
Subject: Right-to-Know Law Request
Date: Friday, October 23, 2020 at 6:54:57 AM Pacific Daylight Time
From: righttoknow
To: records@americanoversight.org
Attachments: image001.png, Francis Collins - Appeal No. 2017-0002 ACA - DECISION - 10.24.17.pdf

EXTERNAL SENDER

October 23, 2020

Austin Evers
Executive Director
American Oversight
records@americanoversight.org

Dear Mr. Evers,

Thank you for writing to the Pennsylvania House of Representatives with your request for records pursuant to the Pennsylvania *Right-to-Know Law* (65 P.S. §§67.101 *et seq.*). On October 16, 2020, I received your two (2) *Right-to-Know Law* requests via email for the following information:

Request #1

“All email communications (including emails, complete email chains, calendar invitations, and attachments thereto) sent by Majority Leader Benninghoff or his Chief of Staff Robert Nye, and containing any of the terms specified below:

Specified Terms:

- | | |
|--------------------------|----------------------|
| 1. “Bush v” | 17. “12th amendment” |
| 2. Chiafalo | 18. 12A |
| 3. “Contested election” | 19. “3 U.S.C.” |
| 4. “Direct appointment” | 20. “3 USC” |
| 5. “Electoral College” | 21. “December 8” |
| 6. “Electoral Count Act” | 22. “Dec. 8” |
| 7. “Failed election” | 23. “Dec 8” |
| 8. Faithless | 24. “12/8” |
| 9. Gore | 25. “December 23” |
| 10. McPherson | 26. “Dec. 23” |
| 11. “Slate of” | 27. “Dec 23” |

- | | |
|-------------------------|-----------------|
| 12. "Safe harbor" | 28. "12/23" |
| 13. "Section 15" | 29. "January 6" |
| 14. "Title 3" | 30. "Jan. 6" |
| 15. Tribunal | 31. "Jan 6" |
| 16. "Twelfth Amendment" | 32. "1/6" |

Please provide all responsive records from August 1, 2020, through the date the search is conducted."

Request #2

"All email communications (including emails, complete email chains, calendar invitations, and attachments thereto) sent by Rep. Everett or his Legislative Aide, Kathy Koch, and containing any of the terms specified below:

Specified Terms:

- | | |
|--------------------------|----------------------|
| 1. "Bush v" | 17. "12th amendment" |
| 2. Chiafalo | 18. 12A |
| 3. "Contested election" | 19. "3 U.S.C." |
| 4. "Direct appointment" | 20. "3 USC" |
| 5. "Electoral College" | 21. "December 8" |
| 6. "Electoral Count Act" | 22. "Dec. 8" |
| 7. "Failed election" | 23. "Dec 8" |
| 8. Faithless | 24. "12/8" |
| 9. Gore | 25. "December 23" |
| 10. McPherson | 26. "Dec. 23" |
| 11. "Slate of" | 27. "Dec 23" |
| 12. "Safe harbor" | 28. "12/23" |
| 13. "Section 15" | 29. "January 6" |
| 14. "Title 3" | 30. "Jan. 6" |
| 15. Tribunal | 31. "Jan 6" |
| 16. "Twelfth Amendment" | 32. "1/6" |

Please provide all responsive records from August 1, 2020, through the date the search is conducted."

* * *

This correspondence serves to inform you that these requests are hereby denied. According to section 303(a) of the *Right-to-Know Law*, the House of Representatives is only obligated to provide *Right-to-Know Law* requesters with access to "legislative records." As defined by section 102, "legislative records" specifically include the following nineteen (19) items:

- (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.*

"Email communications" of House Members and/or their staff do not fall under the definition of "*legislative record*." Therefore, to the extent any such records exist within the House of Representatives, a denial of access is appropriate. ^[1] As a courtesy, please find enclosed for your convenience a copy of the most recent opinion issued by the designated *Right-to-Know Law* Appeals Officer for the House of Representatives upholding our denial of access to requested information which does not fall under the definition of "*legislative record*."

