

## Appointment Calendars Are Not Public Records (Section 708(b)(12))

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Open Records Officers will occasionally receive requests for the appointment calendars of certain agency employees and officers. These calendars, whether electronic or paper, typically contain a schedule of daily activities and contain a mix of items detailing personal and public appointments, events and activities. Generally, speaking the OOR and the courts have held that these calendars are NOT public records under the RTKL. For example, in *Shoemaker v. Allegheny County*, AP 2018-1352, the requester sought the daily calendars of two county officials. The requester clarified that he only sought information directly related to the performance of government work, not personal appointments.

The OOR held that the calendars were exempt pursuant to Section 708(b)(12) of the RTKL which exempts from disclosure:

Notes and working papers prepared by or for a public official of agency employee used solely for that official's or employee's own personal use, including telephone message slips, routing slips and other materials that do not have an official purpose.

65 P.S. § 67.708(b)(12).

In making this determination, the OOR relied on Commonwealth Court decisions where the court concluded that officials' appointment calendars are exempt from disclosure under Section 708(b)(12). In *City of Philadelphia v. The Philadelphia Inquirer*, 52 A.3d 456, 461 (Pa. Commw. Ct. 2012), the Commonwealth Court explained:

The purpose of the calendars as set forth by the affidavits personal to the Mayor and City Council Members are used for scheduling their daily activities and fall within the 'notes and working papers' exception. Under [Section 708(b)(12)], a public official is not the only person required to prepare or see the calendar because the exception specifically includes within the definition of working papers 'papers prepared by or for the public official.' 'Personal' within this definition does not mean that it has to involve a public official's personal affairs — a message slip that his wife called — because those types of documents are not covered by the RTKL, *Easton Area School District v. Baxter*, 35 A.3d 1259 (Pa. Cmwlth. 2012); it covers those documents necessary for that official that are "personal" to that official in carrying out his public responsibilities.

*Id.*; see also *Glunk v. Pa. Dep't of State*, 102 A.3d 605 (Pa. Commw. Ct. 2014) (finding entries on an agency employee's work calendar to be exempt under Section 708(b)(12) of the RTKL); *Opilo v. City of Allentown*, AP 2013-0857 (finding that a Mayor's appointment calendar is exempt under Section 708(b)(12)).

In *Shoemaker*, the OOR determined that the calendars were exempt under Section 708(b)(12) because they were personal to the officials in carrying out their public responsibilities. In making this determination, ORR quoted the agency's affidavits, which affirmed that: there were no official purposes for the creation of the calendars; access to the calendars was limited; and that the calendars were personal and used to keep track of the officials' schedule of daily activities.

Open Records Officers should be aware of the line of cases and determinations that interpret Section 708(b)(12) to exempt appointment calendars from disclosure, including entries related to public work appointments. Intuitively, an ORO

may assume that at least the public appointments contained in the calendars would be public records. However, because these calendars are typically created by an official to schedule their daily activities and contain a mix of items detailing personal and public appointments, events and activities, they are personal in nature, do not have an official purpose and are exempt under Section 708(b)(12).

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.