

IN THE SENATE OF PENNSYLVANIA

Appeal of McManus

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Senate RTK Appeal 01-2014

FINAL DETERMINATION
November 10, 2014

Statement of Facts

On September 22, 2014, John Michael McManus (the requester) submitted a request for documents via certified mail, addressed to the "Pennsylvania Senate, RTKL Office, 3rd Street, Main Capitol #170, Harrisburg, PA 17120-0001." In this request, he requested the following:

1. Please validate, certify (under penalty of perjury- not in violation of your Oath of Office) and provide me the true and correct "**Pamphlet Laws**" commonly referred to as the **LAWS OF THE GENERAL ASSEMBLY OF THE COMMONWEALTH OF PENNSYLVANIA**, in which were applied to and charged to the criminal dockets, sentencing transcripts, and all other Orders and charging instruments/informations et al. pertaining to 'alleged' case/cause no. CP-52-CR-0000093-2009 et al., which 'alleged' defendant breached and violated. **[Continued on Additional Page(s)]**

2. Please validate, certify (under penalty of perjury-not in violation of your Oath of Office) and provide me the lawful and legislative '**Statutory Authorization**' for the Purdon's Pa. Statutes, Purdon's Pa. Consolidated Statutes, and the Pa. Consolidated Statutes Annotated (as cited, applied, and charged to **all** charging instruments/informations, transcripts, orders, and the like) pertaining to and bearing upon said 'alleged' case(s)/cause(s) - not to contradict Judge Blewitt's opinion(s) in the case of Appeal of Tenet Health System, 880 A.2d 721 (2005) **and** the opinion(s) of Judge Robert E. Woodside in Pennsylvania Constitutional Law 307 (1985).

3. Please validate, certify (under penalty of perjury - not in violation of your Oath of Office) and provide me the **mandatory** and legislative "**Enacting**

Clauses" for the following 'statutes' (attached hereto for reference) which were applied to all charging instruments/informations, transcripts, orders, and the like regarding said 'alleged' case(s)/caused(s), pursuant to § 1101 of the Act of 1972, December 6, P.L. 1339, No. 290 and Section 3 of the Statutory Construction Act of 1937, May 28, P.L. 1019, No. 282; 18 Pa.C.S.A. 4101(A)(2); 18 Pa.C.S.A. § 4104(A); 18 Pa.C.S.A. § 4106(A)(1),(3); 35 Pa.C.S.A. § 780-113(A)(30).

4. Please validate, certify (under penalty of perjury - not in violation of your Oath of Office) and provide me the valid, lawful, constitutional '**Statutory Authorization**' in which was applied to the 'alleged' defendant's 'alleged' sentence.

5. Please validate, certify (under penalty of perjury - not in violation of your Oath of Office) and provide me the '**Constitutional Provisions(s)**' in the 1874 and 1968 Pennsylvania Constitutions to '**enact**' a criminal code or criminal statute, currently and prior to said 'alleged' case(s)/cause(s).

6. Please validate, certify (under penalty of perjury - not in violation of your Oath of Office) and provide me the 'bona fide' "**Constitutional Authorization**" for Pennsylvania to legislate criminal codes and/or criminal statutes.

7. Please validate, certify (under penalty of perjury - not in violation of your Oath of Office) and provide me the legislative "**Savings Clause(s)**" in the 1968 Pa. Constitution for all statutes, codes, laws, prosecutions, etc. stemming from the 1874 Pa. Constitution.

8. Please validate, certify (under penalty of perjury - not in violation of your Oath of Office) and provide me the validity, enforceability, lawfulness, and **Constitutional Authority**" of the 1968 Pa. Constitution; whence, it was strictly prohibited from re-writing, altering, etc. its Constitution(1776); **thereby**, impermissibly [sic] re-writing its Constitution (1776) on four (4) distinct -- **1790, 1838, 1874, 1968** -- pursuant to the 1776 Pa. Constitution, Sec. 9, Last Line.

