

IN THE SENATE OF PENNSYLVANIA

Appeal of Kennedy : Senate RTK Appeal 02-2019
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:

FINAL DETERMINATION
October 8, 2019

Statement of Facts

By fax received September 9, 2019 in the office of the Senate Open Records Officer, Mr. Edward Thomas Kennedy (the Requester) sought access to numerous documents from the Senate. 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).

The Request¹

The Requester sought the following:

PA Constitutional (all versions) and Legislative foundation for Pennsylvania Statutes Title 18 Pa. C.S.A. Crimes and Offenses § 2709. Harassment link here: [https://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/18/00.027.009.000 .. HTM 9](https://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/18/00.027.009.000..HTM) (link not valid),² including the phrase “Course of conduct.”

Senate Open Records Officer, Memorandum of Law, Sept. 18, 2019, p. 1.

The Senate Open Records Officer’s Response

For RTK Law Request No. 1909091017, the Senate Open Records Officer responded to the Requester, via email communication dated September 10, 2019 as follows:

¹ The Requester never provided a copy of his original Request with his appeal. Therefore, this statement of the Request is taken from the Senate Open Records Officer’s Memorandum of Law, Sept. 18, 2019, p. 1.

² The Senate Open Records Officer, in both her Memorandum and her response to the Requester, avers that this link, provided by the Requester, is not valid. Senate Open Records Officer, Memorandum of Law, Sept. 18, 2019, p. 1; Senate Open Records Officer, Response to Requester, Sept. 10, 2019.

The Senate Open Records Officer denied this Request on the basis that the Request is not sufficiently specific as required by the RTK Law, and that the Request requires legal research, which the Senate Open Records Officer maintained she is not obligated to conduct on behalf of a requester. Senate Open Records Officer, Response to Requester, Sept. 10, 2019.

The Senate Open Records Officer also advised the Requester of the availability of many of the Senate's legislative records (such as bills and Senate journals) via several links, which she provided in her response. Moreover, the Open Records Officer also advised the Requester that the General Assembly website provides non-legislative records, citing the statutes and Constitution of Pennsylvania, as well as the histories of the laws. She provided this link as well in her response, noting to the Requester that histories are not legislative records under the RTK Law. Id.

The Appeal

By email dated September 10, 2019 (later that same day), the Requester timely appealed this denial of access. On September 10, 2019, this Office notified the Senate Open Records Officer of the appeal, and by separate letter, set forth a briefing schedule for the parties. 65 P.S. § 67.1102(a)(1).

The Requester, in his appeal, only stated that "I disagree with the opinion of the RTKL Officer" to support his appeal. He did not provide additional support for his appeal, nor did he address the reasons for denial raised by the Senate Open Records Officer in her response. Further, the Requester did not include a copy of his original Request with the appeal. Requester Appeal to Senate Open Records Officer Response to RTKL Request No. 1909091017, Sept. 10, 2019.

On September 18, 2019, the Senate Open Records Officer filed a Memorandum of Law in support of her denial of access.

The Open Records Officer set forth several arguments that she termed “preliminary” in her Memorandum, and which she maintains support the Requester’s appeal should be dismissed on procedural grounds. She maintains the appeal is procedurally deficient in several respects.

First, the Open Records Officer maintains the appeal is procedurally deficient because the Requester did not provide a copy of the initial Request in his appeal as required by the RTK Law. In support of this argument, the Open Records Officer cites both the RTK Law and its regulations as requiring a copy of the initial Request to be filed with any appeal. 65 P.S. § 67.1303(b); 104 PA CODE § 7.16(c). Further, the Open Records Officer maintains she notified the Requester of this requirement in her denial and that she provided him with a link to the regulations as well. Senate Open Records Officer, Memorandum of Law, Sept. 18, 2019, p. 2.

Second, the Open Records Officer maintains the Requester failed to address the grounds provided by the Open Records Officer in her denial as required by the RTK Law, 65 P.S. § 67.1101(a)(1). The Open Records Officer argues that neither the Requester’s general statement of disagreeing with the decision, nor the general statements contained in his Memorandum, meet the statutory requirement for addressing the grounds stated in the denial. For these reasons, the Open Records Officer maintains this appeal should be dismissed. *Id.* at 2-3.

Third and finally, the Open Records Officer maintains that because a requester cannot modify a request on appeal, the Requester cannot do so here. The Open Records Officer argues the Requester is attempting to modify his original request via his Memorandum. Specifically, the Open Records Officer avers that “[o]n appeal, it appears the Requester is now attempting to modify the request, as evidenced throughout the memorandum submitted on appeal which

included as an example “...and/or how this statute was approved by the PA Legislature, and who is responsible for it today.” Senate Open Records Officer, Memorandum of Law, Sept. 18, 2019, p. 3. The Open Records Officer maintains she acted in good faith responding to the Request, and that any part of the appeal seeking to modify the original Request should be denied and only the original Request as drafted should be the sole basis for consideration in this appeal. Id. at 3-4.

In addition to these procedural arguments to support dismissal of the appeal, the Senate Open Records Officer maintains this appeal should be denied on substantive grounds. The Open Records Officer puts forth several arguments to support denying this appeal.

First, she maintains a request cannot require legal research, and the request at issue does just that; therefore, the appeal should be denied. The Open Records Officer, citing Askew v. PA Office of the Governor, 65 A.3d 989, 993 (Pa. Commw. Ct. 2013), *appeal denied*, 72 A.3d 604 (Pa. 2013), argues that a request requiring legal research is no request at all; rather, it is a search conducted by the Senate in hopes of finding a document that would “fit the description of the request.” The Open Records Officer further cites Senate precedent on this issue, Appeal of McManus, Senate RTK Law Appeal 01-2014, where this Appeals Officer concluded that a request for “Constitutional Provisions,” “Constitutional Authorization for the adoption of statutes,” and other statutory provisions was really a request for legal research to be conducted by the Senate. Therefore, she maintains, the appeal should be similarly denied. Senate Open Records Officer, Memorandum of Law, Sept. 18, 2019, p. 4.

Second, the Open Records Officer maintains the Request fails to meet the specificity requirements of the RTK Law; therefore, the appeal should be denied. She maintains that under Section 703 of the RTK Law, the Request must be specific enough to enable the Open Records Officer to identify the records being sought. The Open Records Officer further maintains the

Request does not meet the requirements of the 3-prong test for specificity established by our Commonwealth Court, citing PA Dep't of Educ. v. Pittsburgh Post-Gazette, 119 A.3d 1121, 1124-25 (Pa. Commw. Ct. 2015), and Carey v. PA Dep't of Corr., 61 A.3d 367, 372 (Pa. Commw. Ct. 2013). Here, she maintains, the Request seeking **“PA Constitutional (all versions) and Legislative foundation for” the crime of harassment (a statute) “including the phrase Course of Conduct”**” is overly broad in scope and does not provide any actual legislative records that are being requested or a timeframe for which such records are sought; therefore, the appeal should be denied. Senate Open Records Officer, Memorandum of Law, Sept. 18, 2019, p. 5.

