

IN THE MATTER OF  
APPEAL OF  
COULOUMBIS  
Requester

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OFFICE  
CHIEF OF POLICE

v.

RTKL Appeal No. 2017-03  
(Senate RTK Appeal 01-2017)

SENATE OF PENNSYLVANIA  
Legislative

## FINAL DETERMINATION

### INTRODUCTION

Angela Couloumbis (Requester), staff writer for the *Philadelphia Inquirer*, submitted a request to the Senate of Pennsylvania (Senate) pursuant to the act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law, 65 P.S. §§ 67.101 *et seq.* (RTKL), seeking information characterized as reports created or compiled by Senate Security officers between June 1, 2017, to the present. The Senate's open records officer (RTK Officer) denied the request and the Requester appealed. For the reasons stated in this Final Determination, the appeal is denied and Senate is not required to take any further action on the request.

### FACTUAL BACKGROUND

On Monday October 2, 2017, the Requester submitted a Right-to-Know (RTK) request to the Senate's RTK Officer via electronic transmission, reading as follows:

*Under the state's Right-to-Know law, I am requesting to review and make copies of reports created or compiled by Senate security officers regarding incidents and/or routine checks between June 1, 2017 to the present.*

On October 4, 2017, the RTK Officer denied the request via electronic transmission. The

denial was based on a determination that the requested "reports" are not within the definition of a "legislative record" as provided for in the RTKL. 65 P.S. § 67.102. The RTK Officer provided the Requester with copies of prior determinations of Senate RTK Appeals Officers upholding denials of similar requests (Senate RTK Appeals: 02-2012, Carollo; 01-2013, Miller; 02-2016, Pellington).

The Requester filed an appeal on October 23, 2017, via electronic transmission with the Senate Appeals Officer which included the following reasons for filing the appeal:

*Senate officials argue that incident reports by Senate security officers are not "legislative records" subject to the state's Open Records law - yet they avoid defining what kind of record such incident reports constitute.*

*Under Pennsylvania's Right-to-Know law, police and law enforcement reports containing basic information about law enforcement incidents - included but not limited to police blotters, incident reports and emergency response logs - are considered public record. Senate security reports should not be treated any differently, and Senate officials have not addressed why they don't qualify as being a commonwealth or law enforcement record subject to the Right-to-Know requirements for such information.*

*Consider the ramification of upholding this denial: if someone were seriously hurt and a security officer that patrols the Senate responded to it, basic information involving a security incident that any other enforcement agency would be required to make public could be kept secret under the guise of it not being a "legislative record."*

*That is a dangerous power - one not bestowed even on the highest law enforcement agency in the state - to assign to a legislative agency, and a slap to both the spirit and the letter of the Pennsylvania's Right-to-Know law.*

*In short, you would be empowering a legislative agency - in this case, the Senate - to control a police-like force that is publicly accountable to no one. That is a frightening prospect. For those reasons, I am appealing the denial of my Right-to-Know request.*

After receiving Requester's appeal, the Senate Appeals Officer established a schedule for submitting any memorandum of law and documentary evidence with instructions for serving the submissions.

The Senate Appeals Officer recused herself from resolving the appeal on November 6, 2017. On the same date, the Pennsylvania Legislative Reference Bureau (LRB) agreed to determine the appeal. The Senate transferred its record, consisting of the Requester's appeal; a letter of acknowledgement; a letter establishing the briefing schedule for the parties; and a memorandum of law from the Senate's Appeals Officer to the LRB.

The parties were notified of the transfer of the appeal to the LRB by the designated LRB Appeals Officer. The Requester requested a one week extension of time to file any supplemental materials with the LRB Appeals Officer on November 9, 2017. At the same time, the Requester also agreed to waive the statutory deadline for a decision in this appeal. 65 P.S. § 67.1101(b)(2).

According to the regulations of the LRB, the provisions of 2 Pa.C.S. Chs. 5, Subc. A (relating to practice and procedure of Commonwealth agencies) and 7, Subc. A (relating to judicial review of Commonwealth agency action) apply to Right-to-Know appeals. 101 Pa. Code § 31.21(b)(1). The Administrative Agency Law permits all relevant evidence of reasonably probative value to be received in an adjudication. 2 Pa.C.S. § 505. In addition, all parties are afforded opportunity to submit briefs prior to adjudication by a Commonwealth agency. 2 Pa.C.S. § 506.

The LRB Appeals Officer granted the Requester's request to submit additional support for its appeal. The LRB Appeals Officer established a schedule for documents to be submitted in the appeal with instructions to serve the other party. Pursuant to the schedule, Requester was permitted to submit a memorandum of law or any other evidentiary documentation in support of the appeal by the close of business on Thursday, November 16, 2017. The Senate was permitted to file a response to the Requester's documentation by close of business on Wednesday,



November 22, 2017.

