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AVERY,
Requester

v.

LRB Appeal 04-2023
(Senate RTK Appeal 2023-56)

SENATE OF PENNSYLVANIA,
Legislative Agency

FINAL DETERMINATION

INTRODUCTION

Ross Avery (Requester) 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 “copies of all the different variations of ticket stubs and gallery passes that the Senate of Pennsylvania has used over time to admit individuals into its gallery during any sort of legislative session which has been issued in past, at any time.” The Senate Open Records Officer (Senate RTKL Officer) denied the request and Requester appealed. For the reasons stated in this Final Determination, the appeal is denied, and the Senate is not required to take any further action on the request.

FACTUAL BACKGROUND

On December 4, 2023, the Requester submitted an RTKL request to the Senate RTKL Officer reading as follows:

I am seeking copies of all of the different variations of ticket stubs and gallery passes that the Senate of Pennsylvania has used over time to admit individuals into its gallery during any sort of legislative session which has been issued in the past, at any time. This request includes, but is not limited to, copies of all variations including any changes in design, text, color, or size of the ticket stubs or gallery passes. Though the purpose of the request is not required, I am seeking this because I am writing an academic article on the use of ticket stubs historically for a technical communication publication. If for some

reason the Senate of PA has never issued any ticket stubs ever to admit people into its public gallery, ... then I am requesting anything used in substitution of a ticket stub ... particularly where there might have been an important vote in the senate and gallery seats would be in high demand, in addition to copies of any press (media) passes it has issued.

On December 7, 2023, the Senate denied the request based on a determination that the requested records are not within the definition of a “legislative record” as provided for in the RTKL. 65 P.S. § 67.102.

Requester was notified of the right to appeal. 65 P.S. § 67.903. The Senate RTKL Officer appointed Michael Gerdes to serve as Appeals Officer. Requester filed an appeal on December 12, 2023. On December 14, 2023, the recusal of the Appeals Officer prompted the transfer of this appeal and its corresponding record to the Pennsylvania Legislative Reference Bureau (LRB), which agreed to assign an Appeals Officer.

On December 15, 2023, the parties were notified that Lisa K. Kelly of the LRB would serve as the Appeals Officer (LRB Appeals Officer). In accordance with regulations of the LRB, 101 Pa. Code § 31.21 *et seq.*, on December 18, 2023, LRB Appeals Officer established a schedule for documents to be submitted in the appeal with instructions to serve the other party.

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

On December 15, 2023, counsel for the Senate filed a letter brief in support of the Senate’s position. The requester did not file a brief.

LEGAL ANALYSIS

“[T]he objective of the Right-to-Know Law... is to empower citizens by affording them access to information concerning the activities of their government.” *SWB Yankees LLC v. Wintermantel*, 45 A.3d 1029, 1042 (Pa. 2012). Further, this important open-government law is “designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials, and make public officials accountable for their actions.” *Pennsylvania State Police v. McGill*, 83 A.3d 476, 479 (Pa. Commonwealth 2014) (citing *Office of Governor v. Scolforo*, 65 A.3d 1095, 1100 (Pa. Commonwealth 2013)).

This case can be resolved by applying certain legal principles. To start, in construing any statute, the intent of the General Assembly must be ascertained and given effect. The clearest indication of legislative intent is the plain language of a statute. *Office of Governor v. Donahue*, 98 A.3d 1223, 1237 (Pa. 2014). When the words of a statute are clear and free from ambiguity, the letter of the statute is not to be disregarded under the pretext of pursuing its spirit. *Levy v. Senate of Pennsylvania*, 65 A.3d 361, 380 (Pa. 2013).

The RTKL provides different types of access to different types of records of Commonwealth agencies, local agencies, legislative agencies and judicial agencies. Commonwealth agencies and local agencies are required to provide public records in accordance with the RTKL. 65 P.S. §§ 67.301 and 67.302. Judicial agencies are required to provide financial records in accordance with the RTKL. 65 P.S. § 67.304. Legislative agencies are required to provide legislative records in accordance with the RTKL. 65 P.S. § 67.303.

The Senate is a legislative agency subject to the RTKL and, as such, is required to disclose its legislative records. 65 P.S. § 67.303(a). A legislative record in the possession of a legislative agency is presumed to be available in accordance with the RTKL unless an exemption applies. 65 P.S. § 67.305(b). Upon receipt of a

request under the RTKL, a legislative agency is required to assess whether a record is within its possession, custody or control and respond within five business days. 65 P.S. § 67.901.

