

The 5-Business Day Response Period Begins when the Agency's Open Records Officer Receives the Request (Section 703 of the RTKL)

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Previously, we discussed that, to be valid, a RTKL Request must be “generally” addressed to the agency’s open records officer. In addition, we’ve briefly discussed that an agency has five business days from receipt of a request to respond. Today, we’ll discuss how the five business day response period begins to run when the agency’s Open Records Officer receives the request, not when the request is submitted to the agency.

Under the RTKL, agencies are required to respond or invoke an extension of time to RTKL requests within five business days of their receipt. 65 P.S. §§ 67.901-.902. Section 703 of the RTKL provides that if a request is sent to an agency employee other than an agency’s open records officer, that agency employee is required to forward the request to the agency’s open records officer. 65 P.S. § 67.703 (“Employees of an agency shall be directed to forward requests for records to the open-records officer”).

In *Commonwealth, Office of Governor v. Donahue*, 98 A.3d 1223 (Pa. 2014), the Pennsylvania Supreme Court addressed the interplay of these statutory provisions, holding an agency’s responsibility to respond to RTKL requests is triggered only by an agency open records officer’s receipt of a request, and not by any other agency employee’s receipt. (“[While] Section 703 of the RTKL obliges agency employees who receive RTKL record requests to forward the requests to the agency’s open-records officer agencies must respond to RTKL record requests within five business days of the request’s receipt by the agency’s open-records officer”).

More recently, in *Mollick v. Lower Gwynedd Township*, AP 2015-0948, the requester sent request for records via e-mail to the agency’s general “Contact Us” e-mail address. The e-mail contained the subject line “RTK Request,” was addressed to the agency’s “RTK Officer” and contained the proper form as an attachment. After the initial, five day response period had expired, the agency sent correspondence from its open records officer to the requester alleging that the request had just been received by the agency’s open records officer and that the agency was invoking a thirty-day extension of time to respond to the Request under 65 P.S. § 67.902. Requester filed an appeal, claiming that the response was “deemed denied” because the township did not respond within 5-business days of the Township’s receipt of the request.

On appeal, the township submitted an affidavit affirming it did not identify the request as a RTKL request until after the five-day response period and that the agency’s open records officer did not receive the request until that time. Accordingly, based on *Donahue*, the OOR dismissed the appeal as premature. However, the agency was still required to respond to the request and the requester retained his right to file an appeal upon receipt of the agency’s response or the expiration of the 30-day extension.

To be clear, the *Donahue* case and the *Mollick* decision should not be interpreted as creating a loophole that allows requests to be perpetually ignored if they’re never delivered to the agency’s open records officer. To the contrary, agency employees cannot “sit” on requests and not deliver them to the open records officer. As set forth above, Section 703 mandates that employees of an agency be directed to forward requests for records to the open records officer. Moreover, as set forth in *Donahue*, 98 A.3d at 1239, there is a presumption that agencies will act in good faith in forwarding requests addressed to the open records officer.

If you have any questions or comments, please do not hesitate to contact Chris Voltz or any of the other Municipal and School Attorneys at Tucker Arensberg, P.C.