Information Contained in an Agency's Database is "Record" under the RTKL (Section 705)

Right to Know Law Blog March 26, 2019

Pursuant to Section 705 of the RTKL, when responding to a request, "an agency shall not be required to create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which the agency does not currently compile, maintain, format or organize the record." 65 P.S. § 67.705.

This section frequently comes into play when a request seeks records that are electronically stored on an agency's computer database. While the act of pulling information from a database and printing a report may seem to involve the creation of a record, the OOR and courts have held that information contained in an agency's database is a record under the RTKL and that drawing information from a database does not constitute the creation of a record under Section 705 of the RTKL. *See Commonwealth v. Cole*, 52 A.3d 541, 549 (Pa. Commw. Ct. 2012). "To hold otherwise would encourage an agency to avoid disclosing public records by putting information into electronic databases." *Cole*, 52 A.3d at 549.

This obligation to pull information from databases is limited. When providing access to the information, "[a]n agency need only provide the information in the manner in which it currently exists." *Id.* at 547. An agency is not required to create a list or spreadsheet containing the requested information; however, "the information … must simply be provided to requestors in the same format that it would be available to agency personnel." *Id.* at 549 n.12.

A Commonwealth Court case and a recent OOR determination help clarify when an agency is required to provide information from a database and when a request impermissibly requests that an agency create a new record. In *Gingrich v. Pennsylvania Game Commn.*, 2012 WL 5286229 (Pa. Commw. Jan. 12, 2012), a requester sought, among other things, various types of information relating to Pennsylvania's annual deer harvest. The information was contained in the Game Commission's database and the requester suggested possible formats for the Game Commission to produce that information. The Game Commission denied the request on the grounds that it did not have to create a record and the information sought did not exist in the formats identified by the requester. The Commonwealth Court held that an agency can be required to draw information from a database, although the information must be drawn in formats available to the agency. In short, to the extent requested information exists in a database, it must be provided; an agency cannot claim otherwise under Section 705 of the Right-to-Know Law.

In *Gringrich*, with respect to the portion of the request seeking "Deer Totals," the Court determined that while the request sought information from the Commission's Deer Harvest database, the Commission demonstrated that it did not retain deer harvest data in the categories sought by the requester (*i.e.*, antlered, antlerless and button bucks) because the "antlerless" and "button bucks" entries were both categorized as "antlerless" in the data base. Therefore, the Court found that those particular responsive records did not exist and, pursuant to Section 705 of the RTKL, the Commission was not required to create a record.

In Mitchell v. Philadelphia County District Attorney's Office, AP 2019-0072, 2019 WL 1103937 (March 5, 2019), the requester sought lists showing the number of cases that ended in plea deals, convictions, acquittals, being *nolle prossed*, mistrials or hung juries for each year over the last five years.

The District Attorney's Office ("Office") denied the request, stating that it did not possess any responsive records. While the requested information was contained in the Office's database, it was not tracked by the Office and, to fulfill the request, the Office would have had to utilize a data analyst to create a new algorithm to target the specific figures sought by the requester. The OOR denied the appeal because the Office could not simply pull the data from its database and

provide it to the requester. In other words, creating a new algorithm to target information sought by the requester constitutes creating a record under Section 705 of the RTKL.

Accordingly, if an agency can simply pull data from its database and provide it to the requester, it is obligated to do so and cannot claim that such an act constitutes the creation of a record. However, if an agency would have to manually insert information into a new document or create a new algorithm to create a report, the agency can deny the request. The devil is always in the details and Open Record Officers should always work with their solicitor when determining whether or not to deny a request.

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.