Under the RTKL, legislative agencies are only required to provide statutorily defined legislative records. 65 P.S. § 67.303(a). Legislative records are limited in scope and comprise only those records specifically designated as such in the RTKL. If the record or document sought does not satisfy the definition of a legislative record, there is no need to discuss whether the document is in the possession, custody or control of the legislative agency or whether there are exemptions to disclosure; in such a case, the record or document is not subject to disclosure under the RTKL.

Section 102 of the RTKL provides the following pertinent definition:

“Legislative record.” Any of the following relating to a legislative agency or a standing committee, subcommittee or conference committee of a legislative agency:

- (1) A financial record.
- (2) A bill or resolution that has been introduced and amendments offered thereto in committee or in legislative session, including resolutions to adopt or amend the rules of a chamber.
- (3) Fiscal notes.
- (4) A cosponsorship memorandum.
- (5) The journal of a chamber.
- (6) The minutes of, record of attendance of members at a public hearing or a public committee meeting and all recorded votes taken in a public committee meeting.
- (7) The transcript of a public hearing when available.
- (8) Executive nomination calendars.
- (9) The rules of a chamber.
- (10) A record of all recorded votes taken in a legislative session.
- (11) Any administrative staff manuals or written policies.
- (12) An audit report prepared pursuant to the act of June 30, 1970 (P.L.442, No.151) entitled, “An act implementing the provisions of Article VIII, section 10 of the Constitution of Pennsylvania, by designating the Commonwealth officers who shall be charged with the function of auditing the financial transactions after the occurrence thereof of the Legislative and Judicial branches of the government of the Commonwealth, establishing a Legislative Audit Advisory Commission, and imposing certain powers and duties on such commission.”
- (13) Final or annual reports required by law to be submitted to the General Assembly.
- (14) Legislative Budget and Finance Committee reports.
- (15) Daily legislative session calendars and marked calendars.
- (16) A record communicating to an agency the official appointment of a legislative appointee.
- (17) A record communicating to the appointing authority the resignation of a legislative appointee.
- (18) Proposed regulations, final-form regulations and final-omitted regulations submitted to a legislative agency.

(19) The results of public opinion surveys, polls, focus groups, marketing research or similar efforts designed to measure public opinion funded by a legislative agency.

65 P.S. § 67.102. There are various forms of records of legislative agencies that fall within the definition of “legislative record.” However, unless a record satisfies one of the enumerated forms, it is not required to be produced by a legislative agency under the RTKL.

In this case, under the original request, Requester seeks ticket stubs and gallery passes from the Senate. In its brief, the Senate argues that ticket stubs and gallery passes for entry into the Senate chamber are not among the 19 enumerated legislative records. The enumerated list mentions the chamber three times, referencing the adoption and amendment of bills or resolutions, the journals and the rules.

Although a legislative agency may, at its discretion, provide records that are not required to be released, the Senate further argues that the scope of the request--“all” ticket stubs and gallery passes--is insufficiently specific and would require a record search from 1873 to present. Presently, the Senate only utilizes tickets for swearing-in days for members and the Lieutenant Governor, making these records of limited value.

While the value is not at issue here, it is important to note that a request must be limited in scope and not overly burdensome to the agency. Importantly, requests must allow the agency to readily determine which records are being requested.

As the Senate correctly points out, overly broad requests are not upheld under settled law. *See, e.g., Pa. Dept. of Education v. Pittsburgh Post-Gazette*, 119 A.3d 1121, 1124 (Pa. Commw. Ct. 2015) (holding “all emails” request insufficiently specific); *Mollick v. Township of Worcester*, 32 A.3d 859, 871 (Pa. Commw. Ct. 2011) (same).

As discussed above, unless a request satisfies one of the enumerated records under the definitions of “legislative record” under the RTKL, it is not required to be produced by a legislative agency under the RTKL. Here, Requester is not seeking access to a specific record. Rather, Requester is seeking access to an entirely new class of record, namely ticket stubs and gallery passes issued for the Senate gallery. This class of record is not explicitly listed under the definition of “legislative record” under the RTKL. It is clear and unambiguous under the rules of statutory construction that the General Assembly did not intend to make such a general class of records accessible legislative records under the RTKL.

CONCLUSION

For the foregoing reasons, the 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 the mailing 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 DELIVERED: January 16, 2024

Lisa K. Kelly

/s/Lisa K. Kelly, Appeals Officer