Third, the Open Records Officer maintains the Request seeks an answer to a question rather than access to records; therefore, the appeal should be denied. She avers that a request which asks a question is not a request at all, and an answer is not required to be created in such an instance, citing Gingrich v. PA Game Comm'n, No. 1254 C.D. 2011, 2012 Pa. Commw. Unpub. LEXIS 38 (Pa. Commw. Ct. Jan. 12, 2012), Walker v. PA Ins. Dep't, No. 1485 C.D. 2011, Pa. Commw. Unpub. LEXIS 425 (Pa. Commw. Ct. June 15, 2012), and Stidmon v. Blackhawk Sch. Dist., No 11605-2009 at 5 (Beav. Com. Pl. Dec. 14, 2009). She looks to the language of the request, **“PA Constitutional (all versions) and Legislative foundation for Pennsylvania Statutes Title 18 Pa. C.S.A. Crimes and Offenses § 2709. Harassment, including the phrase “Course of conduct[,]”** and argues it would necessitate a record to be created to respond to such an overly broad request, which the RTK Law does not require. 65 P.S. § 67.705. Further, the Open Records Officer maintains that although the Request does not contain a question mark, it still asks a question, which she is not required to answer via the RTK Law process. In support, she cites Varick v. Paupack Twp., OOR Dkt. AP 2013-1348 and

Moore v. Office of Open Records, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). Senate Open Records Officer, Memorandum of Law, Sept. 18, 2019, pp. 5-6.

Fourth, the Open Records Officer maintains the Requester seeks access to records that are not legislative records; therefore, the appeal should be denied. Specifically, she maintains that a request for “laws” seeks records that do not fall within the statutory definition of a legislative record. She cites Appeal of McManus, Senate RTK Law Appeal 01-2014, where this Appeals Officer upheld the denial after concluding the request for “Constitutional Provisions” “Constitutional Authorization for the adoption of statutes” and other statutory provisions was a request for records that were not legislative records under the RTK Law. Senate Open Records Officer, Memorandum of Law, Sept. 18, 2019, p. 7.

Finally, the Open Records Officer maintains that, pursuant to Section 704 of the RTK Law, she provided the Requester with links to many legislative records of the Senate, as well as non-legislative records in her response to his initial request; therefore, the appeal should be denied. Senate Open Records Officer, Memorandum of Law, Sept. 18, 2019, p. 8.

The Requester filed his Memorandum on September 11, 2019. In this pleading, just as in his appeal, the Requester does not address the Open Records Officer’s reasons for her denial. Rather, he makes general, public policy arguments and statements in support of his initial request:

I am writing as one of the people in Pennsylvania concerned about the lawfulness and/or lawlessness of Pennsylvania statutes specifically at this time for 2010 Pennsylvania Code Title 18 - CRIMES AND OFFENSES § 2709. Harassment. and therefore demand to know the legislative evidence and foundation for this statute.

The fact that Open Records Officer Donnetta [sic] D' D'Innocenzo denied by [sic] request to me is evidence in my legal opinion, that the PA legislature has something to hide, and does not want to [sic] people and the public to know that the statute as written many years ago probably now violates the Constitution of the United States. Therefore, I

believe the statute must be deleted and/or rewritten to comply with the Constitution of the United States, and/or definitely not enforced until its defects are corrected.

For example, what is "course of conduct," and is it true that it is defined in Pennsylvania ("PA") only by a jury in a jury trial. My observation is that PA prosecuting attorneys fail to disclose this fact to defendants, and because it is not disclosed, all such plea agreements are null and void, nunc pro tunc, [sic] (correctly interpreted) pursuant to *Class v United States*. 1 [footnote omitted]

For example, all electronic (internet) transmissions today are national and international, and not only within the Commonwealth of Pennsylvania, and as such, how does the Commonwealth presume jurisdiction with this statute [sic] as written, published and enforced?

The Constitution of the United States is the Supreme law of the land and the PA legislature, the PA courts, and PA law enforcement has a duty and obligation to comply with the Constitution of the United States as written.

From both experience and observation, I've noticed that PA prosecuting attorney's [sic] and PA law enforcement abuse this statute as a weapon in order to extract confessions and plea agreements that they knowingly violate the Constitution of the United States. Also, most small town law police officers are not college graduates, and I have observed this statute as written (at times) as a weapon of revenge. 2 [footnote omitted] In other words, i t i s [sic] a bad statute that needs to be rewritten, deleted, and/or change the sentence grading and/or punishments.

I demand to know the legislative foundation and/or how this statute was approved by the PA Legislature, and who is responsible for it today.

Requester, Memorandum of Law, Sept. 11, 2019, pp. 1-2.

Discussion

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) (citing *Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), *appeal granted*, 15 A.3d 427 (Pa. 2010), *aff'd*, 75 A.3d 453 (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.*

Here, the Requester seeks access to the following records, which access the Senate Open Records Officer denied:

PA Constitutional (all versions) and Legislative foundation for Pennsylvania Statutes Title 18 Pa. C.S.A. Crimes and Offenses § 2709. Harassment link here: [https://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/18/00.027.009.000 .. HTM 9](https://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/18/00.027.009.000..HTM), including the phrase “Course of conduct.”

Senate Open Records Officer, Memorandum of Law, Sept. 18, 2019, p.1.

Procedural Arguments

Before addressing the merits of this appeal, the Senate Open Records Officer’s procedural issues must first be resolved. The Open Records Officer maintains this appeal should be dismissed for noncompliance with the provisions of the Act. Specifically, the Senate Open Records Officer avers the Requester’s appeal is deficient in three (3) respects: (1) the Requester did not provide a copy of the initial Request with his appeal; (2) the Requester did not address the grounds provided by the Open Records Officer in his appeal; and, (3) the Requester has improperly modified his request on appeal. This Officer concurs.

A Requester must provide a copy of the Request with the appeal.

The Senate Open Records Officer maintains that because the Requester did not provide a copy of his Request with his appeal, the appeal should be dismissed as insufficient. This Officer concurs.

The regulations for filing a RTK Law appeal in the Senate require a requester to provide a copy of the original request in his appeal filing: “An appeal must include complete contact information, a copy of the original request, and a copy of the response, if any.” 104 PA CODE § 7.16(c) (emphasis added). This requirement ensures the record on appeal is sufficient for the appeals officer to make a determination, as well as enables the appeals officer to present a complete record on appeal to an appellate court. See *Brown v. Phila. Police Dep’t*, OOR Dkt.

AP 2017-1082, 2017 PA O.O.R.D. LEXIS 851, June 2, 2017; Corbett and WILK Newsradio v. Lackawanna County, OOR Dkt. AP 2017-0462, 2017 PA O.O.R.D. LEXIS 716, May 10, 2017; Heath v. PA Dep't of State, OOR Dkt. AP 2016-1435, 2016 PA O.O.R.D. LEXIS 1235, Sept. 7, 2016.³ The Senate Open Records Officer maintains she notified the Requester of this requirement in her denial and also included a link to the relevant Senate regulations in her denial. The record reflects this to be a true averment.

Here, the Requester did not provide a copy of his Request with his appeal. Instead, he placed in his appeal a restatement of what he requested initially. This does not meet the RTK Law requirements for properly filing an appeal in the Senate. Without this important information, the record is incomplete for both this Officer and the Commonwealth Court should the matter be further appealed. Accordingly, the appeal is dismissed on this ground.

A Requester must address the grounds upon which he asserts the requested record(s) is releasable and the grounds upon which the Open Records Officer denied the Request.

The Senate Open Records Officer maintains the Requester did not address the grounds for denial provided by the Open Records Officer in this appeal; therefore, his appeal should be dismissed. This Officer concurs.

The RTK Law requires a requester “shall” include in the appeal “the grounds upon which the requester asserts that the record is a public record, legislative record or financial record” and further requires that the requester “shall address any grounds stated by the agency for delaying or denying the request.” 65 P.S. § 67.1101(a)(1) (emphasis added). The Senate regulations for filing a RTK Law appeal also include this statutory requirement. 104 PA CODE § 7.16(c)(2).

³ Although the OOR is only authorized to hear appeals for Commonwealth and local agencies, an opinion from the OOR is still advisory to the Senate. 65 P.S. §§ 67.503, 67.1310(a); Bowling v. Office of Open Records, 75 A.3d 453, 457 (Pa. 2013).