If you choose to file an appeal to any of these denials, you must do so in writing to Anthony C. Aliano Esq., Right-to-Know Law Appeals Officer, Pennsylvania House of Representatives, 400 Main Capitol Building, Harrisburg, PA 17120. Pursuant to Section 1101, an appeal must be filed within 15 business days of the mailing date of this response.

This correspondence serves to close your requests with our office as permitted by law.

Respectfully,



David L. Reddecliff
Chief Clerk/Open Records Officer
Pennsylvania House of Representatives

[1]

See, e.g., RTKL Appeal No. 2009-0002 SCO (Scolforo Appeal, Decided Feb. 24, 2009); RTKL Appeal No. 2010-0010 JOY at 5 (Joyce Appeal, Decided May 28, 2010); RTKL Appeal No. 2013-0001 ACA at 10 (Capazzi Appeal, Decided Feb. 25, 2013); RTKL Appeal No. 2014-0002 ACA at 8 (McManus Appeal, Decided Nov. 6, 2014); RTKL Appeal No. 2017-0002 ACA (Collins Appeal, Decided Oct. 24, 2017).

Encl.
DLR/biw

[1]

See, e.g., RTKL Appeal No. 2009-0002 SCO (Scolforo Appeal, Decided Feb. 24, 2009); RTKL Appeal No. 2010-0010 JOY at 5 (Joyce Appeal, Decided May 28, 2010); RTKL Appeal No. 2013-0001 ACA at 10 (Capazzi Appeal, Decided Feb. 25, 2013); RTKL Appeal No. 2014-0002 ACA at 8 (McManus Appeal, Decided Nov. 6, 2014); RTKL Appeal No. 2017-0002 ACA (Collins Appeal, Decided Oct. 24, 2017).



HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

Via Certified Mail No.

Francis J. Collins
Kahn, Smith & Collins, P.A.
201 North Charles Street
10th Floor
Baltimore, MD 21201

Hon. David L. Reddecliff
House Open Records Officer
Pennsylvania House of Representatives
133 Main Capitol Building
Harrisburg, PA 17120

RIGHT-TO-KNOW LAW APPEAL
Mailing Date: October 24, 2017

HOUSE COUNSEL
CHIEF CLERK'S OFFICE
17 OCT 24 PM 2:57

DECISION

RE: Appeal No. 2017-0002 ACA

This is an appeal pursuant to 65 P.S. § 67.101 *et seq.*, also known as the Right-To-Know Law, (“RTKL”)¹, filed on September 21, 2017 by Mr. Francis J. Collins (the “Requester”). This is an appeal of a denial issued by the Hon. David L. Reddecliff, Open Records Officer (the “ORO”) of the Pennsylvania House of Representatives, (the “House”) Room 129, Main Capital Building, Harrisburg, PA 17120.

¹ Act of February 14, 2008, P.L. 6, 65 P.S. §§ 67.101 – 67.3104.

The ORO's denial was issued on September 20, 2017. In response to that denial, the Requester filed an appeal on September 21, 2017. That appeal is the subject of the within decision.

I. STATEMENT OF FACTS (emphasis added below)

The facts discerned from the submissions are as follows:

1. On September 13, 2017, Requester directed a RTKL to the House RTKL Office via email.² In it, Requester sought access to the following records:

*"John McNulty and/or Carolyn McNulty, or their agents, contacted Rep Kritin [sic] Phillips-Hill and/or Sen. Scott Wagner, during the past 3 years, regarding the location of the Pennsylvania border, at or near Salt Lake Road and the McNulty's property on that road. I am seeking to learn what was said or written to them and the authority for any such statements or writings. These matters were addressed in a federal lawsuit in Maryland District Court, case no. 16-2426. See Amended Complaint, paragraphs 39 and 40."*³

2. On September 20, 2017, the House ORO issued a response denying access to the requested records ("Denial").⁴ The basis for Denial was that the requested records did not fall under the definition of "*legislative record*" in section 102 of the RTKL.

