

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF OPEN RECORDS

IN THE MATTER OF

DAVID NEIL,
Complainant

v.

PENNSYLVANIA DEPARTMENT
OF PUBLIC WELFARE,
Respondent

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Docket No. AP 2010-0874

PETITION FOR RECONSIDERATION

On October 14, 2010, the Office of Open Records (OOR) issued a final determination in the above-captioned appeal. Pursuant to 1 Pa.Code § 35.241 (application for rehearing or reconsideration), the Department of Public Welfare (DPW), being the respondent in the above-captioned appeal, petitions the OOR for reconsideration of its final determination.

SPECIFICATION OF ERRORS

1. DPW's Open Records Office has never received any RTKL request from the Complainant, David Neil. Exhibits A, B, and C.
2. On September 27, 2010, DPW's Open Records Office received an e-mail message from the OOR, which attached a "newly docketed appeal" filed by Mr. Neil, in which he alleged that he had emailed a RTKL request to DPW, but had "received no response from them." Exhibit D.

3. The appeal announced by the OOR on September 27, 2010 was then (and is now) the only appeal filed with the OOR in which (i) Mr. Neil was the Complainant, and (ii) DPW was the Respondent. **Official Notice; Exhibits A, B, and C.**
4. On September 28, 2010, September 28, OOR Appeals Officer J. Chadwick Schnee had sent a letter to Mr. Neil and DPW's AORO (Ms. Bryan), which stated that "[t]he record in this matter will close on October 6, 2010." **Exhibit E.**
5. On October 1, 2010, five days before the record would close on the only OOR appeal in which Mr. Neil and DPW were parties, the OOR sent an e-mail message to the Complainant (Mr. Neil) and to DPW's Agency Open Records Officer (Kathi Bryan), and to the e-mail inbox used by DPW's RTKL Office. **Exhibit F.**
6. The October 1 e-mail message:
 - a. Made reference to an appeal filed by Mr. Neil, in which he alleged that he "did not receive a response from DPW," and
 - b. Stated that the associated appeal was "dismiss[e]d ... as untimely." **Exhibit F.**
7. Because the above-captioned appeal was the only appeal in which Mr. Neil and DPW were parties, DPW understood the October 1 e-mail message to announce that the above-captioned appeal was dismissed and, based on this understanding, DPW ceased preparing any materials to respond to this appeal, on the ground that such materials were no longer necessary. **Exhibits A, B, and C.**
8. Between October 1, 2010 and October 14, DPW received no further communications from either the OOR or Mr. Neil, related to Mr. Neil or the above-captioned appeal.
9. On October 14, 2010, DPW received an e-mail transmitting the OOR's final determination in this appeal.

10. In light of the OOR's errors in sending the October 1, 2010 e-mail to DPW, and in light of DPW's reasonable reliance on that message, DPW submits that the facts set forth above constitute a breakdown of the administrative processes pertaining to this appeal, thereby entitling DPW to the relief requested herein.

11. In the alternative, the OOR should grant this petition for review and dismiss Mr.

Neil's appeal for the following reasons:

- a. Section 901 of the RTKL states that "The time for response shall not exceed five business days from the date the written request is received by the open-records officer for an agency." 65 P.S. § 67.901 (emphasis added).
- b. In his appeal, not only does Mr. Neil fail to assert that he sent his request to DPW's open-records officer *but*, in reproducing the e-mail message that he (allegedly) sent to DPW, *he cropped the header*, thereby *concealing* the name and e-mail address of the person or office to which he sent his request.
Exhibit X.
- c. The DPW submits that, in a circumstance where a complainant alleges that he sent an e-mail message to an agency, and that the agency has never responded to it, the intentional withholding of the name and address of the person to whom the e-mail message was addressed.
- d. The DPW further submits that, because the (alleged) e-mail message does not speak for itself (because the header was not included), and because Mr. Neil's assertion that he sent the e-mail message to DPW is not supported by any statement that it was made under penalty of perjury – which is the condition that the OOR has announced must be satisfied, in order for it to accept a

statement of fact as true – there is no competent evidence to support any finding that the five-business-day “clock” announced in section 901 of the RTKL ever began to run at all.

- e. Under these circumstances, the OOR should either (i) the OOR should have held that Mr. Neil failed to plead a prima facie appeal; or (ii) the burden of showing that Mr. Neil complied with section 901 of the RTKL rested on Mr. Neil and, because he offered no evidence in support of that proposition – much less any statement to that effect made under penalty of perjury, which is the OOR’s standard for finding statements of fact to be acceptable - the

REQUESTED RELIEF

The relief sought by DPW includes the following:

1. Entry of an order granting this Petition for Review, thereby causing the matter to be re-opened, and providing Mr. Neil with the opportunity to file an “Answer,” pursuant to 1 Pa.Code § 35.241.
2. Having re-opened this matter, DPW asks that the OOR accept the attached exhibits as a part of the evidentiary record.
3. Issuance of a final order reversing the Final Determination in this matter.

