

Pennsylvania Supreme Court Establishes Test For Specificity Under The Right To Know Law

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Pennsylvania Department of Education v. Pittsburgh Post-Gazette, 2015 Pa. Commw. LEXIS 316 (Pa. Commw. Ct. July 14, 2015). Pennsylvania Supreme Court reverses the Office of Open records and holds that a request must meet three criteria to be sufficiently specific under the Right to Know Law.

SUMMARY AND FACTUAL INFORMATION

On August 5, 2014 the Pittsburgh Post-Gazette (“Requestor”) filed a request for records pursuant to the Right-to-Know Law (“RTKL”) seeking all of the emails of the Acting Secretary of Education as they pertained to the performance of her duties from her appointment date in August 2013 to August 2014 (“Request”). The Pennsylvania Department of Education (“Department”) denied the Request as insufficiently specific under Section 703 of the RTKL.

On appeal, the Department maintained that the Request was insufficiently specific, and further argued that if the Office of Open Records (“OOR”) found the Request to be sufficiently specific, the Department should “be given an opportunity, following that determination, to fully prepare the records for review and redaction, and cite all applicable exemptions” and be allowed to require prepayment of fees if the estimate exceeds one hundred dollars.

The OOR ruled: (1) that the request was sufficiently specific; (2) the Department could not seek prepayment of fees because it failed to include an estimate in its initial response; (3) the Department was required to assert any applicable exemptions or privileges at the time of the appeal and could not seek to assert them after losing the specificity challenge; and (4) the Department failed to establish that any exemptions or privileges applied to the requested records. Thus, OOR granted Requester’s appeal and ordered PDE to provide Requester with all responsive records within thirty days.

DISCUSSION

When analyzing the specificity of a request under Section 703 of the RTKL, the Court set forth a three-part balancing test to determine whether a request is sufficiently specific under Section 703 of the RTKL. Courts are to examine the extent to which the request sets forth: (1) the subject matter of the request (the transaction or activity of the agency for which the record is sought); (2) the scope of documents sought (a discrete group of documents, either by type or by recipient); and (3) the timeframe for which records are sought (a finite period of time for which records are sought).

Applying the three part test, the Court found that the Request identified a finite timeframe of 347 days (August 23, 2013 to August 5, 2014) and a limited scope (emails to and from the Acting Secretary). However, the Court found that the Request failed to specify the subject matter of the request—i.e., the transaction or activity of the agency for which Requester seeks information.

The Court rejected Requestor’s argument that the subject matter of the Request was specific because it only sought emails “as they pertain to the performance of her duties as Acting Secretary.” The Court deemed such a request a fishing expedition and concluded that the year-long timeframe of the Request was not short enough to save an otherwise overbroad request. *Compare Easton Area Sch. Dist. v. Baxter*, 35 A.3d 1259, 1265 (Pa. Cmwlth. 2012) (finding request for all emails sent or received by any school board member in thirty-day period to be sufficiently specific because of short timeframe).

Accordingly, the Court reversed the OOR's determination that the request was sufficiently specific. However, the Court did not address the remaining arguments made by the Department or overrule the OOR's determination that the Department could not assert additional defenses after the OOR's determination that the request was specific.

PRACTICAL ADVICE

The Supreme Court has clarified that a broad request that fails to identify a subject matter, but does provide a specific timeframe, is insufficiently specific under the RTKL. However, the Court did not draw a line where the timeframe is short enough to save an otherwise insufficiently specific request. Moreover, the Court did not overrule the OOR's determination that an agency must assert all available defenses on appeal or risk waving those defenses. Accordingly, even when it seems certain that a request is insufficiently specific, school districts should consult with their solicitors when responding to a request pursuant to the RTKL.

For additional information, contact Christopher Voltz at cvoltz@tuckerlaw.com