When a requester fails to state why the requested records are releasable records under the Act, his appeal is properly dismissed. Padgett v. PA State Police, 73 A.3d 644, 647 (Pa. Commw. Ct. 2013); see In re Robert Brown v. Westtown-East Goshen Regional Police Dep't, OOR Dkt. AP 2017-0020, Jan. 6, 2017. Further, when a requester fails to address the agency's grounds for denial of access to the requested records, that appeal is also properly dismissed. Padgett, 73 A.3d at 647; Dep't of Corr. v. OOR, 18 A.3d 429, 433-34 (Pa. Commw. Ct. 2010) (finding that, based on the "clear and unambiguous" language of Section 1101(a), it is both "appropriate" and "statutorily required" that a requester address the agency's grounds for denying the request); see In re Robert Brown v. Westtown-East Goshen Regional Police Dep't, OOR Dkt. AP 2017-0020, 2017 PA O.O.R.D. LEXIS ____, Jan. 6, 2017; Lybrand v. PA Dep't of Corr., OOR Dkt. AP 2016-2027, 2017 PA O.O.R.D. LEXIS 18, Jan. 5, 2017; Holloway v. PA Dep't of Corr., OOR Dkt. AP 2016-2021, 2017 PA O.O.R.D. LEXIS 13, Jan. 5, 2017; Caliman v. City of Phila., Dist. Attorney, OOR Dkt. AP 2016-2051, 2016 PA O.O.R.D. LEXIS ____, Dec. 21, 2016. The requester is not required to prove anything in his appeal; rather, he must identify the "defects" in an agency's stated reasons for denying the request. Dep't of Corr., 18 A.3d at 434.

For an appeal to be legally sufficient under this provision of the Act, at a minimum, the requester's appeal "must address any grounds stated by the agency...for denying the request." Padgett, 73 A.3d at 647 (citation omitted); see Saunders v. Dep't of Corr., 48 A.3d 540, 542-43 (Pa. Commw. Ct. 2012). Moreover, if an agency sets forth exemptions that apply and prevent disclosure, then the requester must also state why the requested records do not fall under the asserted exemptions, and thus, that the records are releasable records under the Act. Padgett, 73 A.3d at 647 (citation omitted). In Padgett, the requester did not explain the public nature of the

records or claim the records were public. Further, he did not address the PSP's reasons for withholding the records. Padgett, 73 A.3d at 647. Rather, the requester generally stated the RTK Law exceptions do not apply. The Court concluded such generalized statements do not satisfy the requirements of Section 1101(a). Id.; see Dep't of Corr., 18 A.3d at 433-34 (finding the statement in the requester's appeal that the "above PA right to know requests are public" did not satisfy the requirement of addressing the agency's grounds for denial of the request).

Importantly, a requester's motivation for making his request is not relevant and the requester's explanation of why he believes the agency should release the records to him does not satisfy the requirements of Section 1101(a) of the Act. Padgett, 73 A.3d at 647. In Padgett, the Court was not compelled by the requester's argument that he was entitled to the records because they were related to a criminal investigation in which he was a party. See also, LeGrande v. Dep't of Corr., 920 A.2d 943, 950 (Pa. Commw. Ct. 2007); *appeal denied*, 931 A.2d 659 (Pa. 2007) (court is bound by language in the RTK statute despite compelling public policy arguments) (citation omitted).

Therefore, for this appeal to proceed under the Act, at a minimum, the Requester must have stated the grounds upon which he believes the items he requested -

PA Constitutional (all versions) and Legislative foundation for Pennsylvania Statutes Title 18 Pa. C.S.A. Crimes and Offenses § 2709. Harassment link here: [https://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/18/00.027.009.000 .. HTM 9](https://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/18/00.027.009.000..HTM), including the phrase "Course of conduct." –

are legislative records and subject to release, and he must also have addressed the Open Records Officer's reasons for denying his request. Generalized assertions that the requested items should be released are not sufficient under the Act.

Here, the Requester failed to satisfy either requirement of the Act. He did not state why the requested items are legislative records subject to release and he did not address the Open

Records Officer's grounds for denying his request. Instead, he merely stated in his appeal: "I disagree with the opinion of the RTKL Officer." Moreover, in his Memorandum, the Requester provides only generalized reasons why the items should be released, but these generalized averments do not meet the requirements of the Act. He states:

I am writing as one of the people in Pennsylvania concerned about the lawfulness and/or lawlessness of Pennsylvania statutes specifically at this time for 2010 Pennsylvania Code Title 18 - CRIMES AND OFFENSES § 2709. Harassment. and therefore demand to know the legislative evidence and foundation for this statute.

The fact that Open Records Officer Donnetta [sic] D' D'Innocenzo denied by [sic] request to me is evidence in my legal opinion, that the PA legislature has something to hide, and does not want to [sic] people and the public to know that the statute as written many years ago probably now violates the Constitution of the United States. Therefore, I believe the statute must be deleted and/or rewritten to comply with the Constitution of the United States, and/or definitely not enforced until its defects are corrected.

For example, what is "course of conduct," and is it true that it is defined in Pennsylvania ("PA") only by a jury in a jury trial. My observation is that PA prosecuting attorneys fail to disclose this fact to defendants, and because it is not disclosed, all such plea agreements are null and void, nunc pro tune, [sic] (correctly interpreted) pursuant to Class v United States. 1 [footnote omitted]

For example, all electronic (internet) transmissions today are national and international, and not only within the Commonwealth of Pennsylvania, and as such, how does the Commonwealth presume jurisdiction with this statute [sic] as written, published and enforced?

The Constitution of the United States is the Supreme law of the land and the PA legislature, the PA courts, and PA law enforcement has a duty and obligation to comply with the Constitution of the United States as written.

From both experience and observation, I've noticed that PA prosecuting attorney's [sic] and PA law enforcement abuse this statute as a weapon in order to extract confessions and plea agreements that they knowingly violate the Constitution of the United States. Also, most small town law police officers are not college graduates, and I have observed this statute as written (at times) as a weapon of revenge. 2 [footnote omitted] In other words, i t i s [sic] a bad statute that needs to be rewritten, deleted, and/or change the sentence grading and/or punishments.

I demand to know the legislative foundation and/or how this statute was approved by the PA Legislature, and who is responsible for it today.

Although the Requester attempts to make public policy arguments that arguably could further the purposes of the RTK Law to promote transparency and accountability of government, these alone are not enough. Neither a requester's motivation for making a request nor his explanation of why he believes an agency should release records is enough to meet the Act's requirements. Further, the Requester failed to address the case law cited by the Open Records Officer, which addresses the specificity of a request under the RTK Law, and to state why these decisions are inapplicable or distinguishable or should be reversed. The Requester's general averments, along with his singular statement that he "disagree[s] with the opinion of the RTKL Officer" are not sufficient to meet the requirements of the Act. The Requester is required to state why the requested items are legislative records and to address the grounds for denial of access. He met neither requirement under the Act.

It follows that this appeal is dismissed as insufficient; the Requester failed to state why the requested records are legislative records in his appeal, and the Requester also failed to address the Senate Open Records Officer's grounds for denying access. His generalized statements do not meet the requirements of the Act.

A Requester may not modify, explain or expand a Request on appeal.