9. Please validate, certify (under penalty of perjury - not in violation of your Oath of Office) and provide me the '**Constitutional Delegated Authority**' for the Pennsylvania General Assembly to 'delegate' its legislative authority and power to a '**foreign**', de facto, and non-constitutional legislative entity [**Legislative Reference Bureau**] to 'contract' with a 'private' publisher [**West Publishing Co.**] to interpret the Statutory Laws of Pennsylvania.

(RTKL request, Sept. 22, 2014) (emphasis in original) Appended to this request were excerpts from the following statutes: 18 Pa.C.S.A. § 4101; 18 Pa.C.S.A. § 4104; 18 Pa.C.S.A. § 4106; 18 Pa.C.S.A. § 4120; and, 35 P.S. § 780-113. 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 communication dated September 30, 2014, the Senate Open Records Officer denied access to any such records by the requester. By communication dated October 6, 2014, and received in the Office of the Senate Appeals Officer on October 9, 2014, the requester timely appealed this denial of access.

On October 22, 2014, the Senate Open Records Officer filed a Memorandum of Law in support of her denial of access, which was based on two grounds. First, the Senate Open Records Officer maintains the request lacks the specificity required by the RTK Law, in that it requires the Senate Open Records Officer to ascertain which legislative records would be responsive to the request. Second, the Open Records Officer maintains that the records requested are not "legislative records" as defined in the RTK Law. (Senate Open Records Officer Memorandum of Law, Sept. 30, 2014, pp. 6-8).

Although the requester has not availed himself of the opportunity to file any further documentation or a Memorandum of Law to support his appeal, he did provide support in the appeal itself. He specifically averred the following:

1. Such requested records, in whole or in part, are legislative records and are in fact 'parts' of legislative records, i.e., enacting clause(s), pamphlet laws,

statutes legislatively authorized, etc. in which the Pa. Senate is a part of the General Assembly of the Commonwealth of Pa. and is responsible for legislative enactments as a legislative body.

2. The Pennsylvania General Assembly, in which the Senate is a part of, is responsible for the 'statutes' – **referenced herein and attached hereto**– to be enacted into law by the General Assembly by a "single statute bill"; and, per the 1787 signing of the Pennsylvania Constitution expressly provides for every "bill" to be read at length on three (3) different days in each House before a final vote is taken on the "bill". (citations omitted)
3. For every bill or law to be perfected, it must include three (3) essential parts: (1) title; (2) **enacting clause**; and, the (3) the [sic] body, in which this Senate has a legislative duty and obligation to place on the referenced and attached 'statutes' in order to give it jurisdictional identity and constitutional identity. (citations omitted)
4. The employment of an enacting clause has an ancient and 'time honored' history of usage in law making, its employment upon the face of each and every law validly enacted by the General Assembly of the State of Pa. is absolutely necessary and mandatory for a law to have any binding force or effect upon a living man. (citation omitted)
5. The 'enacting clause' of a bill goes to the substance of that bill, it is not merely procedural.
6. In relation to the requested records, i.e., the enacting clause. no "bill" shall become "law" except by vote of a majority; and, every "bill" which passes both Houses of the Pennsylvania General Assembly shall be presented to the Governor for authentication and every "bill" he approves shall become "law". [sic] (emphasis in original)

(Requester Appeal to Senate Open Records Officer Response to RTKL Request No.

1409291133, Oct. 6, 2014, pp. 1-2) The requester further maintains:

[i]t is a moot issue at this point to substantiate my position any further, when it is evidently clear that an '**enacting clause**' is a part of a "bill" in which is a "legislative record" which this Senate of Pennsylvania has a moral

and legal duty to provide in which such requested records are in fact and in law, 'public records.'

