

## Requests Must Seek Records, Not Ask Questions (Section 703) – Insufficiently Specific Requests – Denying Requests

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Earlier posts have discussed whether the requester has submitted a valid request that: 1) uses the proper form; 2) is properly addressed to and has been received by the open records officer; 3) is sufficiently specific; and does not 4) require legal research or judgments to respond. This post continues to discuss improper requests. One of the most common mistakes made by requesters is that they ask questions rather than request records.

A request must seek records, rather than answers to questions, in order to comply with the requirements of 65 P.S. § 67.703. The OOR will not refashion the question asked in the Request into a request for records under the RTKL. See *Pa. State Police v. Office of Open Records*, 995 A.2d 515, 516 (Pa. Commw. Ct. 2010) (“Nowhere in [the RTKL] has the General Assembly provided that the OOR can refashion the request”).

However, it is not always clear whether a request is improperly asking questions. As we’ve discussed previously, the RTKL defines “records” broadly and this definition includes requests for information. 65 P.S. § 67.102. Accordingly, requests that seek information will be deemed requests for records. See *Gingrich v. Pennsylvania Game Commn.*, 1254 C.D. 2011, 2012 WL 5286229, at \*5 (Pa. Cmmw. Jan. 12, 2012) (“The RTKL defines ‘record’ as ‘information’, thus begging the question of how any request that seeks information is not one that seeks records”).

While the presence or absence of a question mark is not determinative as to whether a request asks a question, the OOR has provided some guidance in distinguishing requests that ask questions from requests that seek records. In *Simoni v. Brentwood Borough*, AP 2017-2260, 2018 WL 683703, the OOR explained that impermissible questions have the following features:

- they are punctuated by question marks;
- they demand answers;
- they provide a narrative statement and then demand to know more information about the situation described; and
- they do not reference any kind of pre-existing records or information.

Accordingly, the OOR concluded that following portions of the request were deemed invalid:

Called at 10/30 @ 8:08 pm. Requested officer assistance. Received no police response. Problem still not rectified. Why not? What officer on 10/29 (first call) is refusing to respond by telephone. What officer on 10/30 refused to come to my address on 10/30/17 + why? Is this legal? What do I do in a life-threatening emergency since the Brentwood Police don't respond/assist me. Who is determining sidewalks are clear when they are not?

On the other hand, in *McAnulty v. Indiana Borough*, AP 2017-1691, 2017 WL 5516860, the OOR held that the following three-part request was a valid request for information:

- Insurance company currently carrying the Borough's insurance;
- Insurance policy number; and
- Insurance agent currently managing the insurance relationship.

It's easy to see the differences between these two requests. Unlike *Simoni*, the request in *McAnulty* was not punctuated by question marks, did not include a narrative statement followed by a demand for answers or additional information. Moreover, the *McAnulty* request referenced a pre-existing record, namely an insurance policy. However, it's also easy to imagine requests where the answer isn't so clear. Accordingly, an open records officer should carefully review any request prior to denying it for asking questions instead of seeking records.

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.