The Senate Open Records Officer maintains the Requester is improperly attempting to modify his original Request through this appeal; therefore, the modified appeal should be denied and only the original Request should serve as the basis for consideration on appeal. Specifically, the Open Records Officer maintains that in the original Request, the Requester sought certain items –

PA Constitutional (all versions) and Legislative foundation for Pennsylvania Statutes Title 18 Pa. C.S.A. Crimes and Offenses § 2709. Harassment link here: <https://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/18/00.027.009.000> .. HTM 9, including the phrase "Course of conduct." –

but that now, through his appeal, he has posed numerous questions, such as “what is course of conduct and is it true that it is defined in Pennsylvania...only by a jury in a jury trial[,]” and asked for “the legislative foundation and/or how this statute was approved by the PA Legislature, and who is responsible for it today.” This, she maintains, is a modification to his original Request, which is not permissible. Further, the Open Records Officer maintains she acted in good faith discharging her statutory duties in responding to the original Request, and that it is improper for the Requester to modify his Request after-the-fact. This Officer concurs.

Once a Requester submits a request under the RTK Law, a requester may not modify, explain or expand the original request on appeal. Smith Butz, LLC v. DEP, 142 A.3d 941, 945-46 (Pa. Commw. Ct. 2016) (citing Dep’t of Corr. v. Disability Rights Network of PA, 35 A.3d 830, 833 (Pa. Commw. Ct. 2012)); see Winder v. Wolf Twp., OOR Dkt. AP 2017-1140, 2017 PA O.O.R.D. LEXIS 987, June 28, 2017 (request for “minutes” of a meeting could not be modified on appeal to seek “transcript” of a meeting) (citing PA State Police v. OOR, 995 A.2d 515, 516 (Pa. Commw. Ct. 2010) (opining the request and the reason(s) the agency denies access are fixed; requester could not narrow his search on appeal; OOR could not narrow the request on appeal)).

The agency makes its decision based upon its review of the language in the original request; therefore, a requester cannot change that request upon appeal. See Staley v. Pittsburgh Water and Sewer Authy., OOR Dkt. AP 2010-0275, 2010 PA O.O.R.D. LEXIS 256, April 28, 2010 (“A requester may not modify the original request as the denial, if any, is premised upon the original request as written”). It follows that this Officer’s review on appeal is confined to the Request as written. See Smith Butz., 142 A.3d at 945-46; Moran v. Luzerne County, OOR Dkt. AP 2018-1929, 2018 PA O.O.R.D. LEXIS 1494, Nov. 30, 2018.

Moreover, the Act, 65 P.S. § 67.901, requires good faith efforts by an agency to respond to a request, and there is a presumption the Senate will act in good faith in discharging its duties under the Act. Smith Butz, 142 A.3d at 945-46 (citing Commw. v. Donohue, 98 A.3d 1223, 1239 (Pa. 2014) (citations omitted)).

Here, the record reflects the Requester modified his original Request with the addition of numerous questions and statements as contained in his Memorandum, which is not permissible under the Act. Once an agency reviews and responds to the specific request as written, a requester cannot modify that request.

Further, the Requester made a specific Request to the Senate, and the Senate Open Records Officer, in good faith, conducted her search and evaluation of records based upon the express language in the original Request. There is no reason, based upon the record, to believe the Senate Open Records Officer did not comply with this statutory mandate. She, in good faith, based her denial upon the language contained in the original Request. The Requester cannot, through the appeals process, modify said request. See Smith Butz, 142 A.3d at 945.

The Requester improperly modified his original Request in his appeal. Accordingly, the Request, as stated in the original Request, shall form the basis of the review of Requester's appeal. His appeal based on his modified request is denied.

Merits of the Appeal

This Officer turns next to the merits of the appeal. The Senate Open Records Officer maintains this appeal should be denied and her decision upheld for five (5) reasons, each of

which is discussed below.⁴ For the following reasons, the decision of the Open Records Officer is affirmed.

Specificity of the Request.

The Senate Open Records Officer maintains this Request -

PA Constitutional (all versions) and Legislative foundation for Pennsylvania Statutes Title 18 Pa. C.S.A. Crimes and Offenses § 2709. Harassment link here: [https://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/18/00.027.009.000 .. HTM 9](https://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/18/00.027.009.000..HTM), including the phrase “Course of conduct.” –

lacks the requisite specificity of section 703 of the RTK Law. She maintains that based upon the language of this Request, she is unable to identify the records being requested.

In support of this, the Open Records Officer avers this Request does not satisfy the three-part test for specificity established by the Commonwealth Court, which examines: (1) the subject matter of the request; (2) the scope of the documents sought; and, (3) the timeframe for which the records are sought. She maintains this Request is overly broad in scope “by providing Constitutional and statutory references” and that it “does not provide any actual legislative records that are being requested.” Further, she maintains the Requester did not provide a timeframe for the requested items. Therefore, she maintains, the Request lacks the requisite specificity, her decision should be upheld, and the appeal denied. This Officer concurs. For the reasons that follow, the Request is insufficiently specific and the appeal is denied.

An agency open records officer cannot make a determination of releasability of a record when a RTK Law request is vague; therefore, the Act requires written requests for access to records be specific. The Act mandates that such requests “should identify or describe the records

⁴ The Senate Open Records Officer properly raises issues in her appeal that she did not address in her denial. See *Levy v. Senate of Pennsylvania*, 65 A.3d 361, 383 (Pa. 2013), *reargument granted, in part, opinion withdrawn*, 2014 Pa. Commw. LEXIS 127 (Pa. Commw. Ct. Feb. 27, 2014), *substituted opinion*, 94 A.3d 436 (Pa. Commw. Ct. 2014), *appeal denied*, 106 A.3d 727 (Pa. 2014).

sought with sufficient specificity to enable the agency to ascertain which records are being requested...” 65 P.S. § 67.703; see Dep’t of Corr. v. St. Hilaire, 128 A.3d 859, 863 (Pa. Commw. Ct. 2015) (opining that the “central question in evaluating the adequacy of a request is whether the request ‘sufficiently informs an agency of the records requested’”) (citing Montgomery County v. Iverson, 50 A.3d 281, 284, n.4 (Pa. Commw. Ct. 2012)), *appeal denied sub nom*, St. Hilaire v. Dep’t of Corr., 136 A.3d 983 (Pa. 2016). Importantly, a request that lacks the requisite specificity also makes it difficult, if not impossible, for this Officer and the Courts to meaningfully review the Senate’s decision if appealed. See Associated Builders v. Dep’t of Gen. Services, 747 A.2d 962, 965 (Pa. Commw. Ct. 2000).

When interpreting a request under the RTK Law, agencies should rely upon the common meaning of words and phrases, because the RTK Law is remedial legislation that must be interpreted to maximize access. See Walters v. Lock Haven Univ., OOR Dkt. AP 2013-0750, 2013 PA O.O.R.D. LEXIS 494, June 21, 2013 (citing Gingrich v. PA Game Comm’n, No. 1254 C.D. 2011, 2012 Pa. Commw. Unpub. LEXIS 38 at * 16 (Pa. Commw. Ct. Jan. 12, 2012)). The determination of specificity is made on a case-by-case basis. Id.

If the requester fails to identify the requested records with specificity, 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, 747 A.2d at 965-66 (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 PA State Police v. OOR, 995 A.2d at 517 (holding that portion of request seeking “any and all” records, files, or communications of any kind pertaining to seizures of property was insufficiently specific but portion seeking manuals relating to vehicle stops,

searches, and seizures was specific enough to enable agency to ascertain what records were being sought); Arduino v. Borough of Dunmore, 720 A.2d 827, 831 (Pa. Commw. Ct. 1998), *appeal granted*, 753 A.2d 820 (Pa. 1999), *appeal dismissed*, 741 A.2d 195 (Pa. 1999). However, “an agency’s failure to maintain [its] files in a way necessary to meet its obligations under the RTK Law should not be held against the requestor.” Dep’t of Corr. v. St. Hilaire, 128 A.3d at 865, *appeal denied sub nom, St. Hilaire v. Dep’t of Corr.*, 136 A.3d 983 (Pa. 2016) (citing Dep’t of Env’tl. Prot. v. Legere, 50 A.3d 260, 265 (Pa. Commw. Ct. 2012) (opining that just because the Department did “not catalogue or otherwise organize the requested records in a way that permits them to be easily located does not render the request overbroad”), *reconsideration denied en banc*, 2012 Pa. Commw. LEXIS 258 (Pa. Commw. Ct. Aug. 30, 2012)).