(Requester Appeal to Senate Open Records Officer Response to RTKL Request No. 1409291133, Oct. 6, 2014, p. 2) (emphasis in original) The requester also maintains the Senate Open Records Officer should be able to "ascertain whether the said referenced 'statutes' contain any 'enacting clause(s)' and are in 'fact' "**Pamphlet Laws**" and 'official' laws of the Commonwealth of Pennsylvania, just upon the face of them." Id. at 3 (emphasis in original)

Discussion

This appeal presents two questions for review: whether the request possesses the requisite specificity as required by the RTK Law, and if so, whether the documents requested are "legislative records" within the meaning of the RTK Law. Requester maintains the documents he seeks constitute records that must be released under the Act. (Requester Appeal to Senate Open Records Officer Response to RTKL Request No. 1409291133, Oct. 6, 2014). The Senate Open Records Officer summarized the requested documents as "Pamphlet Laws, Statutory Authorizations, Enacting Clauses, Constitutional Provision(s), Constitutional Authorization, Savings Clause(s), Constitutional Authority, and Constitutional Delegated Authority," and concluded same are not releasable because the Senate is only required to release legislative records under the Act, which these are not. (Senate Open Records Officer Response to RTKL Request No. 1409291133, Sept. 30,

2014, p. 3). Moreover, the Senate Open Records Officer maintains the request lacks the specificity required by the RTK Law, because it requires the Senate Open Records Officer to ascertain which legislative records would be responsive to the request. (Senate Open Records Officer Memorandum of Law, Sept. 30, 2014, pp. 7-8)

For the reasons that follow, the decision of the Senate Open Records Officer is sustained.

The purpose of the RTK Law is to allow the public access to records that reveal the workings of state government. Askew v. Commw. of PA, Office of the Governor, 65 A.3d 989, 991-92 (Pa. Commw. Ct. 2013), *appeal denied*, 72 A.3d 604 (Pa. 2013). Doing so empowers citizens and promotes access to official government information “to prohibit secrets, scrutinize the actions of public officials and make public officials accountable for their actions.” *Id.*

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 the General Assembly does not intend an absurd, impossible, or unreasonable result. 1 Pa.C.S.A. § 1922(1).

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, 1168 (Pa. Commw. Ct. 2013), *aff’d*, 98 A.3d 1223, 1237-38 (Pa. 2014). 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, 65 A.3d at 380; 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).

Here, the relevant statutory provisions are clear and unambiguous; they specifically provide for 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.” 65 P.S. §§ 67.301, 67.302, 67.304. And, legislative agencies are required to release “legislative records.” 65 P.S. § 67.303(a).

The Act defines the Senate as a “legislative agency,” 65 P.S. § 67.102; therefore, the Senate is required to release “legislative records.” 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. The Senate, however, is not required to create records that do not currently exist. It likewise is not required

to compile or format records in a way it is not already currently compiling or formatting them. 65 P.S. § 67.705.

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.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 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.

An agency open records officer cannot make a determination of releasability of a record when the RTK Law request is vague; therefore, the Act requires that written requests for access to records be specific. Such requests “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. If the requester fails to do so, then the agency has no obligation to comply with the request, because the lack of specificity prevents the agency from determining whether to grant or deny the request. Associated Builders & Contractors, Inc. v. PA Dept. of General Services, 747 A.2d 962, 965-66 (Pa. Commw. Ct. 2000)(finding that request for “any and all documents relating to” the particular subject matter of the requests failed to provide sufficient facts for the Department to determine what type of record was being requested); see Pennsylvania State Police v. Office of Open Records, 995 A.2d 515, 517 (Pa. Commw. Ct. 2010); Arduino v. Borough of Dunmore, 720 A.2d 827, 831 (Pa. Commw. Ct. 1998), *appeal dismissed*, 741 A.2d 195 (Pa. 1999) (citation omitted). To determine whether a request satisfies this statutory requirement, “the specificity of a request must be construed in the request’s context, rather than envisioning everything the request might conceivably encompass.” Askew, 65 A.3d at 992 (quoting Montgomery County v. Iverson, 50 A.3d 281, 283 (Pa. Commw. Ct. 2012)).

