

IN THE SENATE OF PENNSYLVANIA

Appeal of Carollo

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Senate RTK Appeal 02-2012

FINAL DETERMINATION
June 18, 2012

Statements of Fact

By letter dated May 15, 2012 addressed to the Senate's Open Records Officer, Mr. Russell Carollo (Requester) sought access to the following:

"1) All communications to or from senators and/or Senate staff related in any way to Color of Change (aka ColorOfChange.org), Common Cause (aka Common Cause Education Fund), Center for Media and Democracy (AKA ALEC Exposed or SourceWatch), ProgressNow, People for the American Way (PFAW), Citizen Engagement Laboratory and Progressive Change Campaign Committee (PCCC).

2) All communications (not covered in item 1) to or from senators and/or Senate staff related in any way to the American Legislative Exchange Council

(ALEC). This would not include communication directly with ALEC and/or ALEC officials.

3) All correspondence (not covered in Items 1 & 2) related in any way to public records requests seeking information related in any way to the American Legislative Exchange Council (ALEC).”

This request was made pursuant to the Right-to-Know Law, Act of February 14, 2008, P.L. 6, 65 P.S. §67.101 et seq. (the Act).

By communication dated May 17, 2012, the Senate’s Open Records Officer denied access to any such records by the Requester. By letter dated May 21, 2012, Requester has appealed this denial of access. On May 24, 2012, the Senate’s Open Records Officer filed a memorandum of law in support of his denial of access. Requester has not availed himself of the opportunity to file any further documentation or a memorandum or law to support his appeal.

Discussion

This appeal presents a question of statutory interpretation and construction. In construing any statute, it is a basic premise of law 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). This case can be resolved by applying these legal principles to the existing factual situation.

The Act provides different types of access to different types of records. Commonwealth agencies and local agencies must provide access to public records. 65 P.S. §§ 67.301, 67.302 Legislative agencies must provide access to legislative records. 65 P.S. § 67.303 Finally, judicial agencies must provide access to financial records. 65 P.S. § 67.304. This appeal deals solely with access provided by legislative agencies to legislative records.

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." The Act is clear and unambiguous. If the records sought by the Requester are legislative records, then the Requester should be granted access to such records.

Section 102 of the Act defines the term "legislative record" in a very specific and exhaustive manner. There are nineteen different types of legislative documents listed which would be accessible by the public as legislative records

pursuant to the Act.¹

¹ "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 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

Nowhere in this list of accessible legislative records is found the mention of any correspondence or communication between members of the Senate and staff or any other groups. Requester has only sought access to communications or correspondence between members of the Senate and staff or other groups. It would seem clear and unambiguous that it was not the intention of the General Assembly to make such a general class of records into accessible legislative records under these provisions of the Act. Requester is seeking access to an entirely new class of record clearly not within the purview of any definition of a legislative record. Therefore, the denials issued by the Senate's Open Records Officer must be sustained. See also: Appeal of Scolforo, Senate RTK 01-2009, Appeal of Nicholas, Senate RTK 05-2009.

research or similar efforts designed to measure public opinion funded by a legislative agency.

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ORDER

AND NOW, this 18th day of June 2012, the decision of the Senate's Open Records Officer is sustained. The documents sought by Requester are not accessible legislative records.



Mark R. Corrigan
Senate Appeals Officer

APPEALING THIS DECISION TO COMMONWEALTH COURT

Within 30 days of the mailing date of this final determination, either part to this action may appeal the decision to the Commonwealth Court. 65 P.S.

§67.1301. If you have any questions about the procedure to appeal, you may call the Prothonotary of the Commonwealth Court at 717.255.1650.