



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

January 28, 2013

Mr. Ryan Bagwell
5219 Shorecrest Drive
Middleton, WI 53562

Re: Right-to-Know Law Request No. 2012-182
Ryan Bagwell v. Pennsylvania Department of Education,
Office of Open Records Docket No. AP 2012-2020

Dear Mr. Bagwell,

This letter is in further response to your request to the Pennsylvania Department of Education for information pursuant to the Pennsylvania Right-To-Know Law (RTKL), 65 P.S. §§ 67.101 *et seq.* Your request was first 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 November 26, 2012, the Department denied your request on the basis that the request lacks “sufficient specificity to enable the agency to ascertain which records” are being requested. 65 P.S. § 67.703. On December 28, 2012, the Office of Open Records (OOR) issued a final determination in your appeal of the Department’s denial of your request. The OOR found that your request is sufficiently specific and requires that the Department provide “all responsive records” to you consistent with that determination.

The Department has filed a petition for review with the Commonwealth Court to seek that Court’s review of the OOR’s December 28, 2012 final determination. Without waiving the objection to your request on the basis of lack of sufficient specificity, the Department provides you with the additional response below.

If the Department has records responsive to your request, the requested documents may not be records of the Department. Documents in Secretary of Education Ronald Tomalis’s possession, custody or control solely by virtue of his position as a member of Penn State’s Board of Trustees are not records of the Department. *See Bagwell v. Pennsylvania Department of Education*, OOR Dkt. No. 2012-1355 (September 13, 2012) (“While it is true that the Secretary serves as a member of the Penn State Board of Trustees *ex officio* . . ., this role does not serve to transform the activities of the Penn State Board of Trustees into activities of the Department”).

Although your request lacks sufficient specificity and though the requested records, to the extent they exist, may not be records of the Department, the Department provides the additional response below. Pursuant to the Office of Open Records Final Decision in *Jenkins vs. Pennsylvania Department of State*, OOR Dkt. AP 2009-065, it should be noted that: "It is not a denial of access when an agency does not possess records and [there is no] legal obligation to obtain them (*see, e.g.* section 67.506 (d)(1))."

Your request states that the Secretary of Education is most likely to have the requested records such documents in his possession, under his custody or control. After a reasonable search, the Secretary of Education does not have the requested records in his possession, under his custody or control.

Notwithstanding the statement in your request, the Department has made additional inquiry to determine whether the Department has records of a procurement, contract or memorandum of understanding between the Department and the law firm of Freeh Sporkin & Sullivan, LLP. After a reasonable search, the Department has determined that there is no record in SAP, Supplier Relationship Management (SRM), or the Consolidated Online Logging and Tracking System (COLTS) of any procurement, contract or memorandum of understanding between the Department and the law firm of Freeh Sporkin & Sullivan, LLP.

The Department has also made an additional inquiry to ascertain the efforts required to conduct an additional search of the Department's records to determine whether any other individual in the Department has the records requested in their possession, custody or control. Based on that inquiry, the Department has concluded that any additional search for the records requested would exceed efforts required by law for the Department to conduct a good faith and thorough search of its records to determine if the Department is in possession, custody or control of the records requested.

Finally, even if the Department has the records requested in its possession, custody or control, 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 v. Office of Open Records*, 995 A.2d 515, 517 (Pa. Cmwlth. 2010) (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.").

You have a right to appeal this response 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;

3) the reason why you think the records exist under the custody or control of the agency.
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,

A handwritten signature in black ink, appearing to read "Michael E. Bressi", with a long horizontal flourish extending to the right.

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

Date Mailed: January 28, 2013

ATTESTATION OF NONEXISTENCE OF RECORDS

Date: January 28, 2013


Agency: Pennsylvania Department of Education

Requester: Ryan Bagwell

Records 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.

I, Ronald J. Tomalis, am the Secretary of the Pennsylvania Department of Education (PDE) and I make this statement under penalty of perjury as more fully set forth in 18 Pa.C.S. § 4904.