If a request necessitates traditional legal research and analysis to ascertain that which is being requested and/or whether a particular document possesses the

legal significance necessary to make it responsive to the request, the request lacks the specificity required by the RTK Law. Askew, 65 A.3d at 993-94; see Monighan v. PA Dept. of Transportation, OOR Dkt. AP 2013-1967, 2013 PA O.O.R.D. LEXIS 1118, * 8-9, Nov. 19, 2013; Aliota v. Millcreek Township, OOR Dkt. AP 2012-1351, 2012 PA O.O.R.D. LEXIS 1170, * 6-7, Sept. 7, 2012. A request that “explicitly or implicitly obliges legal research is not a request for a specific document; rather, it is a request for someone to conduct legal research with the hopes that the legal research will unearth a specific document that fits the description of the request.” Askew, 65 A.3d at 993. When a request would require the agency to “perform a considerable amount of legal research and analysis to locate and identify those laws and/or legal documents that are responsive to Requester’s request,” the request is not specific. Id. at 993-94; but see Community Academy of Phila. Charter School v. School Dist. of Philadelphia, OOR Dkt. AP 2013-1372, 2013 PA O.O.R.D. LEXIS 791, * 10-11, Sept. 4, 2013 (holding request was sufficiently specific when the agency had already identified potential responsive records).

Moreover, a RTK Law request lacks specificity when it explicitly or implicitly requires the agency to perform legal research to locate an “enacting clause” or a “savings clause” sought by the requester. Maddrey v. PA Dept. of State, OOR Dkt. AP 2013-2204, 2013 PA O.O.R.D. LEXIS 1249, * 6-7, Dec. 20, 2013 (holding the Department is not required to perform legal research to locate “enacting clause” in Title 18); Mason v. PA Dept. of State, OOR Dkt. AP 2014-1250, 2014 PA O.O.R.D.

LEXIS 952, * 5-6, Aug. 29, 2014 (holding the request lacks specificity because it implicitly requires the agency to perform legal research to locate the “savings clause” sought by the requester).

Further, a request lacks the requisite specificity when it requires an agency to perform legal research by locating the applicable laws and making a judgment as to the constitutional bases for these laws. Neal v. PA Dept. of State, OOR Dkt. AP 2014-1470, PA O.O.R.D. LEXIS 1189, * 7-8, Oct. 23, 2014; Whitaker v. PA Dept. of State, OOR Dkt. AP 2014-1463, PA O.O.R.D. LEXIS 1191, * 7-8, Oct. 23, 2014.

It is within this legal framework that this appeal is analyzed. Each of the documents the requester has sought is addressed in turn below.

Document 1

Please validate, certify (under penalty of perjury- not in violation of your Oath of Office) and provide me the true and correct **"Pamphlet Laws"** commonly referred to as the **LAWS OF THE GENERAL ASSEMBLY OF THE COMMONWEALTH OF PENNSYLVANIA**, in which were applied to and charged to the criminal dockets, sentencing transcripts, and all other Orders and charging instruments/informations et al. pertaining to 'alleged' case/cause no. CP-52-CR-0000093-2009 et al., which 'alleged' defendant breached and violated. **[Continued on Additional Page(s)]**

On its face, this request is for the “Pamphlet Laws” that are relevant to the requester’s criminal case. Nowhere in this request does the requester state with specificity the “Pamphlet Laws” he is seeking. Rather, the Senate Open Records Officer would have to locate and review the record of the criminal proceedings in which the requester was involved. The only way the Senate Open Records Officer

could ascertain which "Pamphlet Laws" the requester seeks is by conducting legal research and analysis, which the RTK Law simply does not require. It reasonably follows that the request for Document 1 lacks the requisite specificity required by the RTK Law.

