

Subject: RTK Request 2201121310 Morris - Response - Granted In Part - Section 704 / Denied In Part - No Records

Date: Thursday, January 20, 2022 at 10:45:31 AM Eastern Standard Time

From: RTKofficer

To: AO Records

EXTERNAL SENDER

Dear Mr. Morris,

I am responding to your recent RTK request which was received on Wednesday, January 12, 2022 in which you requested the following:

Please provide all responsive records described below from October 25, 2021, through the date the search is conducted:

1. A complete copy (including any attachments) of any contract or subcontract, amendment, memorandum of understanding, or other written agreement between

(a) the Pennsylvania State Senate (or members thereof) and/or the Senate Intergovernmental Operations Committee, and

(b) parties investigating elections in Pennsylvania.

At a minimum, this request should be interpreted to include agreements with Envoy Sage, as well as any other individuals or entities contracted in association with any investigations of the 2020 election.

2. A complete copy (including any attachments) of any resume, bid, project proposal, cost or time estimate, scope of work, application form, or other document submitted to the Pennsylvania State Senate (or members or agents thereof) by entities investigating elections in Pennsylvania.

3. A complete copy of any invoice from or payment to entities investigating elections in Pennsylvania, or any of the other individuals or entities enumerated in item 1 above.

In reviewing your request, the following sections of the Right-to-Know Law (RTKL), 65 P.S. § 67.101 et. seq., are relevant:

Section 303(a) of the RTKL provides that “[a] legislative agency shall provide legislative records in accordance with this act.” 65 P.S. § 67.303(a). Section 102 defines “legislative agency” to include the Senate. 65 P.S. § 67.102.

Section 305(b) provides that “A legislative record in the possession of a legislative agency. . . shall be presumed to be available in accordance with this act. The presumption shall not apply if: (1) the record is exempt under section 708; (2) the record is protected by a privilege; or (3) the record is exempt from disclosure under any other Federal or State law, regulation or judicial order or decree.” 65 P.S. § 67.305(b). Accordingly, if the record requested is not considered a “Legislative record” under the RTKL, it is not presumed to be available to the public.

Section 102 of the Act provides the following definition of “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 co-sponsorship 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.*

Section 102 further provides for the definition of "financial record." As any of the following: "(1) Any account, voucher or contract dealing with: (i) the receipt or disbursement of funds by an agency; or (ii) an agency's acquisition, use or disposal of services, supplies, materials, equipment or property. (2) The salary or other payments or expenses paid to an officer or employee of an agency, including the name and title of the officer or employee. (3) A financial audit report. The term does not include work

papers underlying an audit.” 65 P.S. § 67.102.

Section 102 also defines:

“Confidential proprietary information.” Commercial or financial information received by an agency:

- (1) which is privileged or confidential; and*
- (2) the disclosure of which would cause substantial harm to the competitive position of the person that submitted the information. 65 P.S. § 67.102*

Section 704. provides for “[e]lectronic access.

(a) General rule.--In addition to the requirements of section 701, an agency may make its records available through any publicly accessible electronic means.

(b) Response.—

- (1) In addition to the requirements of section 701, an agency may respond to a request by notifying the requester that the record is available through publicly accessible electronic means or that the agency will provide access to inspect the record electronically.*
- (2) If the requester is unwilling or unable to access the record electronically, the requester may, within 30 days following receipt of the agency notification, submit a written request to the agency to have the record converted to paper. The agency shall provide access to the record in printed form within five days of the receipt of the written request for conversion to paper.” 65 P.S. § 67.704.*

Section 706 allows for the redaction of information.

Section 706. Redaction.

If an agency determines that a public record, legislative record or financial record contains information which is subject to access as well as information which is not subject to access, the agency's response shall grant access to the information which is subject to access and deny access to the information which is not subject to access. If the information which is not subject to access is an integral part of the public record, legislative record or financial record and cannot be separated, the agency shall redact from the record the information which is not subject to access, and the response shall grant access to the information which is subject to access. The agency may not deny access to the record if the information which is not subject to access is able to be redacted. Information which an agency redacts in accordance with this subsection shall be deemed a denial under Chapter 9. 65 P.S. § 67.706.

