

## OOR Confirms that Requesters Can Seek the Same Records Twice Under the RTKL

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Previously, this blog address how the Office of Open Records, in *Steinheiser v. Southeastern Pennsylvania Transit Authority*, AP 2019-1877 (Nov. 6, 2019), confirmed that local agencies are not required to provide original documents to a requester. That case also confirmed that, as interpreted by the OOR and courts, a request is not impermissibly disruptive under Section 506(a) of the RTKL if it is made only twice.

In *Steinheiser*, the Requester sought the actual business card of SEPTA's Open Records Officer. The OOR previously found that the business card was a public record and SEPTA provided him with a scanned copy of the card. In this case, SEPTA argued that the Request was disruptive and burdensome because the Requester had received the card twice and still appealed.

Section 506(a) of the RTKL states that “[a]n agency may deny a requester access to a record if the requester has made repeated requests for that same record and the repeated requests have placed an unreasonable burden on the agency.” 65 P.S. § 67.506(a)(1).

Under this section an agency must demonstrate that: (1) the requester has made repeated requests for the same records; and (2) the repeated requests have placed an unreasonable burden on the agency. *Office of the Governor v. Bari*, 20 A.3d 634, 645 (Pa. Commw. Ct. 2011). In *Mezzacappa v. West Easton Borough*, AP 2012-0992, the OOR held that a request must be repeated more than once to constitute a “repeated request” for purposes of 65 P.S. § 67.506(a). The OOR stated: “Because the Borough has only established that the Requester has made one repeated request, rather than multiple ‘repeated requests,’ the OOR finds that the Request was not disruptive.” This decision was upheld on appeal *Borough of West Easton v. Mezzacappa*, No. C-48-CV-2012- 7973 (North. Com. P1. Jan. 9, 2013) (“[A] request is not disruptive when a requester [seeks] the same records only twice”), *aff'd* 74 A.3d 417 (Pa. Commw. Ct. 2013).

Accordingly, local agencies should not deny a request simply because the Requester has made the same Request once before.

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.