Moreover, an open-ended request that gives an agency little guidance regarding what to look for may be so burdensome that it will be considered overly broad. Montgomery County v. Iverson, 50 A.3d 281, 284 (Pa. Commw. Ct. 2012), *appeal denied*, 72 A.3d 604 (Pa. 2013) (citing Mollick v. Twp. of Worcester, 32 A.3d 859, 871 (Pa. Commw. Ct. 2011)). However, a request that is more narrow, may be sufficiently specific even though it requests broad categories of records. *Id.* (citing Easton Area Sch. Dist. v. Baxter, 35 A.3d 1259, 1265 (Pa. Commw. Ct. 2012), *appeal denied*, 54 A.3d 350 (Pa. 2012)); *see* Oser v. Pocono Mountain Regional Police Dept., OOR Dkt. AP 2017-1463, 2017 PA O.O.R.D. LEXIS 1782, Dec. 11, 2017 (finding that although the scope of the request for “all information” was broad, “the request as a whole provides a narrow search context to sufficiently describe to the Department what records are being sought,” because the subject matter was limited to a specific grievance filed on a specific date). 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 v. PA Office of the Governor, 65 A.3d 989, 992 (Pa. Commw. Ct. 2013) (quoting Montgomery County v. Iverson, 50 A.3d at 283).

The Commonwealth Court utilizes a three-part balancing test to ascertain specificity under Section 703 of the RTK Law, examining the extent to which the request sets forth: (1) the subject matter of the request; (2) the scope of documents sought; and (3) the timeframe for which records are sought. PA Office of Inspector General v. Brown, 152 A.3d 369, 372 (Pa. Commw. Ct. 2016) (citing Dept. of Educ. v. Pittsburgh Post-Gazette, 119 A.3d 1121, 1124 (Pa. Commw. Ct. 2015)). The Court opined:

Regarding the application of the three prongs, we stated that the subject matter of the request "must identify the 'transaction or activity' of the agency for which the record is sought" and should provide "a context to narrow the search." *Id.* at 1125 (quoting Section 102 of the RTKL, 65 P.S. §67.102).

The scope of the request "must identify a discrete group of documents, either by type . . . or by recipient." *Id.* (internal quotation omitted). Indeed, "[a] request for a broad category of documents, such as all records, may be sufficiently specific if confined to a particular recipient or recipients." *Id.* at 1125-26. "The fact that a request is burdensome does not deem it overbroad, although it may be considered a factor in such a determination." *Dep't of Env'tl. Prot. v. Legere*, 50 A.3d 260, 265 (Pa. Cmwlth. 2012).

Moreover, "[t]he timeframe of the request should identify a finite period of time for which records are sought." 119 A.3d at 1126. However, this prong is the most fluid and whether the request's timeframe is sufficiently narrow is "generally dependent upon the specificity of the request's subject matter and scope." *Id.*

PA Office of Inspector General v. Brown, 152 A.2d at 372-373 (citing Dept. of Educ. v. Pittsburgh Post-Gazette, 119 A.3d at 1125)) (emphasis added).

In the present case, the Request for **“all versions” of the “PA Constitutional and Legislative foundation” of Title 18 Pa. C.S.A. § 2709** is similar to several others where the Commonwealth Court concluded the requests were not sufficiently specific, when they requested “any” or “all” records without any other specific identifying information such as: a specific subject matter of the request; a specific transaction or activity for which the records were being

sought; a limited scope of a discrete group of documents; or a context or timeframe for narrowing the search.

First, in Askew, the Court concluded the request for “any” form of legislation that “provides” jurisdiction lacked the requisite specificity because “it is open-ended in terms of a timeframe, overly broad in the scope of documents sought, and cannot be satisfied without conducting legal research to form the basis of a legal opinion.” Askew, 65 A.3d at 992. The Askew Court relied upon Pennsylvania Housing Finance Agency v. Ali, where a request for a “[c]opy of all correspondence, including proposal and sales agreements, concerning item 4C Project Workout — Chestnut/56th Street Apartments found on the PHFA February 10, 2011...Agenda and, or distributed to the Board” was determined insufficiently specific because it incorporated too many different kinds of potential documents. Id. at 993 (citing PA Housing Finance Agency v. Ali, 43 A.3d 532, 535-536 (Pa. Commw. Ct. 2012)). The Askew Court similarly concluded the request for “any” form of legislation that “provides” jurisdiction was too vague. Askew, 65 A.3d at 993. Further, the Court opined the Office “is asked to search the vast universe of legislation and legal documents without any limiting criteria.” Id. (emphasis added). The Court concluded that because the requester failed to sufficiently identify the types of records in which his request would be located, his request was insufficiently specific for the Office to respond because it was overly broad and encompassed a wide-range of legal documents and types of legislation. Id.

Further, in Dep’t of Educ. v. Pittsburgh Post-Gazette, the Court concluded the request for “all emails” lacked the specificity required by the Act because it did not identify the agency activity or transaction. There, the requester sought “all emails” of the Secretary of Education “as they pertain to ... her duties as Acting Secretary since she was appointed on August 25, 2014 to

date.” Dep’t of Educ. v. Pittsburgh Post-Gazette, 119 A.3d at 1123. The Court opined that although the request identified a finite timeframe and limited the scope to emails to and from the Secretary, it lacked specificity because it failed to specify the subject matter of the request narrower than “all agency activity.” Id. at 1126. The request for emails pertaining to the performance of her duties while Acting Secretary “does not provide a context by which the Request can be narrowed; it is, by virtue of the Secretary’s position, a request for emails about all of the agency’s activity over nearly a one year period. In other words, it is a fishing expedition.” Dep’t of Educ. v. Pittsburgh Post-Gazette, 119 A.3d at 1126 (emphasis added).

Similarly, in Montgomery County v. Iverson, 50 A.3d 281 (Pa. Commw. Ct. 2012), the Commonwealth Court concluded a request for “all” emails was insufficient under the RTK Law because, *inter alia*, there was no context for narrowing the search, and the search was not limited to specific individuals or email addresses. Rather, the requester sought any applicable emails. Montgomery County v. Iverson, 50 A.3d at 284.

Moreover, in Mollick v. Twp. of Worcester, the Court concluded the request for “all emails” regarding any “business and/or activities for the past one and five years” was not sufficiently specific because the requester did not specify the category or type of Township business or activity he was seeking information. The Court further concluded the request would unreasonably burden the Township to “examine all its emails for an extended time period without knowing, with sufficient specificity, what Township business or activity the request is related.” Mollick v. Twp. of Worcester, 32 A.3d 859, 870 (Pa. Commw. Ct. 2011). Cf. Commw. v. Engelkemier, 148 A.3d 522 (Pa. Commw. Ct. 2016) (holding that request for all emails was sufficiently specific when requester limited his request by subject matter by providing a keyword list); Easton Area Sch. Dist. v. Baxter, 35 A.3d 1259, 1260 (Pa. Commw.