The Requester filed additional support for its appeal on November 16, 2017. The Senate filed a "Memorandum of Law – Senate Response to Appellant's Reply Submission" with the LRB Appeals Officer on November 22, 2017.

### LEGAL ANALYSIS

In 2008, the Pennsylvania General Assembly enacted the RTKL,<sup>1</sup> providing for the method of access to a legislative record and setting the criteria to determine whether information is protected from disclosure. The objective of the RTKL is to empower citizens by affording them access to information concerning the activities of their government, to promote openness to official government information in order to prohibit secrets, scrutinize the actions of public officials and to make public officials accountable for their actions. *SWB Yankees LLC v. Wintermantel*, 615 Pa. 640, 662; 45 A.3d 1029, 1042 (2012); *Office of the District Attorney of Philadelphia v. Bagwell*, 619 Pa. 586, 618, 155 A.3d 1119, 1130 (Pa. Commw. Ct. 2017). The RTKL provides for increased access to public records effecting a dramatic expansion of the public's access to government documents. *Levy v. Senate of Pa.*, 619 65 A.3d 361, 381 (Pa. 2013).

Upon the denial by a RTK Officer of a written request for access to a record, a requester may file an appeal. 65 P.S. § 67.1101. The appeal is required to "state the grounds upon which the requester asserts that the record is a public record, legislative record or financial record and shall address any grounds stated by the agency for delaying or denying the request." 65 P.S. § 67.1101(a)(1). Here, the Senate argues for a dismissal of this appeal without further consideration for Requester's failure to follow the RTK statutory requirements and the appeal

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<sup>1</sup> Act of February 14, 2008, (P.L. 6, No. 3), 65 P.S. §§ 67.101-67.3104, as amended. The RTKL replaced the Right-to-Know Act (RTKA), Act of June 21, 1957 (P.L. 390, No. 212), 65 P.S. §§ 66.1-66.4 (repealed, effective Jan. 1, 2009).

instructions from the Senate Appeals Officer.

On November 9, 2017, the recusal of the Senate Appeals Officer ended its involvement in this RTK appeal. This appeal and its corresponding record were transferred to the LRB Appeals Officer of the LRB who issued instructions to the parties on November 9, 2017 which were in accordance with regulations of the LRB. 101 Pa. Code § 31.21.

The competing statutory purposes and concern for due process rights compel a liberal reading of the procedural requirements of the RTKL. *Levy v. Senate of Pa.*, 65 A.3d at 383 (Pa. 2013), *appeal denied*, 630 Pa. 738 (2014). For these reasons, the record in this appeal is recognized as adequate for review.

The RTKL imposes a statutory duty on a legislative agency to release certain records by stating that [a] legislative agency shall provide legislative records in accordance with this act. 65 P.S. § 67.303(a). The terms legislative agency and legislative record are defined in the RTKL. 65 P.S. § 67.102. The Senate is specifically identified in the definition of “legislative agency.”<sup>2</sup> Significantly, the record must be one of the Senate itself or a standing committee, subcommittee or conference committee of the Senate. 65 P.S. § 67.102.

The question presented here requires statutory interpretation to assess the scope of the term “legislative record.”<sup>3</sup> A “legislative record” is clearly defined under the RTKL.<sup>4</sup> 65 P.S. §

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<sup>2</sup> “Legislative agency.” Any of the following:

(1) The Senate. 65 P.S. § 67.102(1).

<sup>3</sup> The analysis must be made based on the definition of “legislative records,” rather than whether the records were intended to be publicly released. *Askew v. Office of Governor*, 65 A.3d 989, 992-92 (Pa. Commw. Ct. 2013), *appeal denied*, 621 Pa.660 (2013); *see also Miller v. County of Centre*, No. 98 & 99 (2006) MAP at 11, --- A.3d --- -2017 (WL 5617637, opinion not yet reported).

<sup>4</sup> “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.

7.102. A public "record" is separately defined. It does not include a "legislative record." 65 P.S. § 67.102.

The Statutory Construction Act, 1 Pa.C.S. §§ 1501-1991, recognizes that the objective of all interpretation is to ascertain and effectuate the General Assembly's intent. 1 Pa.C.S. § 1921(a). The prevailing standard presents that a statute's plain language generally provides the best indication of legislative intent. 1 Pa.C.S. § 1921(b).

