clear and the language is plain. The General Assembly used the specific words account, voucher or contact. Appellant urges a broad and expansive reading of this definition to include any and all records which might exist as a result of an account, voucher or contract. That cannot be done when the wording of the statute is free from ambiguity and constrains the definition of a financial record. If the General Assembly wished a more encompassing definition of financial record, it would most certainly have used different language.

Although the Act is new and recently became effective, the definition of a financial record contained therein is not new and it is not without judicial interpretation. The identical definition was contained in the prior Right-to-Know Law which was repealed by the present Act. Act of June 21, 1957, P. L. 390, as amended, 65 P.S. §66.1 et seq. Section 1 of that prior law defined a public record as:

> "Any account, voucher or contract dealing with the receipt or disbursement of funds by an agency or its acquisition, use or disposal of services or of supplies, materials, equipment or other property..."

The General Assembly reenacted the identical language in the new Act knowing that the courts had already given guidance concerning the words account, voucher and contract.

In Sapp Roofing Company, Inc. V. Sheet Metal Workers' International Association, Local Union No. 12, 552 Pa. 105, 713 A.2d 627 (1998), a plurality of our Supreme Court found that this definition of "account, voucher or contract" would include a copy of a private contractor's payroll in possession of a school district. The records were accessible because they evidenced a disbursement of funds by the school district.

A year later, in North Hills News Record v. Town of McCandless, 555 Pa. 51 at 55, 722 A.2d 1037 at 1039 (1999), the Court adopted the reasoning in Sapp stating,

> "Implicit in the Court's decision in Sapp Roofing is the conclusion that the accounts/vouchers/contracts category of public records reaches some range of records beyond those which on their face constitute actual accounts, vouchers or contracts. Nevertheless, it is clear from Sapp Roofing that, to constitute a public record, the material at issue must bear a sufficient connection to fiscally related accounts, vouchers or contracts."

Finally, in LaValle v. Office of General Counsel of the Commonwealth, 564 Pa. 482, 769 A.2d 449 (2001), the Court again stated that there must be a close

relationship between the records sought and the account, voucher or contract before the record could be an accessible public record. At issue was an audit report prepared for the Commonwealth.

In this line of cases, the Court was dealing, in each instance, with a request for access to one record. The Court examined each of these specific records individually. Although the Court was willing to look beyond the words "account, voucher and contract" to a limited extent, the requested record still needed to be substantially intertwined or have a close nexus with an account, voucher or contract.

In the present case, Appellant is not seeking access to a specific record. It would appear that he is not even seeking access to a compete class of records. Rather, he is seeking access to any document or record which may exist as a result of any contractual relationships. The records sought by Appellant would not cause any disbursement of money by the Senate. Any disbursement of funds would be in accordance with and pursuant to the terms of the actual contracts not any extraneous documents. Such an expansive reading of the Act is not warranted based on either statutory construction or existing jurisprudence.

Appellant also contends that the records he requested fall within subsection (19) of the definition of accessible legislative records contained in Section 102 of the Act. That section provides for access to:

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

In support of this contention, Appellant offers simply one sentence. "Given the nature of the contracts, the records certainly focus on such efforts."

There is a seriatim recitation of the duties involved in each of these individual contracts in the Statements of Fact earlier in this opinion. None of these contracts has anything to do with polling. Not one these contractual provisions offers even a scintilla of evidence that they were designed as an effort to measure public opinion. No authority has been offered that these contracts would fall within the cited definition and I do not know of any. Therefore, the records existing as a result of these contractual relationships do not fall within this definition of an accessible legislative record.

Finally, it must be noted that the Open Records Officer argues that the records existing as a result of the contracts with various attorneys are also protected from access by the attorney/client privilege. Having already determined that the requested records do not fall within the definition of an accessible legislative record, it is not necessary to address this argument at this time.

IN THE SENATE OF PENNSYLVANIA

:

Appeal of Krawczeniuk : Senate RTK Appeal 04-2009

:

ORDER

AND NOW, this 23rd day of November, 2009, the decision of the Senate's Open Records Officer is affirmed. Copies of any memorandums, communications, notes, letters, instructions, e-mails or other correspondence or work product produced for the State Senate by contractors James Moran, Patrick Solano, Hardy Williams, Brian J. Cali, Lt. Col. Harold Donahue and Joseph R. Clapps are not accessible legislative records.

Mark R. Corrigan
Senate Appeals Officer