Ct. 2012) (holding that "[a]ll emails sent and received between Oct. 1 and Oct. 31" for email addresses of nine school board members, the general school board address, and the school district superintendent was sufficiently specific), *appeal denied*, 54 A.3d 350 (Pa. 2012).

Further, in Office of Inspector General v. Brown, the Commonwealth Court concluded the request for "all OIG rules, regulations, polices and related authorities" was insufficiently specific, because it did not advise the OIG of what records were being requested and did not identify the OIG transaction or activity for which the records were being sought. The Court concluded, that similar to Pittsburgh Post-Gazette, the request did "not provide a context by which it can be narrowed." Office of Inspector General v. Brown, 152 A.2d 369, 374 (Pa. Commw. Ct. 2016). Cf. Dep't of Env'tl. Prot. v. Legere, 50 A.3d 260 (Pa. Commw. Ct. 2012) (holding that request for "Act 223, Section 208 determination letters" issued by the Department and the related orders was sufficiently specific because it was for "a clearly-defined universe of documents. There are no judgments to be made as to whether the documents are 'related' to the request."), *reconsideration denied en banc*, 2012 Pa. Commw. LEXIS 258 (Pa. Commw. Ct. Aug. 30, 2012) (emphasis added); PA State Police v. OOR, 995 A.2d 515, 516-17 (Pa. Commw. Ct. 2010) (holding that portion of request seeking any and all records, files, or communications of any kind pertaining to seizures of property was insufficiently specific, but portion seeking manuals relating to vehicle stops, searches, and seizures was specific enough to enable the agency to ascertain what records were sought). Further, the Brown Court opined the request did not identify a specific subject matter that was the object of the request, and the request would impose an unreasonable burden to require the OIG to examine all of its rules, regulations, policies and related authorities without knowing which OIG business or activity the request contemplated. Office of Inspector General v. Brown, 152 A.2d at 375.

Similarly, the request here for –

PA Constitutional (all versions) and Legislative foundation for Pennsylvania Statutes Title 18 Pa. C.S.A. Crimes and Offenses § 2709. Harassment link here: [https://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/18/00.027.009.000 .. HTM 9](https://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/18/00.027.009.000..HTM), including the phrase “Course of conduct.” –

is insufficiently specific. The Request does not identify a specific subject matter that is the object of the request because it does not identify a specific transaction or activity for which the information is being sought. Rather, the request is for **“all versions” of “PA Constitutional and Legislative foundation” for Title 18 Pa. C.S.A. § 2709, “including the phrase ‘course of conduct.’”** The scope is overly broad because the Request does not identify a discrete group of documents; instead, it seeks “foundation” documents. This Officer is uncertain as to what exactly constitutes “foundation” documents. Moreover, the Request does not contain a finite period of time for which the records are sought. Such a broad request imposes an unreasonable burden on the Senate Open Records Officer to examine all of her records for this information covering an extended period of time, and to render judgment as to whether the documents are related to the Request.

Further, here, we do not have a request that is broad in scope yet limited to a narrow search context to sufficiently describe what records are being sought. See Oser v. Pocono Mountain Regional Police Dept., OOR Dkt. AP 2017-1463, 2017 PA O.O.R.D. LEXIS 1782, Dec. 11, 2017. Rather, the request provides little clarity as to what documents are desired by the Requester. Although “[s]eeking records related to a topic or topics does not necessarily make a request insufficiently specific,” the “request must still provide enough specificity in its scope and timeframe to help guide the agency in its search for records.” See Duquette v. Palmyra Area School District, OOR Dkt. AP 2017-0372, 2017 PA O.O.R.D. LEXIS 1624, Nov. 6, 2017.

This Officer is unable to discern just what records are being sought in the Request.

Without more specificity as to subject matter, agency transaction or activity to narrow the search context, the request for -

PA Constitutional (all versions) and Legislative foundation for Pennsylvania Statutes Title 18 Pa. C.S.A. Crimes and Offenses § 2709. Harassment link here: <https://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/18/00.027.009.000> .. HTM 9, including the phrase “Course of conduct.” –

does not properly guide the Senate’s search for responsive records. Thus, the decision of the Senate Open Records Officer is affirmed and the appeal is denied as insufficiently specific.

A request lacks specificity when it requires legal research.

The Senate Open Records Officer maintains this Request improperly requires legal research be conducted to determine what records could be responsive; therefore, her decision should be upheld and this appeal denied. Specifically, the Open Records Officer avers, citing Askew v. PA Office of the Governor, 65 A.3d 989, 993 (Pa. Commw. Ct. 2013), that the Request for -

PA Constitutional (all versions) and Legislative foundation for Pennsylvania Statutes Title 18 Pa. C.S.A. Crimes and Offenses § 2709. Harassment link here: <https://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/18/00.027.009.000> .. HTM 9, including the phrase “Course of conduct.” –

is not a request for a specific document, but rather is a request for the Senate to conduct legal research that could uncover a responsive document or documents. This, she maintains, is similar to a prior request filed in the Senate, and ruled upon as improper under the Act. Appeal of McManus, Senate RTK Appeal 01-2014 (Requester sought “Constitutional provisions,” Constitutional Authorization for the adoption of statutes” and other statutory provisions, which Request was determined to improperly require legal research). This Officer concurs. The Request lacks specificity because it necessitates legal research, which is a requirement not

imposed by the Act. The Senate Open Records Officer's decision is affirmed on this point and the appeal is denied.

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, then the request lacks the specificity required by the RTK Law. Askew, 65 A.3d at 993-94; see Monighan v. PA Dep't of Transp., OOR Dkt. AP 2013-1967, 2013 PA O.O.R.D. LEXIS 1118, * 8-9, Nov. 19, 2013; Aliota v. Millcreek Twp., 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.

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. See Neal v. PA Dep't of State, OOR Dkt. AP 2014-1470, 2014 PA O.O.R.D. LEXIS 1189, * 7-8, Oct. 23, 2014; Whitaker v. PA Dep't of State, OOR Dkt. AP 2014-1463, 2014 PA O.O.R.D. LEXIS 1191, * 7-8, Oct. 23, 2014; see Deck v. PA Dep't of State, OOR Dkt. AP 2015-0452, 2015 PA O.O.R.D. 440, April 24, 2015 (Requester sought "Pamphlet Laws," "Statutory Authorization," "Constitutional Authorization" and more, which the OOR determined was a request that required legal research.); McManus v. PA Dep't of State, OOR Dkt. AP 2014-1852, 2014 PA O.O.R.D. LEXIS 1449, Dec. 31, 2014 (requester sought

“Pamphlet Laws,” “Statutory Authorization,” “Constitutional Authorization” and more, which the OOR determined was a request “to perform legal research to locate the requested statutory provisions and/or legislative acts the Requester seeks.”); Lindsey v. PA Dep’t of State, OOR Dkt. AP 2014-1932, 2015 PA O.O.R.D. LEXIS 26, Jan. 8, 2015.

Further, the OOR held a request “seeking information related to legislative acts” was insufficient because it required the Department to perform legal research by locating the applicable laws and the requested information in those laws. Kluebar v. PA Dep’t of State, OOR Dkt. AP 2015-1052, 2015 PA O.O.R.D. LEXIS 951, July 20, 2015.

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. See Maddrey v. PA Dep’t 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 Dep’t 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).