If the words of the statute are ambiguous, the intention of the General Assembly may be ascertained by considering, the occasion and necessity for the statute, the object or policy goals to be obtained and the consequences of a particular interpretation. 1 Pa.C.S. § 1921(c). In contrast, "where the statute expressly defines what a term means, the legislature has created its own dictionary and the meaning of the term as defined excludes any other meaning." *McGilley v. Chubb & Son, Inc.*, 369 Pa. Super. 547, 560, 553 A.2d 1070, 1077 (1987). When a statute provides its own internal definitions, the statute is construed according to those

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- (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. 65 P.S. § 67.102.



definitions. *Westbrook v. Pennsylvania Financial Responsibility Assigned Claims Plan*, 416 Pa. Super. 543, 752, 611 A.2d 749, 752 (1992).

According to its legislative history, the purpose of the RTKA, the predecessor to the RTKL, was to “strike the veil of secrecy from [those] governmental departments and agencies” that have become so far removed from the electoral process that public oversight is necessary to keep them in check. Pennsylvania Legislative Journal, House of Representatives, Session 1957, No. 35, April 10, 1957, 2186; *Miller v. County of Centre*, No. 98 & 99 MAP (2016) at 11, --- A.3d ----2017 (WL 5617637, opinion not yet reported); *McGilley v. Chubb & Son, Inc.*, 369 Pa. Super. 547, 560; 535 A.2d 1070, 1077 (1987); *Wiley v. Woods*, 393 Pa. 341, 348141 A.2d 844, 848 (Pa. 1958) (stating that the RTKA was enacted to “enlarge the rights of the general public for the examination and inspection of public records”).

The content of the 19 categories of “legislative records” listed in the RTKL does not include the reports of the Senate’s security officers.<sup>5</sup> The requested Legislative record must also be one of a standing committee, subcommittee or conference committee of a legislative agency. 65 P.S. § 67.102. Senate security is not a committee of the Senate.

A “record” is defined, in part, in the RTKL as “[i]nformation, regardless of physical form or characteristics, that documents *a transaction or activity of an agency* and that is created, received or retained pursuant to law or in connection with *a transaction, business or activity of the agency*” (emphasis added). 65 P.S. § 67.102.<sup>6</sup> Reports of Senate security officers do not detail a transaction or the business or activity of the Senate or its committees.

The Requester’s attempt to enlarge the definition of “legislative record” fails as the rules of statutory construction must yield to the definition section of the RTKL in which the definitions

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<sup>5</sup> These reports are not staff “manuals or written policies.” 65 P.S. § 67.102. Def. of “legislative record” (11).

<sup>6</sup> See *supra* text accompanying note 4.

appears. *Miller v. County of Centre*, No. 98 & 99 MAP (2006) at 11, --- A.3d ----2017 (WL 5617637, opinion not yet reported); *Matthews v. Konieczny*, 515 Pa. 106, 527 A.2d 508 (1987)(plurality opinion).

The Secretary of the Senate has oversight responsibility for Senate security and supervises, among others, the Chief Sergeant-at-Arms. Pa. Senate Rule 6(c)(7). The Sergeant-at-Arms and his deputies provide security for the Senate. Senate security is charged by the President of the Senate with keeping order, checking press credentials, and ensuring that Senators are not disturbed in the performance of their duties.<sup>7</sup> Rule 6(c)(8), Rules of the Senate of Pennsylvania, Pa. Senate Rule

The Senate's allegations that its security officers have very limited authority, have absolutely no level of law enforcement authority and have no authority to conduct a criminal investigation may be self-serving. However, any administrative relationship between Senate and the Senate security officers in no way alters the conclusion that the Senate Sergeant-at-Arms and its staff do not conduct the business of or reflect a transaction or activity of the Senate or its committees.

"The Memorandum of Law - Couloumbis Reply Submission" argues that denying the Requester information so squarely in the public purview, especially in the wake of public safety

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<sup>7</sup> The Chief Sergeant-at-Arms shall:

- (1) Be constantly in attendance during the sessions of the Senate except when absent in discharging other duties.
- (2) Have charge of and direct the work of the assistant sergeants-at-arms.
- (3) Serve all subpoenas and warrants issued by the Senate or any duly authorized officer or committee.
- (4) Maintain order, at the direction of the presiding officer, in the Senate Chamber and adjoining rooms.
- (5) See that no person, except those authorized to do so, disturbs or interferes with the desk, or its contents, of any Senator or officer.
- (6) Exclude from the Floor all persons not entitled to the privilege of the same.
- (7) Have charge of all entrances to the Chamber during the sessions of the Senate and shall see that the doors are properly attended.
- (8) Announce, upon recognition by the presiding officer, all important communications and committees.
- (9) Escort the Senate to all Joint meetings with the mace.
- (10) Escort the Senate to attend funeral services of members, former members of the Senate or other dignitaries with the mace. Rule 6 (c)(8), Rules of the Senate of Pennsylvania.



