

IN THE SENATE OF PENNSYLVANIA

Appeal of Kennedy

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Senate RTK Appeal 03-2023

FINAL DETERMINATION  
October 13, 2023

Statement of Facts

On September 11, 2023, Edward Kennedy (the Requester) submitted a request to the Senate Open Records Officer seeking access to documents from the Senate. This request was made pursuant to the Right-to-Know Law, Act of February 14, 2008, P.L. 6, No. 3, 65 P.S. § 67.101 *et seq.* (the Act or RTK Law).

The Request

The Requester sought the following:

“I’m a Pennsylvania, standing under the Public Law born on Pottsville, Pennsylvania land and soil on October 25, 2953. Itis my duty to enforce the Public Law. Pursuant to Pub. L. 89-554, September 6, 1966, 80 Stat. 424, 5 U.S. Code § 3331 – Oath of office and 5 5 U.S. and Code §§ 3332- Officer affidavit; no consideration paid for appointment, please provide the oath of office for PENNSYLVANIA SENATOR JUDITH SCHWANK, and a copy of her indemnity policy and the first 10 pages of her surety bond. Notice: A "Commission" does not comply with this request or cited law herein or this request.” [*sic*]  
Requester’s September 11, 2023 RTK request.<sup>1</sup>

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<sup>1</sup> The details of the request and the Senate Open Records Officer’s Response are taken from the Requester’s September 14, 2023 email to the Senate Appeals Officer. It is unclear whether they constitute complete copies of the original request and the Response as required under the Senate RTK regulations which state that “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).

### The Senate Open Records Officer's Response

On September 12, 2023, the Senate Open Records Officer responded, granting in part and denying in part the request. Specifically, while noting that the federal law cited by the Requester was not applicable, the Senate Open Records Officer provided a hyperlink where the Oath of Office for Pennsylvania public officers could be viewed and printed.

Additionally, the Senate Open Records Officer responded that "There are no records responsive to the request for *'a copy of her indemnity policy and the first 10 pages of her surety bond'* as the law cited in the request does not apply to Pennsylvania State Senators." Finally, in accordance with Section 903 of the Act, the Senate Open Records Officer provided notice to the Requester of his right to appeal the denial and included information regarding the procedure for doing so. Senate Open Records Officer's September 12, 2023 response to RTK Law request.

### The Appeal

On September 14, 2023, Requester sent an email to the Senate Appeals Officer with the following message:

"Appeal - kindly provides procedures and/or forms if required. This is my second request."<sup>2</sup>

Requester's September 14, 2023 email to Senate Appeals Officer.

On September 15, 2023, the Senate Appeals Officer responded to Requester via email and included links to relevant portions of the Right-to-Know Law and the Pennsylvania Code, and a link to a RTKL Appeal Form which contained detailed instructions on filing an appeal. Later

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<sup>2</sup> Although the Requester indicates that this was his "second request" the Senate Appeals Officer has no record of a prior request by the Requester.

that same day, Requester responded via email to the Senate Appeals Officer stating in relevant part:

“Notice is given that I do not believe public servants do have possess surety and liability insurance, and if true, this is a jail time crime - yes or no?

Notice also I am injured by JUDY SCHWANK of READING not performing her duties and responsibilities, and intend to file claims this weekend against her bond and the corporation\and its subsidiaries. Perhaps she can reconsider her decision given her status?” [*sic*]

Requester’s September 15, 2023 email to Senate Appeals Officer.

### **Sufficiency of the Appeal**

The Requester notified the Senate Appeals Officer of his intent to appeal the denial and sought information regarding the procedures for his appeal. Such information was included with the initial response by the Senate Open Records Officer, and was provided again by the Senate Appeals Officer. Nevertheless, the Requester’s appeal does not satisfy the requirements under the Act or the regulations under Chapter 7 of Title 104 of the Pennsylvania Code and must be dismissed.

Section 1101(a)(1) of the Act specifies that an appeal “shall 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). The Senate regulations for filing a RTK Law appeal also reflect this statutory requirement. 104 Pa. Code § 7.16(c)(2).

Despite receiving instructions on the requirements for filing an appeal both in the initial response from the Senate Open Records Officer and in the subsequent information provided by the Senate Appeals Officer, the Requester never satisfied the requirements of the Act or the

regulations. Specifically, the Requester did not state the grounds upon which the Requester asserts that the record sought is a legislative record, nor did the Requester address the grounds stated by the Senate Open Records Officer for denying the request. Therefore, Requester's appeal in this matter is insufficient and must be dismissed.

### **Conclusion**

This appeal is dismissed as insufficient. The Requester failed to address the Senate Open Records Officer's grounds for her denial, and failed to address why the requested records are releasable legislative records. Therefore, the appeal fails to satisfy the requirements of the RTK Law.

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**FINAL DETERMINATION**  
**October 13, 2023**

**ORDER**

AND NOW, this 13<sup>th</sup> day of October 2023, this appeal is DISMISSED as insufficient.



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**MICHAEL GERDES**  
**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 717-255-1650.