



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION
333 MARKET STREET
HARRISBURG, PA 17126-0333
www.pde.state.pa.us

November 26, 2012

Mr. Ryan Bagwell
5219 Shorecrest Drive
Middleton, WI 53562

Re: Right-to-Know Law Request No. 2012-182

Dear Mr. Bagwell,

Thank you for writing to the Department of Education (Department) with your request for information pursuant to the Pennsylvania Right-To-Know Law (RTKL), 65 P.S. §§ 67.101 *et seq.* Your request was received on October 19, 2012. You requested:

Copies of contracts, memorandums of understanding, letters of intent and any other agreements, regardless of title, to which the law firm of Freeh Sporkin & Sullivan, LLP, is a party.

By letter dated October 23, 2012, you were advised that the Department required up to an additional 30 days, i.e., until November 26, 2012, in which to respond to your request. In addition, by letter dated October 25, 2012, you were asked if you were willing to amend your request to include more specific information such as a time restriction, a subject matter and the name(s) of any other party or parties to the requested agreements, so that the Department could properly and timely determine whether it had any public records responsive to your request.

However, by letter dated October 30, 2012, you declined to make your request more specific.

Your request is denied because it is not sufficiently specific. The RTKL requires that a request for records be made with "sufficient specificity to enable the agency to ascertain which records" are being requested. 65 P.S. § 67.703.

In *Pennsylvania State Police v. Office of Open Records*, 995 A.2d 515 (Pa. Cmwlth. 2010), the Commonwealth Court concluded that a request for "any and all records" relating to a specific subject was not a sufficiently specific request for the agency to be required to respond under the RTKL. The specificity requirement in the new RTKL is identical to that of its predecessor: "A written request should identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested and shall include the name and address to which the agency should address its response." 65 P.S. § 66.2(c) (repealed). Pennsylvania's courts have repeatedly held that RTKL requests such as yours can be properly denied for lack of specificity. Because the new RTKL uses the exact same wording, the earlier judicial opinions

continue to have precedential value and have been cited by the OOR in denying requests that are not sufficiently specific. See, *Anderson v. City of Philadelphia*, OOR Dkt. No. 2009-0618 (Sept. 25, 2009); *Associated Builders & Contractors, Inc. v. Department of General Services*, 747 A.2d 962, 966 (Pa. Cmwlth 2000).

In determining whether a request for records of communications is sufficiently specific, the OOR has determined that the totality of the circumstances have to be considered. See, *Hocker v. Young Scholars of Central Pennsylvania Charter School*, OOR Dkt. No. AP 2009-0901 (Dec. 17, 2009), citing *Associated Builders, supra*. As noted by the OOR in *Martin v. PUC*, OOR Dkt. No. AP 2010-0385 (May 27, 2010), “[a] number of facts may be considered such as time restrictions, subject matter, date restrictions, parties involved, types of records, etc. However, there is no formula or combination thereof that can be identified to meet specificity requirements.”

Your request seeks “copies of contracts, memorandums of understanding, letters of intent and any other agreements, regardless of title to which the law firm of Freeh Sporkin & Sullivan, LLP, is a party” but does not include any time or date restrictions, any subject matter or parties involved, other than the private law firm of Freeh Sporkin & Sullivan, LLP. Your request does not provide sufficient descriptive information in any or all of the categories noted by the Office of Open Records in *Hocker v. Young Scholars*, OOR Dkt. AP 2009-0901, to enable the Department to determine what information is sought and to determine whether it has any responsive records.

Without any time or date restrictions, or any subject matter or the parties involved, your request is overly broad and does not narrow the universe of potential records encompassed by the remains. By asking for a variety of records of which the private law firm of Freeh Sporkin & Sullivan, LLP is a party, but not identifying any other party and not providing any subject matter or any time or date restrictions, the Department cannot determine whether it has any documents responsive to your request. Therefore, your request is insufficiently specific and must be denied to ensure that the Department has the proper opportunity to raise all other substantive reasons for denial and narrow the issues for consideration by the Office of Open Records (OOR), if review of the denial is sought. An agency may be compelled to produce records that were not envisioned by the agency as being within the scope of a request if, on appeal, the OOR determines that the agency waived an objection based on insufficient specificity by not raising it in the initial denial. See, e.g., *Schillinger v. Lackawanna*, OOR Dkt No. AP 2009-1059 (Jan. 8, 2010).

Nothing in your request identifies the Department as a party to any of the contracts, agreements, etc., that you are seeking and does not identify the subject matter of any such contracts, agreements, etc. Thus, the Department could only speculate about what records you are seeking and the RTKL does not require that an agency speculate about what records are being requested; the request must be sufficiently specific for the agency to ascertain what records are being requested. In addition, nothing in your request indicates that you are seeking any record that documents a transaction or activity of the Department or any record that was created, received or retained pursuant to law or in connection with a transaction, business or activity of the Department. Thus, there is nothing to indicate that you are seeking records of the Department.

The records that may be encompassed by your request may be exempt under Sections 708(b)(6), (10), (16), (17) of the RTKL and/or privileged as deliberative process, attorney client or attorney client work product. We reserve the right to review and assert any such exemptions if any portion of the request is deemed sufficiently specific, pending review of any responsive records. Due to the lack of specificity, we are unable to determine which exemptions might be applicable so that we cannot meaningfully assert any exemptions at this time. *See, Pennsylvania State Police, supra* (when a request is insufficiently specific, the agency should have opportunity to later assert exemptions, unless “the reason for denying access can be reasonably discerned when the request is made.”). 995 A. 2d at 517.


You have a right to appeal this denial of information in writing to Terry Mutchler, Executive Director, Office of Open Records (OOR), Commonwealth Keystone Building, 400 North Street, 4th Floor, Harrisburg, Pennsylvania 17120. If you choose to file an appeal, you must do so within 15 business days of the mailing date of this response and send to the OOR:

- 1) this response;
- 2) your request; and
- 3) the reason why you think the agency is wrong in its reasons for saying that the request is not sufficiently specific.

Also, the OOR has an appeal form available on the OOR website at:
<https://www.dced.state.pa.us/public/oor/appealformgeneral.pdf>.

Should you have questions regarding this letter, please contact me by telephone, facsimile, or mail.

Sincerely,



Michael E. Bressi
Agency Open Records Officer
(717) 783-9795
(717) 772-2317 (fax)