

Agencies Are Not Required to Perform Legal Research or Make Judgments (Section 703) – Insufficiently Specific Requests – Denying Requests

Right to Know Law Blog February 18, 2019

As previously discussed, Section 703 of the RTKL requires that requests be sufficiently specific so that the agency can ascertain what records are being requested. Typically, when determining whether a request is sufficiently specific, the courts and the Office of Open records examine the extent to which the request sets forth: (1) the subject matter of the request (e.g., the transaction or activity); (2) the scope of documents sought (e.g., type or recipient); and (3) the finite timeframe for which records are sought.

A request is also insufficiently specific if, in order to respond, an agency has to perform legal research. The Commonwealth Court has explained:

a request necessitating the performance of traditional legal research and analysis to form the basis of a legal opinion makes the request unspecific in nature. Indeed a request that explicitly or implicitly obliges legal research is not a request for a specific document; rather it is a request for someone to conduct legal research with the hopes that the legal research will unearth a specific document that fits the description of the request.

Askew v. Pa. Office of the Governor, 65 A.3d 989, 993 (Pa. Commw. Ct. 2013).

The Office of Open records has clarified what constitutes impermissible legal research. Recently, in *Schilling v. Cambria County Conservation and Recreation Authority*, AP 2018-2123 (Feb. 7, 2019), the OOR found that a request for “all rules, regulations and or laws concerning public use of lands” was insufficiently specific because, in order to respond to the request, the agency would be required to perform legal research to determine what records concern the “public use of lands.” In *Schell v. Dauphin County District Attorney’s Office*, AP 2018-0480 (April 11, 2018), the OOR held that a request for “any document that contains a law letting a prosecutor to use charges that were thrown out by a district justice for lack of evidence in a plea bargain” impermissibly required legal research and was therefore insufficiently specific.

In addition, a request can be insufficiently specific if, in order to respond to the request, the agency must make judgments as to whether a record is responsive to a request. Typically, this issues arises when a requester seeks document “related to” a transaction or activity of the agency. The OOR has repeatedly held that a request that requires an agency to make judgments as to whether each potential responsive record is properly “related to” a request is insufficiently specific. In *Winklosky v. Pennsylvania Office of the Governor*, AP 2018-1440 (Nov. 6, 2018), the OOR held that requests for records “related to reviews,” “related to notice to, review by or approval,” “related to communications,” and “related to work proposed or performed” was insufficiently specific because it required that the agency make judgments as to whether a request is responsive.

By prohibiting requests that require legal research or require the agency to make judgments as to what is responsive, the courts and OOR have affirmed that RTKL requests must seek specific records or can be denied for being insufficiently specific. Open record officers should contact their solicitors to determine if a request is insufficiently specific on these grounds.

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.