I attest that I am a member of the Board of Trustees of the Pennsylvania State University (Board). The Requester states that I am the most likely person at PDE to have possession, custody or control of the records requested. After a reasonable search of my records for the records requested, including those records received or maintained by me as a member of the Board that are not considered records of PDE, I have determined that such records are not in my possession, custody, or control. It is understood that this does not mean that the records do not exist under another spelling, another name, or under another classification.



Ronald J. Tomalis

Dated: 1/28/13

ATTESTATION OF NONEXISTENCE OF RECORDS

Date: January 28, 2013

Agency: Pennsylvania Department of Education

Requester: Ryan Bagwell

Records 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.

I, Lawanza L. Poteat, am an Administrative Officer in the Bureau of Management Services for the Pennsylvania Department of Education (PDE) and I make this statement under penalty of perjury as more fully set forth in 18 Pa.C.S. § 4904.

I attest that I have conducted a search of PDE's electronic databases to determine whether PDE is a party to any procurement, contract or memorandum of understanding with the law firm of Freeh Sporkin & Sullivan, LLP. Specifically, I have queried the following databases available to PDE: SAP, Supplier Relationship Management (SRM), and Consolidated Online Logging and Tracking System (COLTS). SAP and SRM include records from as early as 2003. COLTS includes records from as early as June 2007. I further attest that I queried SAP, SRM and COLTS for the following terms: Freeh Sporkin & Sullivan, LLP; Freeh Group; Freeh Law Firm; Freeh Group International Solutions, LLC; Louis J. Freeh; Louis J. Freeh, Esquire; and, Louis J. Freeh, Esq. After a reasonable search of these databases, I have determined that there is no record in SAP, SRM or COLTS of any procurement, contract or memorandum of understanding between PDE and the law firm of Freeh Sporkin & Sullivan, LLP. It is understood that this does not mean that the records do not exist under another spelling, another name, or under another classification.


Lawanza L. Poteat

Dated: 1/28/13

ATTESTATION OF NONEXISTENCE OF RECORDS

Date: January 28, 2013

Agency: Pennsylvania Department of Education

Requester: Ryan Bagwell

Records 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.

I, Michael Walsh, am the Deputy Secretary of the Office of Administration of the Pennsylvania Department of Education (PDE) and I make this statement under penalty of perjury as more fully set forth in 18 Pa.C.S. § 4904.

The Requester states that Secretary of Education Ronald J. Tomalis is the most likely person at PDE to have possession, custody or control of the records requested. The Secretary has provided an affidavit that he does not have possession, custody or control of the records requested.

Notwithstanding the Requester's statement, I further attest that the Department has made an inquiry of PDE's Executive staff and Deputy Secretaries to ascertain the efforts required to conduct an additional search of PDE's records to determine whether any other individual in PDE has the records requested in their possession, custody or control to the extent that they exist. Based on this inquiry, PDE has determined:

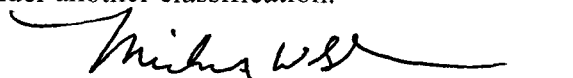
- In addition to the searches conducted by Secretary Tomalis and Lawanza Poteat as referenced in their Attestations of Nonexistence of Records, an additional search to locate the records requested would require a manual search of all hard copy and electronic records of PDE.
- The records PDE would be required to search could be maintained:
 - By any one or more of an unidentified number of individuals.
 - On-site at PDE facilities or at off-site storage or records center locations.
 - On computers, servers or storage devices in various locations around Pennsylvania.

Based on the forgoing, PDE has concluded that any additional search for the records requested would exceed efforts required by law for PDE to conduct a good faith and thorough search of its records to determine if PDE is in possession, custody or control of the records requested.

In providing this response, it is understood that this does not mean that the records do not exist under another spelling, another name, or under another classification.

Dated:

1/28/13


Michael Walsh