Section 708. Exceptions for public records.

(a) Burden of proof.--

(2) The burden of proving that a legislative record is exempt from public access shall be on the legislative agency receiving a request by a preponderance of the evidence.

(b) Exceptions.--Except as provided in subsections (c) and (d), the following are exempt from access by a requester under this act:

(11) - A record that constitutes or reveals a trade secret or confidential proprietary information. 65 P.S. § 67.708(b)(11).

Section 901 provides the general rule for responding to RTK requests.

Section 901. General rule.

Upon receipt of a written request for access to a record, an agency shall make a good faith effort to determine if the record requested is a public record, legislative record or financial record and whether the agency has possession, custody or control of the identified record, and to respond as promptly as

possible under the circumstances existing at the time of the request. All applicable fees shall be paid in order to receive access to the record requested. The time for response shall not exceed five business days from the date the written request is received by the open-records officer for an agency. If the agency fails to send the response within five business days of receipt of the written request for access, the written request for access shall be deemed denied. 65 P.S. § 67.901.

Pursuant to Sections 704, 706 & 708(b)(11), your request is hereby granted in part and denied in part.

For parts one and two of the request, please see the link to the contract on the [State Treasury Contract e-Library Database website](#) - (Contract # [3921111601A](#))

Within the contract, the redaction code “65 P.S. § 708(b)(11)” was limitedly applied to information that the contractor asserts is confidential proprietary information.

The redacted information is deemed denied and the process for appeal is provided below.

In response to the third part of the request, as of this time, there are no financial records associated with the contract as no expenses have been processed for payment. Therefore, this part of the request is denied as there are no responsive records.

Please note that pursuant to Section 704, the Senate publishes [monthly expense reports](#) on the Senate website.

If you have any questions, please contact Michael Sarfert of my staff.

Sincerely,

Donetta M. D’Innocenzo, Open Records Officer
Senate of Pennsylvania
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Link to Senate RTKL website - <http://www.pasen.gov/RTKL/index.cfm>

RIGHT TO APPEAL

In accordance with Section 903 of the Right-to-Know Law, you are hereby notified of your rights to appeal a denial under Chapter 11 of the Act. 65 P.S. §67.903.

The Senate has appointed the Secretary of the Senate, to serve as Appeals Officer. 65 P.S. §67.503. The Appeals Officer can be contacted as follows:

Megan Martin
Senate Appeals Officer
Room 462, State Capitol Building
Harrisburg, PA 17120-3053

Telephone: (717) 787-5920
RTKAppeals@os.pasen.gov

Please be sure to include your complete contact information with any appeal, a copy of the original request and this denial.

Chapter 11 of the law governs the appeals process and provides for the following:

1. An appeal must be filed with the Senate's Appeals Officer within 15 business days of the mailing date of this response.
2. An appeal shall state the grounds upon which the requester asserts that the record is a legislative record, which includes a financial record and shall address any grounds stated by the agency for delaying or denying the request. 65 P.S. §67.1101(a)(1). An appeal must also be filed in accordance with the provisions of Chapter 7 of Title 104 (Senate of Pennsylvania) of the Pennsylvania Code.
<http://www.pacodeandbulletin.gov/Display/pacode?file=/secure/pacode/data/104/chapter7/chap7toc.html&d>
3. The Appeals Officer is required to make a final determination, in writing, within 30 days of receiving an appeal. Prior to making the final determination, the Appeals Officer may hold a hearing.

Privileged Communication: The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material and may be subject to attorney client privilege, and exempt from disclosure under applicable law. Any review, retransmission, dissemination, copying or other use of, or taking of any action in reliance upon, this communication by persons or entities other than the intended recipient is prohibited. If you receive this in error, please contact the sender by reply email and delete the material from any computer. It is the responsibility of the recipient of this message to protect against harmful content.