

Requesters Can Submit RTKL Requests for Records that they Already Possess Because the Identity and Motivation of the Requester is Irrelevant under the RTKL (Section 301(b))

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In the previous post we discussed how a “common sense” reason for denying a request (e.g., the requested records are subject to a pending RTKL appeal), was rejected by the OOR because that reason was not supported by the statutory requirements of the RTKL. The recent determination in *Stooky v. Unionville-Chadds School District*, AP 2019-0484 (April 18, 2019) provides another example that illustrates that the statutory framework of the RTKL must be followed all cases, even when doing so does not appear to make sense. In *Stooky*, the Requester sought, among other things, emails from various school district (“District”) employees and officials *that were sent to the Requester*. The District denied that portion of the request because the Requester clearly already possessed emails that were sent to her.

On appeal, the OOR held that the District was obligated to provide the responsive emails. Section 708 of the RTKL places the burden of proof on the public body to demonstrate that a record is exempt from disclosure. 65 P.S. § 67.708(a). In this case, the District did not provide any factual or legal support for denying access to the responsive records, other than stating that Requester already had copies of the requested emails.

However, the OOR and Commonwealth Court has repeatedly held that a requester’s identity or motivation for making a request is not relevant to determining whether a record is accessible under the RTKL. *See e.g., Padgett v. Pennsylvania State Police*, 73 A.3d 644, 647 (Pa. Cmwlth. 2013). Rather, the inquiry is limited to the request itself, not the requester, the reasons for the request, or the intended use of the record. *Id.*; *see also* 65 P.S. §67.301(b) (stating that an agency “may not deny a requester access to a public record due to the intended use of the public record by the requester unless otherwise provided by law.”).

Therefore, the OOR held that the District’s basis for denying the Request (the Requester already has copies of the records) was improperly based on the Requester’s identity. Accordingly, because the District did not make any other arguments in support of the denial, the OOR ordered the District to fulfill the Request.

This determination provides an important reminder that agencies must always comply with the statutory requirements of the RTKL and can only deny RTKL requests if the denial is supported by an exemption under the RTKL. In other words, “common sense” denials are not permitted under the RTKL.

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.