GROUND FOR DENYING MR. NEIL'S APPEAL

But for the e-mail message of October 1, 2010 (Exhibit F), DPW would have submitted argument and evidence in support of the following grounds for denying Mr. Neil's appeal:

1. **The five-business-day clock never started to tick, because Mr. Neil either (i) did not submit a request to DPW, or (ii) he failed to follow correct procedure for submitting an e-mail request.**
 - a. Section 901 of the RTKL states that "The time for response shall not exceed five business days from the date the written request is received by the open-records officer for an agency." 65 P.S. § 67.901. Thus, the five-business-day clock does not start to run until the agency's open-records officer receives the request.
 - b. During the time that the new RTKL has been in effect, DPW's "open-records officer" has always been Kathi Bryan. **Exhibit A.**
 - c. Section 703 of the RTKL states that "[a] written request for access to records may be submitted ... by e-mail" 65 P.S. § 67.703. In his written appeal to the OOR, Mr. Neil states that he sent his written request to DPW via e-mail. **Exhibit D.**
 - d. Section 703 of the RTKL states that "[a] written request must be addressed to the open-records officer designated pursuant to section 502." 65 P.S. § 67.703.

- e. DPW's website provides the correct e-mail inbox address for sending RTKL requests to DPW's open-records officer. **Exhibit A.**¹
- f. Although Mr. Neil's written appeal to the OOR (seemingly) reproduces the *body* of the e-mail message he says he sent to DPW, his written appeal does not include the *heading* for the purported message, nor does he otherwise state that he addressed it to Ms. Bryan and sent it to the specified e-mail inbox. **Exhibit D.**
- g. As set forth in Exhibits A, B, and C, DPW's open-records officer has never received any RTKL request from Mr. Neil, nor have either of the other two persons who constitute DPW's RTKL office.
- h. Because DPW's open-records officer never received Mr. Neil's RTKL request, the five-business-day clock never began to run and, therefore, the final determination of October 14, 2010 should be reversed, and his request appeal should be denied.²

¹ http://www.dpw.state.pa.us/dpworganization/officeofadministration/righttoknowlaw/S_001074

² DPW is not saying that Mr. Neil never sent a request to *someone*, nor are we accusing Mr. Neil of lying. There are many reasons why that might explain why DPW's open-records officer did not receive his e-mail. These include:

- The request might have been sent to an agency other than DPW, such as the Philadelphia Department of Human Services (DHS), of the federal Department of Health and Human Services, or a county agency.
- The request might have had a typo in the e-mail address, so that it was not received by anyone.
- Instead of complying with section 703, and with the written policies on DPW's website (promulgated pursuant to RTKL), Mr. Neil may have addressed his e-mail to a person whom he believed worked for DPW, but who no longer does, due to a change of job, retirement, death, or other circumstance.
- Mr. Neil may have addressed his e-mail to a DPW employee who is out of the office for some reason (injury or illness, or military service, for instance).

2. The information sought by Mr. Neil is protected against disclosure by federal and state law and, therefore, falls outside the definition of "public record."

- a. In the e-mail message that he allegedly sent to DPW, Mr. Neil asks that he be told the number of food stamp and cash assistance recipients who currently reside at two addresses. **Exhibit A.** The following programs are encompassed by the term "cash assistance": The TANF program; the General Assistance Program; and the State Blind Pension program. 55 Pa.Code § 105.1(a)(2).
- b. The information sought by Mr. Neil would disclose whether persons residing at the addresses receive food stamps and cash assistance, or would readily result in such a disclosure:

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- The mailbox to which Mr. Neil may have addressed his request may have blocked Mr. Neil's request as "spam," or may have been full and, for that reason, could not accept his request. (The official mailbox of DPW's RTKL Office has been set up to avoid these problems, but many other mailboxes use anti-spam software and have limited capacity.
 - It is also possible that Mr. Neil sent his request to an on-the-job DPW employee, who actually received it. In that situation, it is *possible* that the employee would know of his duty to forward the e-mail, and yet not do so. DPW has, however, provided training to its employees on the RTKL and, without more information, there is no more basis to assume that a DPW employee of opened and read the e-mail, but nonetheless elected to not forward it. There are, however, *alternative possible explanations*. The employee might, for example, have received a warning that the e-mail contained a virus or other "infection," and then followed the correct procedure and deleted it. Or, the employee might have attempted to forward the e-mail, but misaddressed it. Or, the employee might have the employee (whether intentionally or otherwise) deleted the e-mail without reading it, perhaps in the belief that it involved some other, now-concluded matter. Significantly, Mr. Neil's written appeal also does not show the "Subject" line of his e-mail. Depending on what that line may have said, this could easily be the case, as when there has been a repeated back-and-forth using the "reply" function.

