

IN THE SENATE OF PENNSYLVANIA

Appeal of Miller

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Senate RTK Appeal 01-2013

FINAL DETERMINATION
January 17, 2014

Statements of Fact

By email dated November 25, 2013 addressed to the Senate Open Records Officer, Ms. Celeen Miller (Requester) sought access to the following:

...the email correspondences, both sent and received, from the following Senate and Senate staff with any content about SB411 (of session 2013-2014) between the dates of November 1 through and including November 25, 2013. Please include any deleted emails that are still by law available through RTK.

Senator Richard Kasunic
Will Dando
Senator John Yudichak
Richard Fox
Senator Gene Yaw
Adam Pancake
Senator Joseph Scarnati
Kate Eckhart
Senator Dominic Pileggi
Kathy Eakin.

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 or RTK Law).

By email communication dated December 2, 2013, the Senate Open Records Officer denied access to any such records by the Requester, stating that “[t]he records you are requesting do not fall within the definition of a Legislative Record.” (Senate Open Records Officer Response to RTKL Request No. 1311251329, Dec. 2, 2013). By email dated December 20, 2013, Requester timely appealed this denial of access. On January 3, 2014, the Senate Open Records Officer filed a memorandum of law in support of her denial of access.¹ Although Requester has not availed herself of the opportunity to file any further documentation or a memorandum of law to support her appeal, she did provide a brief statement of support in the appeal itself.²

Discussion

This appeal presents a question of whether email correspondence from and to Senate members and staff are “legislative records” within the meaning of the Right-to-Know Law. Requester maintains that such correspondence constitutes a “record” that must be released under the Act, because such correspondence is “information stored or maintained electronically and a data-processed or image-processed document.” (Requester Appeal to Senate Open Records Officer Response to RTKL Request No. 1311251329, Dec. 20, 2013). The Senate Open Records Officer maintains the email correspondence is not releasable because the Senate is only

¹ It must be noted that the Senate Open Records Officer who denied the request on December 2, 2013 was then-Chief Clerk, W. Russell Faber; the memorandum of law was filed by Donetta D’Innocenzo, who became the Senate’s Acting Chief Clerk and Open Records Officer on December 27, 2013.

² Requester’s argument in support of her appeal is that the requested emails are “records” as defined in the RTK Law. Specifically, that they are “information stored or maintained electronically and a data-processed or image-processed document.”

required to release legislative records under the Act and the language of the Act is clear that email correspondence falls outside the Act's definition of "legislative record." (Senate Open Records Officer Memorandum of Law, p. 4). For the reasons that follow, the decision of the Senate Open Records Officer is sustained.

In interpreting and construing statutes, courts must ascertain and effectuate the intent of the General Assembly. 1 Pa.C.S.A. § 1921(a); Levy v. Senate of Pennsylvania, 65 A.3d 361, 380 (Pa. 2013). It is presumed that the General Assembly does not intend an absurd, impossible, or unreasonable result. 1 Pa.C.S.A. § 1922(1). It follows that, in this case, it must be ascertained whether it was the intent of the legislature to include email correspondence within the Act's definition of "legislative record." The answer to that question must be no.

As with all questions of statutory construction and interpretation, the starting point is the plain language of the statute, because "[t]he clearest indication of legislative intent is generally the plain language of a statute." Commw. of PA, Office of the Governor v. Donahue, 59 A.3d 1165 (Pa. Commw. Ct. 2013), *rehearing denied en banc*, 2013 Pa. Commw. LEXIS 53 (Pa. Commw. Ct. Feb. 22, 2013). When the words of a statute are "clear and free from all ambiguity, the letter of [the statute] is not to be disregarded under the pretext of pursuing its spirit." Levy v. Senate of Pennsylvania, 65 A.3d 361, 380 (Pa. 2013); 1 Pa.C.S.A. § 1921(b). Further, when the statutory language is unambiguous there is "no need to resort to other indicia of legislative intent...[thus] any further deliberation as to its meaning is unwarranted."

Donahue, 59 A.3d at 1168-69 (concluding that the plain language of the RTK Law was unambiguous; therefore, the court did not expand the law to include agency personnel not specifically set forth in the statute)(citation omitted); see 1 Pa.C.S.A. § 1921(b)-(c).

In this case, the relevant statutory provisions are clear and unambiguous. The Act specifically provides different types of access to different types of records. For example, Commonwealth and local agencies are required to provide “public records” in accordance with the Act, while judicial agencies are required to release “financial records” in accordance with the Act. 65 P.S. §§ 67.301, 67.302, 67.304. And, legislative agencies are required to release “legislative records” in accordance with the Act. 65 P.S. § 67.303(a) (“A legislative agency shall provide legislative records in accordance with this Act.”). Because the Act defines the Senate as a “legislative agency,” 65 P.S. § 67.102, the Senate is required to release “legislative records” in accordance with the Act. 65 P.S. § 67.303(a). Importantly, by their very definitions, “legislative records” are not the same as “public records”; therefore, the Senate is required only to provide access to legislative records not public records. See 65 P.S. § 67.102.

Section 102 of the Act defines the term “legislative record” in a specific and exhaustive manner. There are nineteen different types of legislative documents

listed that would be accessible by the public as legislative records pursuant to the Act.³

The records sought by Requester do not fall within the RTK Law's clear and unambiguous definition of a legislative record. Nowhere in this comprehensive list

³ "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.

of accessible legislative records is found the mention of email correspondence from and to members of the Senate and staff. Because email correspondence is not enumerated as one of the nineteen categories of information constituting a legislative record, it reasonably follows that it was not the intention of the General Assembly to make such correspondence into accessible legislative records under these provisions of the Act. Just as the RTK Law was not expanded to include agency personnel not listed in the statute, so too, here the language of the RTK Law defining a legislative record is plain and unambiguous, and as such, should not be expanded to encompass items that the legislature chose not to include in the Act.

Finally, Requester's reliance on the Act's definition of "record" is misplaced because the Senate, as a legislative agency, is only required to release legislative records in accordance with the Act, which the requested emails are not. 65 P.S. §§ 67.102, 67.303.

Requester is seeking access to legislative documents that are not included in the Act's clear and unambiguous definition of a legislative record. To release these documents would be to contravene the intent of the General Assembly. Therefore, the denial issued by the Senate Open Records Officer must be sustained. See Appeal of Carollo, Senate RTK 02-2012; see also Appeal of Nicholas, Senate RTK 05-2009.

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ORDER

AND NOW, this 17th day of January 2014, the decision of the Senate Open Records Officer is affirmed. The documents sought by Requester are not legislative records and, thus, not accessible under the Right-to-Know Law.



Megan Totino Consedine
Senate Appeals Officer

APPEALING THIS DECISION TO COMMONWEALTH COURT

Within 30 days of the mailing date of this final determination, either party 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 717-255-1600.