Document 2

Please validate, certify (under penalty of perjury-not in violation of your Oath of Office) and provide me the lawful and legislative '**Statutory Authorization**' for the Purdon's Pa. Statutes, Purdon's Pa. Consolidated Statutes, and the Pa. Consolidated Statutes Annotated (as cited, applied, and charged to all charging instruments/informations, transcripts, orders, and the like) pertaining to and bearing upon said 'alleged' case(s)/cause(s) – not to contradict Judge Blewitt's opinion(s) in the case of Appeal of Tenet Health System, 880 A.2d 721 (2005) and the opinion(s) of Judge Robert E. Woodside in Pennsylvania Constitutional Law 307 (1985).

On its face, this request is for the "Statutory Authorization" that is relevant to the requester's criminal case, to the holding in Appeal of Tenet Health System, and to the provisions in Woodside's treatise on Pennsylvania Constitutional Law. Again, the requester does not state with specificity the "Statutory Authorization" he is seeking, which would necessitate legal research and analysis by the Senate Open Records Officer to locate and then analyze the "statutory authorization" as well as the Tenet case and Woodside's treatise. The RTK Law does not contemplate or require an agency to conduct this legal research for a requester. It reasonably follows that the request for Document 2 lacks the requisite specificity of the RTK Law.

Document 3

Please validate, certify (under penalty of perjury - not in violation of your Oath of Office) and provide me the **mandatory** and legislative "**Enacting Clauses**" for the following 'statutes' (attached hereto for reference) which were applied to **all** charging instruments/informations, transcripts, orders, and the like regarding said 'alleged' case(s)/caused(s), pursuant to **§ 1101 of the Act of 1972, December 6, P.L. 1339, No. 290 and Section 3 of the Statutory Construction Act of 1937, May 28, P.L. 1019, No. 282**; 18 Pa.C.S.A. 4101(A)(2); 18 Pa.C.S.A. § 4104(A); 18 Pa.C.S.A. § 4106(A)(1),(3); 35 Pa.C.S.A. § 780-113(A)(30).

On its face, this request is for "Enacting Clauses" to the statutes the requester appended to his request (18 Pa.C.S.A. Sec. 4101; 18 Pa.C.S.A. Sec. 4104; 18 Pa.C.S.A. Sec. 4106; 18 Pa.C.S.A. Sec. 4120; and, 35 P.S. Sec. 780-113), which he maintains were applied in his criminal case pursuant to the Statutory Construction Act and Act 290 of 1972.

In order to respond to this request, the Senate Open Records Officer would have to conduct legal research to ascertain the enacting clauses for these statutes and their relation to both the Statutory Construction Act and Act 290 of 1972. The RTK Law does not require an agency to perform such legal research for a requester. See Maddrey v. PA Dept. of State, OOR Dkt. AP 2013-2204, 2013 PA O.O.R.D. LEXIS 1249, * 6-7, Dec. 20, 2013 (holding the Department is not required to perform legal research to locate "enacting clause" in Title 18) (citing Monighan v. PA Dept. of Transportation, OOR Dkt. AP 2013-1967, 2013 PA O.O.R.D. LEXIS 1118, Nov. 19, 2013; Aliota v. Millcreek Township, OOR Dkt. AP 2012-1351, 2012 PA O.O.R.D. LEXIS 1170, Sept. 7, 2012). It follows that the Senate Open Records Officer cannot be

required to perform legal research for this requester. Because this request obliges legal research, it is not a request for a specific document; therefore, the request here for “enacting clauses” lacks the specificity required by the RTK Law.

Document 4

Please validate, certify (under penalty of perjury - not in violation of your Oath of Office) and provide me the valid, lawful, constitutional '**Statutory Authorization**' in which was applied to the 'alleged' defendant's 'alleged' sentence.

On its face, this request is for the “Statutory Authorization” that is relevant to the requester’s sentence in his criminal proceeding. Again, this request requires the Senate Open Records Officer to conduct legal research and analysis to ascertain the “Statutory Authorization” that was “applied” to the requester’s sentencing during his criminal proceeding. The RTK Law does not require an agency to conduct such research for a requester. Therefore, this request lacks the specificity required by the RTK Law.

