



Ryan Bagwell <ryan@ryanbagwell.com>

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## AP 2013-1586 / Bagwell v. Philadelphia District Attorney's Office

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Ryan Bagwell <ryan@ryanbagwell.com>  
To: Brad Bender <Brad.Bender@phila.gov>  
Cc: "jschnee@pa.gov" <jschnee@pa.gov>

Thu, Sep 12, 2013 at 3:53 PM

Dear Mr. Schnee,

This is a reply to the supplemental arguments that Mr. Bender submitted earlier today on behalf of the Philadelphia District Attorney's office.

First, although the DA's office decided on its own to assign additional criteria to the parameters of my request, nothing in the RTKL permits an agency to alter or modify a request. My request was clear and unambiguous. It named the specific individuals who sent or received the requested records, as well as a date range. While it did not provide a topic addressed by the requested records, at no time did the ORO indicate she did not understand what I was seeking. The DA's office took it upon itself to modify my request, which it was not permitted to do. Since the entirety of Mr. Bender's argument is based on the unjust modification, his argument must fail.

Second, to be applicable to the RTKL, a record must document a transaction or activity of an agency. Mr. Bender argues that the sought-after records document something other than a transaction or activity of a Commonwealth agency. However, he has offered no evidence to support his claim. He revealed nothing about the content of the request records. He provided no indication that his office reviewed the records to determine which activities they document. And nothing from the DA's office identifies the entity whose activities are documented by the sought-after records. Therefore, his argument that the records do not document a transaction or activity of an agency must fail.

Third, Mr. Bender argues that only records that document a transaction or activity of the agency to which the request is directed are subject to the provisions of the RTKL. The term "record" is defined as "[i]nformation ... that documents a transaction or activity of *an* agency and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of *the* agency." While it may require that the record must be created, received or retained as part of an activity of *the same agency whose activity is being documented*, it does not require that the record be created, received or retained in connection with an activity of the agency to which the request is *directed*.

It is possible, and probably customary, for an agency employee to engage in the activities of a Commonwealth agency with which the person is not employed. A record reflecting that engagement, which was created, received or retained in connection with the activity of the other agency, meets the definition of a record under the RTKL.

Finally, records in the possession of an agency are presumed to be public records. Under the RTKL, the burden is on the *agency* to prove that any exemptions apply. Since the records are clearly in the possession of the DA's office, which makes no contention to the contrary, Mr. Bender bears the burden of proving the records are not public records, not the requester.

Respectfully submitted,

Ryan Bagwell

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