²² Requester's September 13, 2017, RTKL, request is attached and labeled "Request"

³ *Id.*

⁴ The House of Representatives' Denial is attached and labeled "Denial." Denial was sent in accordance with § 903 of the RTKL. Section 903 states: "If an agency's response is a denial of a written request for access, whether in whole or in part, the denial shall be issued in writing and shall include: (1) A description of the record requested. (2) The specific reason for the denial, including a citation of supporting legal authority. (3) The typed or printed name, title, business address, business telephone number and signature of the open records officer on whose authority the denial is issued. (4) Date of the response. (5) The procedure of appeal to the denial of access under this act." 65 P.S. § 67.903; See, "Denial."

Therein, the House ORO also referred the portion of the request pertaining to “Sen. Scott Wagner” to Donetta D’Innocenz, the ORO for the Senate of Pennsylvania.

3. Requester then directed a letter of appeal (“Appeal”) in response to Denial to designated House RTKL Appeals Officer Anthony Aliano, Esquire, (“the OOR”) on September 21, 2017.⁵

4. On October 4, 2017, the House ORO was advised in writing that Mr. Aliano was in official receipt of Requester’s letter of appeal, and the House ORO was directed to file a response by Noon on October 15, 2017.⁶

II. DISCUSSION

a. Scope of Review

The RTKL does not expressly establish a scope of review regarding appeals. Supporting *de novo* review, or a broad standard of review, the RTKL mandates that the appeals officer set a schedule so that documents can be submitted by all parties in support of their positions. 65 P.S. § 671102(a)(1). The RTKL does not restrict the documents that can be submitted nor does it prescribe the appeals officer’s authority to request documents which can be submitted.

Instead, the RTKL broadly buttresses the authority by directing the appeals officer to “review all information filed relating to the request.” 65 P.S. § 67.1102(a)(2). Additionally, among other things, the appeals officer is authorized by the RTKL to hold a hearing and admit testimony, documents and other evidence which the appeals officer

⁵ Requester’s September 21, 2017 letter of Appeal is attached and labeled “Appeal.” See, “Appeal.”

⁶ The written notice from the House RTKL Appeals Officer to the House RTKL Office is attached and labeled “Notice of Appeal.” See, “Notice of Appeal.”

believes to be reasonably probative and relevant to an issue in dispute. *Id.* Accordingly, a *de novo*, or broad standard of review will be used in reviewing the present Appeals.⁷

b. Analysis

APPEAL FAILS BECAUSE THE INFORMATION SOUGHT BY REQUESTER DOES NOT FALL UNDER THE DEFINITION OF “LEGISLATIVE RECORD.”

To refresh the facts above, Requester’s original RTKL Request on September 13, 2017 sought access to the following records:

“John McNulty and/or Carolyn McNulty, or their agents, contacted Rep Kritin [sic] Phillips-Hill and/or Sen. Scott Wagner, during the past 3 years, regarding the location of the Pennsylvania border, at or near Salt Lake Road and the McNulty’s property on that road. I am seeking to learn what was said or written to them and the authority for any such statements or writings. These matters were addressed in a federal lawsuit in Maryland District Court, case no. 16-2426. See Amended Complaint, paragraphs 39 and 40.”⁸

⁷ A broad standard of review is comparable to the wide latitude of review granted to the final finders of fact in administrative hearings. In unemployment compensation matters, appeals are handled by referees and the Board of Unemployment Compensation. Referees review decisions of the Department of Labor Personnel. The referee’s scope of review is limited by statute to consideration of the issues expressly ruled upon in the decision being appealed. 34 Pa. Code § 101.87. Appeals of the referee’s decision are made to the Board of Unemployment Compensation. That Board is the ultimate fact finder in unemployment cases and is empowered to resolve conflicts in evidence, determine the credibility of witnesses, and determine the weight to the accorded evidence. The Board can affirm, modify, or reverse the referee’s decision based on previously submitted evidence, or after taking further evidence. The authority granted to appeals officers under 65 P.S. § 67.1102 of the RTKL more closely approximates that granted to the Board in unemployment compensation cases.