Document 5

Please validate, certify (under penalty of perjury - not in violation of your Oath of Office) and provide me the '**Constitutional Provisions(s)**' in the 1874 and 1968 Pennsylvania Constitutions to '**enact**' a criminal code or criminal statute, currently **and** prior to said 'alleged' case(s)/cause(s).

On its face, this request is for “Constitutional Provisions” from the 1874 and 1968 Constitutions that “‘enact’ a criminal code or criminal statute.” This request requires the Senate Open Records Officer to conduct legal research and analysis, which is not required by the RTK Law. Therefore, the request lacks the specificity

explicitly mandated in the RTK Law. See Neal v. PA Dept. of State, OOR Dkt. AP 2014-1470, PA O.O.R.D. LEXIS 1189, Oct. 23, 2014; Whitaker v. PA Dept. of State, OOR Dkt. AP 2014-1463, PA O.O.R.D. LEXIS 1191, Oct. 23, 2014.

Document 6

Please validate, certify (under penalty of perjury - not in violation of your Oath of Office) and provide me the 'bona fide' "**Constitutional Authorization**" for Pennsylvania to legislate criminal codes and/or criminal statutes.

On its face, this request is for the "Constitutional Authorization" for Pennsylvania to enact criminal laws. This request requires the Senate Open Records Officer to conduct legal research and analysis to ascertain the Constitutional provisions that authorize the Commonwealth to legislate criminal laws. This type of research is not required of an agency; therefore, the request lacks the specificity required by the RTK Law. See Neal v. PA Dept. of State, OOR Dkt. AP 2014-1470, PA O.O.R.D. LEXIS 1189, Oct. 23, 2014; Whitaker v. PA Dept. of State, OOR Dkt. AP 2014-1463, PA O.O.R.D. LEXIS 1191, Oct. 23, 2014.

Document 7

Please validate, certify (under penalty of perjury - not in violation of your Oath of Office) and provide me the legislative "**Savings Clause(s)**" in the 1968 Pa. Constitution for all statutes, codes, laws, prosecutions, etc. stemming from the 1874 Pa. Constitution.

On its face, this request is for the legislative "Savings Clause(s)" in the Pennsylvania Constitution for all statutes, codes, laws, prosecutions, etc. stemming from the 1874 Pa. Constitution. This request requires the Senate Open Records

Officer to conduct legal research and analysis to ascertain the “savings clause” being requested. The RTK Law does not require an agency to conduct such research.

Mason v. PA Dept. of State, OOR Dkt. AP 2014-1250, 2014 PA O.O.R.D. LEXIS 952, * 5-6, Aug. 29, 2014 (holding the request lacks specificity because it implicitly requires the agency to perform legal research to locate the “savings clause” sought by the requester); Pennsylvania State Police v. Office of Open Records, 995 A.2d at 517 (finding that the portion of a RTKL request seeking any and all records, files or communications of any kind pertaining to seizures of property was insufficiently specific for state police to respond to request for records). It follows that the request for Document 7 lacks the specificity required by the RTK Law.

Document 8

Please validate, certify (under penalty of perjury - not in violation of your Oath of Office) and provide me the validity, enforceability, lawfulness, and **Constitutional Authority** of the 1968 Pa. Constitution; whence, it was strictly prohibited from re-writing, altering, etc. its Constitution(1776); **thereby**, impermissibly [sic] re-writing its Constitution (1776) on four (4) distinct -- 1790, 1838, 1874, 1968 -- pursuant to the 1776 Pa. Constitution, Sec. 9, Last Line.

On its face, this request is for the “Constitutional Authority” to amend the Pennsylvania Constitution. Again, this request necessitates that the Senate Open Records Officer conduct legal research and analysis to ascertain that which is being requested. The RTK Law does not require an agency to conduct such legal research for a requester; therefore, the request for Document 8 lacks the specificity required by the RTK Law. See Neal v. PA Dept. of State, OOR Dkt. AP 2014-1470, PA O.O.R.D.