Similarly, the Request -

PA Constitutional (all versions) and Legislative foundation for Pennsylvania Statutes Title 18 Pa. C.S.A. Crimes and Offenses § 2709. Harassment link here: <https://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/18/00.027.009.000> .. HTM 9, including the phrase “Course of conduct.” –

requires the Senate Open Records Officer to conduct legal research to ascertain that which is being requested and whether a document or documents possess the legal significance needed to make it responsive to the request. Similar to Askew and the cases referenced, *supra*, the Senate Open Records Officer would have to perform legal research and analysis by locating the

applicable laws (among other items) and the requested information with the hope that this research would uncover a responsive document or documents for the Requester. This is a requirement the RTK Law does not impose. Accordingly, the decision of the Open Records Officer is sustained on this point. The Request is insufficient because it requires legal research to be conducted by the Senate in order to respond, which the RTK Law does not impose. The appeal is denied.

A request must seek records, not answers to questions.

The Senate Open Records Officer maintains the Request improperly seeks an answer to a question, rather than access to records; therefore, her opinion should be sustained and the appeal denied. The Open Records Officer also maintains she is not required to create a record in response to the Requester's questions.

Specifically, the Open Records Officer avers the Request for **“PA Constitutional (all versions) and Legislative foundation for Pennsylvania Statutes Title 18 Pa. C.S.A. Crimes and Offenses § 2709. Harassment, including the phrase “Course of Conduct,”** although not drafted as a question with a question mark as the punctuation, still asks a question and seeks an answer from the Senate Open Records Officer; the Request does not seek access to records. Under the RTK Law, she maintains, “a request must seek records, rather than answers to questions.” (citing Gingrich v. PA Game Comm’n, No. 1254 C.D. 2011, 2012 Pa. Commw. Unpub. LEXIS 38 (Pa. Commw. Ct. Jan. 12, 2012); Walker v. PA Ins. Dep’t, No. 1485 C.D. 2011, 2012 Pa. Commw. Unpub. LEXIS 425 (Pa. Commw. Ct. June 15, 2012); Stidmon v. Blackhawk Sch. Dist., No. 11605-2009 at 5 (Beav. Com. Pl. Dec. 14, 2009)). She maintains the presence or absence of a question mark “is not determinative as to whether a request asks a question.” (citing Varick v. Paupack Twp., OOR Dkt. AP 2013-1348). She lastly maintains on

this point that this Request would impose a duty on her not required in the Act to create a record “to respond and answer the broad scope of the request, including references to the Pennsylvania constitution and statute[s].” 65 P.S. § 67.705; Moore v. OOR, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010).

To comply with the RTK Law’s requirement for written requests, 65 P.S. § 67.703, a request must seek records, rather than answers to questions. See Gingrich v. PA Game Comm’n, No. 1254 C.D. 2011, 2012 Pa. Commw. Unpub. LEXIS 38 at * 14 (Pa. Commw. Ct. Jan. 12, 2012) (holding “[w]e reject Requester’s contention that the RTKL is designed to be broad enough to encompass answers to questions that may require agencies to research the answers.”)⁵; Brzowski v. PA Turnpike Comm’n, OOR Dkt. AP 2019-1276, 2019 PA O.O.R.D. LEXIS ___, Aug. 29, 2019; Harmon v. Londonderry Twp., OOR Dkt. AP 2018-0153, 2018 PA O.O.R.D. LEXIS 451, Mar. 27, 2018; Curtis v. PA Dep’t of State, OOR Dkt. AP 2011-0560, 2011 PA O.O.R.D. LEXIS 294, May 11, 2011;⁶ see also PA Tpk. Comm’n v. Murphy, 25 A.3d 1294, 1296 (Pa. Commw. Ct. 2011).

Although the RTK Law must be construed to maximize a requester’s access to government records, Gingrich, 2012 Pa. Commw. Unpub. LEXIS 38 at * 16, the RTK Law “is not a forum for the public to demand answers to specifically posed questions...In fact, there is no provision in the RTKL that requires an agency to respond to questions posed in a request.” Walker, 2012 Pa. Commw. Ct. Unpub. LEXIS 425 at * 16.

⁵ Although unreported, this opinion is cited for its persuasive value. See Feldman v. PA Comm’n on Crime & Delinquency, 208 A.3d 167, n.8 (Pa. Commw. Ct. 2019).

⁶ Although not binding on the Senate, the OOR decisions are persuasive. See 65 P.S. §§ 67.503, 67.1310(a); Bowling v. OOR, 75 A.3d 453, 457 (Pa. 2013).

Further, the RTK Law does not impose a duty on an agency to create a record. “When responding to a request for access an agency shall not be required to create a record which does not currently exist or to compile, maintain, format, or organize a record in a manner in which the agency does not currently compile, maintain, format or organize the record.” 65 P.S. § 67.705; see Moore v. OOR, 992 A.2d at 909. It reasonably follows that the RTK Law does not impose a duty on the Senate Open Records Officer to create records that do not exist.

Here, the Request sought **“PA Constitutional (all versions) and Legislative foundation for Pennsylvania Statutes Title 18 Pa. C.S.A. Crimes and Offenses § 2709. Harassment, including the phrase “Course of Conduct.”** The Senate Open Records Officer contends this Request asks a question rather than seeks access to records.

This Officer disagrees. The Request on its face does not appear to ask a question. Rather, it seeks an abundance of unspecified information from the Senate. The Request is over-broad, lacks specificity and requires legal research, but it does not ask a question. Seeking information is not the equivalent of asking a question. See Gingrich, 2012 Pa. Commw. Unpub. LEXIS 38 at * 14. It reasonably follows that, although the Request is deficient in numerous respects, it does not ask a question.

Moreover, although the Requester’s Memorandum in support of his appeal does pose numerous questions that would not trigger a response under the Act, see Gingrich, 2012 Pa. Commw. Unpub. LEXIS 38 at * 14, they are a modification of his Request, and therefore, not part of this Officer’s review on appeal. Review here is confined to the Request as written. See Moran v. Luzerne County, OOR Dkt. AP 2018-1929, 2018 PA O.O.R.D. LEXIS 1494, Nov. 30, 2018.

A request must seek access to legislative records.

The Senate Open Records Officer maintains the Requester seeks access to “laws” and that same are not releasable legislative records under the Act. She avers the Act clearly defines legislative record and that the information the Requester seeks falls outside that specific definition. To support her proposition, she cites Appeal of McManus, Senate RTKL Appeal 01-2014, where this Officer upheld the denial after concluding that a request for “Constitutional Provisions,” “Constitutional Authorization for the adoption of statutes,” and other statutory provisions was a request for non-legislative records. Therefore, she maintains her decision here should be upheld and the appeal denied. This Officer concurs.

The RTK Law explicitly requires legislative agencies to provide legislative records in accordance with the Act. 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). The Act, however, does not require the Senate to create records that do not currently exist; it likewise does not require the Senate to compile or format records in a way it is not already currently compiling or formatting them. 65 P.S. § 67.705. Further, 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 to public records. See 65 P.S. §§ 67.102, 67.301, 67.302, 67.303.

It is presumed a legislative record in the possession of a legislative agency will be available in accordance with the Act. 65 P.S. § 67.305(b). This presumption does not apply if the record is exempt under Section 708 of the Act, if the record is protected by a privilege, or if the record is exempt from disclosure under any other State or Federal law, regulation, or judicial order or decree. 65 P.S. § 67.305(b).

Whether the requested record constitutes a legislative record is a preliminary issue that must be resolved before addressing whether any exceptions under the Act apply. Commw. of PA, Office of the Governor v. Bari, 20 A.3d 634, 640 (Pa. Commw. Ct. 2011). The burden is on the legislative agency to prove by a preponderance of the evidence that the legislative record is exempt from public access. 65 P.S. § 708(a)(2).