incidents at capitols across the country, produces an absurd, impossible, or unreasonable result. Requester continues that the self-designated "reports" of the Senate security officers represent precisely the basic public safety information that the legislature intended to make accessible when it passed the RTKL. The Requester's representation that the RTKL requires police and law enforcement reports containing basic information about law enforcement incidents; included but not limited to police blotters, incident reports and emergency response logs; to be considered public record is misguided. The Requester is incorrect in arguing that the Senate must disclose:

[I]nformation contained in a police blotter as defined in 18 Pa.C.S. § 9102 (relating to definitions) and utilized or maintained by the Pennsylvania State Police, local, campus, transit, or port authority police department or other law enforcement agency or in a traffic report. 65 P.S. § 67.708(b)(16).<sup>8</sup>

The Senate is a body which possesses legislative power. Pa. Const. Art. II, §1. It is not a Commonwealth agency, some of which have the power to enforce the law. Although public safety information may be a "record" of a Commonwealth agency, these documents are not in the purview of the Senate's "legislative records." Under the RTKL, each agency, whether public, legislative or judicial, has its own unique "records" which are required to be made public under

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<sup>8</sup>There are certain records which are universally exempt from access by a requester under the RTKL. Per statute, these are records relating to or resulting in a criminal investigation. Per the statute, these records include:

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- (i) Complaints of potential criminal conduct other than a private criminal complaint.
- (ii) Investigative materials, notes, correspondence, videos and reports.
- (iii) A record that includes the identity of a confidential source or the identity of a suspect who has not been charged with an offense to whom confidentiality has been promised.
- (iv) A record that includes information made confidential by law or court order.
- (v) Victim information, including any information that would jeopardize the safety of the victim.
- (vi) A record that, if disclosed, would do any of the following:
  - (A) Reveal the institution, progress or result of a criminal investigation, except the filing of criminal charges.
  - (B) Deprive a person of the right to a fair trial or an impartial adjudication.
  - (C) Impair the ability to locate a defendant or codefendant.
  - (D) Hinder an agency's ability to secure an arrest, prosecution or conviction.
  - (E) Endanger the life or physical safety of an individual. 65 P.S. § 67.708(b)(16).

Some records involving a noncriminal investigation are also protected from disclosure. 65 P.S. § 67.708(b)(17).

the RTKL.

The Requester argues that the decision of the RTK Officer is contrary to the spirit of the RTKL. However, the spirit of the RTKL is reflected in its language as adopted by the Legislature and in interpreting legislative intent, plain words of the statute are not to be ignored. *In re Stegmaier*, 424 Pa. 4, 7, 225 A.2d 566, 568 (1967).

The Requester alleges that the Senate avoids defining the type of record the incident reports of the Senate Security officers constitute. The RTKL imposes no requirement on a legislative agency to characterize the nature of a writing on which it has made a determination.

All records in the possession of Commonwealth and local agencies are presumed to be public records subject to disclosure unless they are specifically exempt, protected by a privilege or are shielded by federal or state law, regulation, or judicial order or decree. 65 P.S. § 67.305(a); 65 P.S. § 67.708(a)(1). The opposite rule applies to legislative agencies. Only legislative records in the possession of a legislative agency are “presumed to be available.” 65 P.S. § 67.305(b); 65 P.S. § 67.708(a)(2); *cf. Miller v. County of Centre*, Nos. 98 & 99 MAP(2016) at 10 (Pa. 2017; opinion not yet reported).

The definitions of “legislative record,” “legislative agency” and “records” place a limit on the records that legislative agencies must disclose.<sup>9</sup> 65 P.S. § 67.102; 65 P.S. § 67.303(a). Reports of the Senate’s security officers are not accessible legislative records under the provisions of the RTKL. 65 P.S. § 67.102; 65 P.S. § 67.303(a); 65 P.S. § 67.305(a) & (b).

## CONCLUSION

For the foregoing reasons, Requester's appeal is denied and the Senate is not required by the RTKL to take any further action. This Final Determination is binding on all parties. Within 30 days of

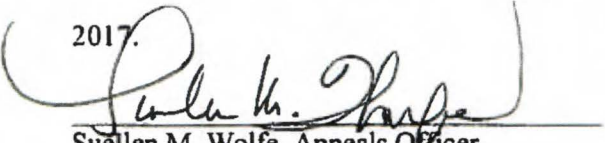
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<sup>9</sup> See *supra* text accompanying note 4.

the date of this Final Determination, any party may appeal to the Commonwealth Court of Pennsylvania. 65 P.S. § 67.1301(a). If a party appeals, it must serve notice of the appeal to all other parties and the LRB. Pursuant to section 1303(a) of the RTKL, LRB has the right to respond. 65 P.S. § 67.1303(a).

FINAL DETERMINATION ISSUED AND HAND DELIVERED on December 19,

2017.



Suellen M. Wolfe, Appeals Officer