LEXIS 1189, Oct. 23, 2014; Whitaker v. PA Dept. of State, OOR Dkt. AP 2014-1463, PA O.O.R.D. LEXIS 1191, Oct. 23, 2014.

Document 9

Please validate, certify (under penalty of perjury - not in violation of your Oath of Office) and provide me the '**Constitutional Delegated Authority**' for the Pennsylvania General Assembly to 'delegate' its legislative authority and power to a '**foreign**', de facto, and non-constitutional legislative entity [**Legislative Reference Bureau**] to 'contract' with a 'private' publisher [**West Publishing Co.**] to interpret the Statutory Laws of Pennsylvania.

On its face, this request is for the "Constitutional Delegated Authority" that authorizes the Pennsylvania General Assembly to contract with a vendor to "interpret" the laws of Pennsylvania. In order to respond to this request, the Senate Open Records Officer would have to conduct legal research and analysis to ascertain that which is being requested in relation to the requester's assertion that the Pennsylvania General Assembly has delegated its authority to "interpret" the laws of Pennsylvania. The RTK Law does not require an agency to conduct such research for a requester. It follows that the request lacks the specificity required by the RTK Law. See Neal v. PA Dept. of State, OOR Dkt. AP 2014-1470, PA O.O.R.D. LEXIS 1189, Oct. 23, 2014; Whitaker v. PA Dept. of State, OOR Dkt. AP 2014-1463, PA O.O.R.D. LEXIS 1191, Oct. 23, 2014.

In sum, the RTK Law requires that a written request for access to records must be specific so that an agency is able to ascertain what records are being requested. If a request necessitates legal research to ascertain that which is being

requested or to ascertain whether a record is responsive to a request, the request lacks the specificity mandated by the RTK Law.

Here, the requester's request for each of the nine (9) documents lacks this required specificity, because the Senate Open Records Officer will have to conduct legal research for each requested document to ascertain that which is being requested. The RTK Law simply does not require an agency to conduct such legal research for a requester. Therefore, because the request lacks the requisite specificity under the Act, the decision of the Senate Open Records Officer is sustained.

Assuming *arguendo* the request at issue states with specificity the documents sought by the requester, the decision of the Senate Open Records Officer is sustained, because the documents are not legislative records. The records sought by the requester do not fall within the RTK Law's clear and unambiguous definition of a legislative record. Nowhere in this comprehensive list of accessible legislative records is found the mention of "Pamphlet Laws², Statutory Authorizations, Enacting Clauses, Constitutional Provision(s), Constitutional Authorization, Savings Clause(s), Constitutional Authority, and Constitutional Delegated Authority." Because these documents ("Pamphlet Laws, Statutory Authorizations, Enacting Clauses, Constitutional Provision(s), Constitutional Authorization, Savings Clause(s), Constitutional Authority, and Constitutional Delegated Authority") are not

² If the requester is seeking a specific bill or bills, he needs to state so with specificity in a subsequent request.

enumerated as any 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 same into accessible legislative records under these provisions of the Act. See Donahue, 59 A.3d at 1168-69 (concluding 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). It follows that the requested documents are not legislative records as defined by the clear and unambiguous language of the RTK Law, and are therefore, not releasable. The decision of the Senate Open Records Officer is sustained.

Accordingly, the decision of the Senate Open Records Officer is sustained. The requester has failed to state with specificity the records to which he seeks access. An agency is not required to perform legal research for a requester to ascertain that which is being requested. In the alternative, the decision of the Senate Open Records Officer is sustained because the requester is seeking access to documents that are not included in the RTK Law'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.

IN THE SENATE OF PENNSYLVANIA

Appeal of McManus


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Senate RTK Appeal 01-2014

**FINAL DETERMINATION
November 10, 2014**

ORDER

AND NOW, this 10th day of November 2014, the decision of the Senate Open Records Officer is affirmed. The requester has failed to state with specificity the records to which he seeks access. Alternatively, the documents sought by the 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.