Here, the Requester never argues the items he is requesting are legislative records. Rather, he states that he “disagree[s] with the opinion of the RTKL Officer” and he offers general statements and poses questions in his Memorandum in support of his Request. The Senate Open Records Officer maintains the requested records are not releasable because the Senate is only required to release legislative records under the Act, and the language of the Act is clear that the requested records fall outside the Act’s explicit definition of legislative record.

In analyzing the scope of the term legislative record, Pennsylvania’s Statutory Construction Act is our guide. Pennsylvania’s Statutory Construction Act, 1 Pa.C.S.A. § 1501 *et seq.*, is clear that when interpreting and construing statutes, courts must ascertain and effectuate the intent of the General Assembly. 1 Pa.C.S.A. § 1921(a); PA Gaming Control Bd. v. Office of Open Records, 103 A.3d 1276, 1284 (Pa. 2014); Levy v. Senate of Pennsylvania, 65 A.3d 361, 380 (Pa. 2013), *reargument granted, in part, opinion withdrawn*, 2014 Pa. Commw. LEXIS 127 (Pa. Commw. Ct. Feb. 27, 2014), *substituted opinion*, 94 A.3d 436 (Pa. Commw. Ct. 2014), *appeal denied*, 106 A.3d 727 (Pa. 2014). It is presumed 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 the requested records -

PA Constitutional (all versions) and Legislative foundation for Pennsylvania Statutes Title 18 Pa. C.S.A. Crimes and Offenses § 2709. Harassment link here:

[https://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/18/00.027.009.000 .. HTM 9](https://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/18/00.027.009.000..HTM), including the phrase “Course of conduct.” –

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, 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; Honaman v. Twp. of Lower Merion, 13 A.3d 1014, 1020 (Pa. Commw. Ct. 2011), *appeal denied*, 31 A.3d 292 (Pa. 2011); 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; *see* 1 Pa.C.S.A. § 1921(b)-(c).

Although the RTK Law must be liberally construed to effectuate its purpose, Barnett v. PA Dept. of Public Welfare, 71 A.3d 399, 403 (Pa. Commw. Ct. 2013) (citing Levy, 65 A.3d at 381) (citations omitted), matters not included in a statutory provision are deemed to be excluded. *See* 1 Pa.C.S.A. § 1903; Commw. of PA v. Zortman, 23 A.3d 519, 524 (Pa. 2011), *motion denied*, 132 S. Ct. 1073 (U.S. 2012), *cert. denied*, 132 S. Ct. 1634 (U.S. 2012); Commw. of PA v. Ostrosky, 866 A.2d 423, 430 (Pa. Super. Ct. 2005), *appeal granted*, 878 A.2d 863 (Pa. 2005), *aff’d*, 909 A.2d 1224 (Pa. 2006); *see also*, Donahue, 59 A.3d at 1168, *aff’d*, 98 A.3d 1223, 1237-38 (Pa. 2014) (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).

Further, courts cannot “add, by interpretation, to a statute, a requirement which the legislature did not see fit to include.” The Summit School, Inc. v. PA Dept. of Education, 108 A.3d 192, 199 (Pa. Commw. Ct. 2015) (citing Shafer Electric & Construction v. Mantia, 96 A.3d 989, 994 (Pa. 2014) (quoting Commw. v. Rieck Investment Corp., 213 A.2d 277, 282 (Pa. 1965))). Similarly, courts cannot insert words the Legislature failed to supply into a statute. PA Dept. of Health v. Office of Open Records, 4 A.3d 803, 812 (Pa. Commw. Ct. 2010).

Finally, although a requester may make compelling public policy arguments in support of his or her request, these alone cannot be considered. Courts are bound by “the definitional limitations found within the statutory language of the Law [RTK Law] itself as set out by the General Assembly and interpreted by the Pennsylvania Supreme Court.” LeGrande v. Dept. of Corrections, 920 A.2d 943, 950 (Pa. Commw. Ct. 2007), *appeal denied*, 931 A.2d 659 (Pa. 2007).

Here, the relevant statutory provisions are clear and unambiguous; they specifically provide for different types of access to different types of records by different agencies. For example, Commonwealth and local agencies are required to provide “public records,” while judicial agencies are required to release “financial records.” 65 P.S. §§ 67.301, 67.302, 67.304.

Under the Act, legislative agencies are required to release “legislative records,” 65 P.S. § 67.303(a), and the Act explicitly defines the term legislative record in a specific and exhaustive manner. There are nineteen types of legislative documents explicitly listed in the Act as legislative records.⁷ 65 P.S. § 67.102.

⁷ “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.

The Legislature, if it so intended, could have created a more expansive definition by including other items in the list, such as those requested by the Requester, but it did not. Rather, it crafted a specific and exhaustive list of documents that would constitute legislative records under the Act, to further its goal of expanded government transparency through public access to documents. See also, Levy v. Senate of PA, 65 A.3d at 381.

Here, 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 the inclusion of these records -

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- (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.

PA Constitutional (all versions) and Legislative foundation for Pennsylvania Statutes Title 18 Pa. C.S.A. Crimes and Offenses § 2709. Harassment link here: <https://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/18/00.027.009.000> .. HTM 9, including the phrase “Course of conduct.”

Because the requested records are 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 into accessible legislative records under the Act. Just as the RTK Law was not expanded to include agency personnel not listed in the statute, so too, here the plain and unambiguous language of the RTK Law defining a legislative record should not be expanded to encompass items the legislature chose not to include. Courts cannot insert words the Legislature did not supply in a statute and this Officer will not do so here. The decision of the Open Records Officer on this ground is sustained and the appeal is denied.

The Senate Open Records Officer may provide access to legislative records pursuant to Section 704 of the Act.

The Senate Open Records Officer also maintains the appeal should be dismissed because she made many legislative and non-legislative records available to the Requester via electronic links pursuant to Section 704 of the Act.

Given the disposition of the aforementioned issues, this Officer makes no decision on the merits⁸ of the Section 704 argument, which was not adequately addressed by the parties.

⁸ This Officer notes the Senate Open Records Officer maintains she provided the Requester with the means to electronically access “many” legislative records of the Senate, as well as non-legislative records. However, because the Request lacks specificity this Officer cannot make a determination as to whether the records made available electronically by the Senate Open Records Officer are responsive to the Request.

Conclusion

This appeal is dismissed as insufficient. The Requester failed to provide a copy of his Request with his appeal, failed to address the Open Records Officer's grounds for her denial, failed to address why the requested records are releasable legislative records, and improperly modified his Request on appeal.

In the alternative, the decision of the Senate Open Records Officer is sustained in part and the appeal is denied. The Request lacks the requisite specificity under the Act. Without more specificity as to subject matter, scope or timeframe, the Request does not properly guide the Senate's search for responsive records. Further, the Request lacks the requisite specificity because, in order to satisfy the Request, the Open Records Officer would have to conduct legal research to ascertain which, if any, documents would be responsive. Moreover, the Requester is seeking access to records that are not included in the RTK Law's clear and unambiguous definition of a legislative record. To release such records would be to contravene the intent of the General Assembly by adding requirements to the Act that the Legislature did not see fit to include. This Officer declines to do so here. Therefore, the appeal is denied. See Appeal of McManus, Senate RTK Law Appeal 01-2014.

IN THE SENATE OF PENNSYLVANIA

Appeal of Kennedy

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Senate RTK Appeal 02-2019

FINAL DETERMINATION
October 8, 2019

ORDER

AND NOW, this 8th day of October 2019, this appeal is DISMISSED as insufficient.

Alternatively, the decision of the Senate Open Records Officer is AFFIRMED in part and the appeal DENIED. The Request lacks the requisite specificity. Further, the documents sought by Requester are not legislative records and, thus, not accessible under the Right-to-Know Law.



MEGAN MARTIN
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.