



September 30, 2013

VIA ELECTRONIC MAIL TO JSCHNEE@PA.GOV

Appeals Officer J. Chadwick Schnee, Esquire
Commonwealth of
Pennsylvania Office of
Open Records
Commonwealth Keystone
Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225
jschnee@pa.gov

**Re: Request of The Pennsylvania State University to Participate in
Appeal; Bagwell v. Pennsylvania Department of Education (“DOE”),
Docket #AP 2013-1753**

Dear Appeals Officer Schnee:

Pursuant to Section 1101(c) of the Pennsylvania Right-to-Know Law (“RTKL”), 65 P.S. § 67.1101(c), The Pennsylvania State University (“Penn State”), hereby requests to participate in the above-captioned appeal as a party with a direct interest. Penn State maintains that the records subject to this appeal must be withheld in their entirety pursuant to 65 P.S. §§ 67.102, 67.708(b)(10)(i) and 67.708(b)(17), and in order to prevent substantial harm to Penn State. As an interested party, Penn State further requests a brief period of time in which to file information and legal argument in support of its position.

Via email, Mr. Bagwell notified Penn State of the above-docketed appeal on September 19, 2013. On September 30, 2013, Penn State received copies of the supplemental filings made by Mr. Bagwell and the DOE. Thus, Penn State’s request to participate in the appeal and provide further information and legal argument is timely and appropriate. 65 P.S. § 1101(c)(2).

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Penn State Has a Direct Interest in the Records Subject to Appeal

Section 1101 (c) of the RTKL provides that a person "with a direct interest in the record subject to an appeal" may request to participate in the appeal as a party. 65 P.S. § 67.1101(c). A "direct interest" is "an interest of a person other than the requester or agency that may be directly affected and that is not adequately represented by existing parties." Office of Open Records Appeal Process - Interim Guidelines Section I(A)(8).

The requests subject to this appeal include privileged communications between Penn State's Board of Trustees and attorneys retained by the University. Disclosure of any such documents risks violation and waiver of the attorney/client privilege and/or the attorney work product privilege protecting Penn State. In addition, the requests include information created by Penn State and provided to its Board of Trustee members that relate to non-criminal investigations and pre-deliberations, all of which are exempted by the RTKL.

As a result, Penn State has an interest that is directly affected by this appeal. Moreover, Penn State's interest in preventing disclosure of its confidential and protected information cannot be adequately represented by the DOE. The DOE itself does not have a direct stake in such information and Penn State is the more appropriate party to explain how Penn State would be substantially harmed if the records subject to this appeal were to be disclosed.

Conclusion

In light of the foregoing, Penn State respectfully requests that Appeals Officer Schnee (1) grant this request to participate as a party with a direct interest; and (2) provide a reasonable amount of time for Penn State to file a statement of information and legal arguments in support of its position.

Respectfully submitted,



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Associate General Counsel

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