⁸ See, “Request” (emphasis added).

The House ORO issued a response on September 20, 2017 denying access to the requested information because it did not fall under the definition of “legislative record.”⁹

In response to Denial, Requester’s argument in Appeal is limited to the following:

*“I believe this information is subject to disclosure for several reasons. First, the McNultys [sic] waived any confidentiality they claim by making representations in a Federal lawsuit. Second, it is important that the Commonwealth of Pennsylvania speak with one voice and not be making statements that affect property rights without being open about it. Judge Motz, in the attached position, took the above referenced statements as a statement of the position of your Commonwealth. The McNulty’s lawyers also represented that Ms. Phillips-Hill and Sen. Wagener spoke for the Commonwealth. This needs to be cleared up. We need to know what was said and the authority for the statements.”*¹⁰

The mandates of the RTKL with respect to the House of Representatives are clear and unambiguous. The House of Representatives is a “legislative agency” as defined by § 102 of the RTKL.¹¹ A “legislative agency” is required to provide RTKL requesters with access to “legislative records” in accordance with the act.¹² Section 102 specifically defines “legislative record” as follows:

⁹ See, “Denial.”

¹⁰ See, “Appeal” (emphasis added).

¹¹ 65 P.S. § 67.102

¹² 65 P.S. § 67.303(a); See *Levy v. Senate*, 34 A.3d 243, 244 n.3 (Pa. Cmwlth. 2011) appeal granted, 834 MAL 2011, 2012 WL 1662462 (Pa. May 14, 2012); *Appeal of Scolforo* (Senate 01-2009, 02-2009) 09-1, 09-2-3; *Appeal of Scolforo* (House, 2009-0001 SCO) 09-7, 09-9-10; *Appeal of Scolforo* (House, 2009-0002 SCO) 09-13, 09-15-16; *Appeal of Wolf* (House, 2009-0003 WOL) 09-19, 09-21-22; *Appeal of Noll* (House 2009-0004 NOL) 09-25, 09-28-29; *Appeal of Parsons* (House 2009-007 PAR) 09-35, 09-39-41; *Appeal of Lowell* (House 2009-2008 LOW) 09-44, 09-48-50; *Appeal of Nicholas* (Senate 05-2009) 09-52, 09-53; *Appeal of Krawczeniuk* (Senate 03-2009) 09-57, 09-58; *Appeal of Krawczeniuk* (Senate 04-2009) 09-61, 09-62; *Appeal of Joyce* (House 2010-0010 JOY) 10-7, 10-9-10; *Appeal of Brogan* (House 2015-0003 ACA) 15-6-9.

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 the 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-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.¹³

The definition of “legislative record” is expressly limited to 19 specific documents.¹⁴ If the requested record does not fall under the definition of “legislative record,” a “legislative agency” may rightfully deny access to that record.¹⁵ This position

¹³ 65 P.S. § 67.102.

¹⁴ *Id.*

¹⁵ See, e.g. *RTKL Appeal No. 2009-0002 SCO* (Scolforo Appeal, Decided Feb. 24, 2009); *RTKL Appeal No. 2010-0010 JOY* at 5 (Joyce Appeal, Decided May 28, 2010); *RTKL Appeal No. 2013-0001 ACA* at 10 (Capazzi Appeal, Decided Feb. 25, 2013); *RTKL Appeal No. 2014-0002 ACA* at 8 (McManus Appeal, Decided Nov. 6, 2014). See also, *Davis v. Sulcove*, 205 A.2d at 92; 65 P.S. § 67.102; *RTKL Appeal No. 2015-0003 ACA* at 6-9 (Brogan Appeal, Decided Oct. 20, 2015).

has been repeatedly upheld by both the House RTKL Appeals Officer and the Commonwealth Court.¹⁶

Requester sought access in Request to “statements or writings regarding the location of the Pennsylvania border” and “statements or writings regarding a meeting between John McNulty and/or Carolyn McNulty...and Rep. Kristin Phillips-Hill and/or Sen. Scott Wagner during the past three years in which the location of the Pennsylvania border was discussed.”¹⁷ Neither “statements” nor “writings” of House Members pertaining to property in their legislative district fall under the definition of “legislative record.”¹⁸ As such, to the extent any such “statements” or “writings” exist, access to such records was lawfully denied by the House ORO under the RTKL.¹⁹

Requester’s arguments in Appeal fail to persuade that the requested records are “legislative records” which the House of Representatives is required to disclose under the RTKL. Indeed, Requester makes no mention of the stipulations of the RTKL at all in Appeal.²⁰ Instead, Requester peculiarly asserts that the requested information is subject to disclosure because (1) confidentiality has been waived by the property owners in the property dispute referenced in Request, and (2) that “the Commonwealth of Pennsylvania [should] speak with one voice.”^{21 22} Though these sentiments may be true as they relate

¹⁶ *Id.*

¹⁷ *See*, “Request.”

¹⁸ *See*, 65 P.S. § 67.102.

¹⁹ It bears mention that in accordance with section 502(b)(1) of the RTKL, the House ORO directed the portion of the request pertaining to “Sen. Scott Wagner” to the designated ORO for Senate of Pennsylvania. *See*, 65 P.S. § 67.502. Thus, the House ORO made clear that Denial speaks on behalf of the House of Representatives, only. *See*, “Denial.”

²⁰ *See*, “Appeal.”

²¹ *Id.*

to Requester's mission in obtaining the requested records, neither argument relates to the requirements of the RTKL.

The House of Representatives is a "legislative agency" which is only required to provide access to "legislative records" under the RTKL. Requester's arguments in Appeal are irrelevant to the issue at bar and to the RTKL. As such, the denial of access issued by the House ORO was proper, and Appeal must be dismissed.

III. CONCLUSION

In sum, the Denial was proper in all respects under the RTKL. The House ORO issued a proper denial in response to Request because "statements" and "writings" of House Members pertaining to property in their legislative districts do not fall under the definition of "legislative record," thus exempting any such existing records from disclosure by the House of Representatives under the RTKL.

Accordingly, the Denial was proper and the Appeal fails. If you choose to file an appeal to this Denial, you must do so in writing within thirty (30) days of the mailing date noted herein, addressed as follows:

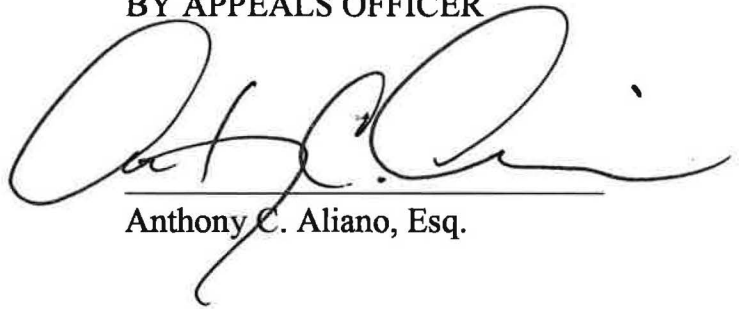
**Commonwealth Court of Pennsylvania
Pennsylvania Judicial Center
601 Commonwealth Avenue, Suite 2100
P.O. Box 69185
Harrisburg, PA 17106-9185**

²² Requester then goes on in the Appeal to reference an "attached position" of one Judge Motz in support of the latter claim, however such a document, if ever attached, was not included with Notice of Appeal. *See*, "Notice of Appeal."

ORDER

AND NOW, this 24th day of October, 2017, upon consideration of the subject appeal, the Denial is AFFIRMED.

BY APPEALS OFFICER

A handwritten signature in black ink, appearing to read 'Anthony C. Aliano', is written over a horizontal line. The signature is fluid and cursive.

Anthony C. Aliano, Esq.