The point, of course, is that there are a multitude of *possible* reasons why DPW's open-records officer did not receive Mr. Neil's e-mail message, and the majority of these do not involve any fault on the part of DPW. Rather, these possibilities demonstrate the importance of the rule set forth in section 901, that the "five-business-day clock" does not begin to tick until the agency's open-records officer actually receives the written request.

- i. The most obvious example is where only one person resides at an address. If DPW's response were either "0" or "1," DPW would have disclosed that that person either does or does not receive benefits.
 - ii. Suppose two persons reside at the address, in which case DPW's possible responses would be "0," "1," or "2." Of these responses, only "1" would have any ambiguity, and that ambiguity could be easily resolved by other means, using such obvious factors as age or sex, which often determine whether a person can qualify for benefits.
 - iii. Further, DPW does not maintain occupancy records that would disclose the number of persons who might reside at an address but not receive benefits. Thus, if DPW's answer to Mr. Neil's inquiry were "1," "2," or any other number greater than zero, and that number is equal to the total number of residents, DPW would effectively be saying that all persons at that address receive benefits.
- c. The RTKL only grants access to those records that are "public records," and a record that is exempted by federal or state statute or regulation is not a "public record." 65 P.S. § 67.102; 67.305(a)(1).


d. The identities and addresses of food stamp and cash assistance recipients are protected by many federal and state statutes and regulations, including the following:

- i. 42 USC § 602(a)(1)(A)(iv) (the state must “[t]ake such reasonable steps as the State deems necessary to restrict the use and disclosure of information about individuals and families receiving assistance”)
- ii. 42 USC § 1320b-7(a)(5) (the state must have “adequate safeguards ... to assure that ... information is adequately protected against unauthorized disclosure”)
- iii. 45 CFR § 205.50(a)(1)(i) (“The use or disclosure of information concerning ... recipients will be limited to purposes directly connected with” the administration of the benefits programs, and related activities, such as audits authorized by law.)
- iv. 62 P.S. § 404(a)(1) (DPW “shall have the power to make and enforce regulations ... [t]o project the names of applicants for and recipients of public assistance from improper publication”) Section 505(a)(1) sets forth the same rule for persons who receive State Blind Pension benefits. 62 P.S. § 505(a)(1).
- v. 62 P.S. § 404(a)(2) (DPW “shall have the power to make and enforce regulations ... [t]o protect the rights and interests about whom personal or confidential information is in its possession.”) Section 505(a)(2) sets forth the same rule for persons who receive State Blind Pension benefits. 62 P.S. § 505(a)(2).
- vi. 55 Pa.Code § 105.1. This regulation states that a “relationship of confidence” exists between DPW and persons who receive benefits through DPW-operated programs. “Information to be safeguarded” includes “[t]he names of applications and recipients” and “[t]he address of any applicant or recipient ... except as provided in § 105.4.” 55 Pa.Code § 105.1(d)(2). Section 105.4 bars the disclosure of an address of any applicant or recipient, unless the request is made about a particular named individual. 55 Pa.Code § 105.4(a)(1).

- e. Providing Mr. Neil with the contemplated numbers would contravene the statutes and regulations cited above.
- f. A further demonstration that this information is not a “public record” is found in laws that give limited access to some information on recipients.
 - i. Section 105.3 of DPW’s regulations states that “[t]he use of information in the possession of the Department concerning applicants and recipients is restricted to purposes directly connected with” the administration of the various programs, and related activities, such as investigations and audits. 55 Pa.Code § 105.3(b). Mr. Neil’s request shows no connection to the administration of any DPW program.
 - ii. Section 425 of the Public Welfare Code: “Upon request by any adult resident of the Commonwealth, any county board shall furnish the address and amount of assistance with respect to persons receiving such assistance about whom inquiry is made, but such information shall not be used for commercial or political purposes.” 62 P.S. § 425. Section 505(a)(1) sets forth the same rule with regard to persons receiving state blind pension benefits. 62 P.S. § 505(a)(1). And see 62 P.S. § 404(a)(1), pertaining to “recipients of public assistance.”
 - iii. Mr. Neil’s request does not satisfy sections 425, 505, and 404(a)(1) of the Public Welfare Code:
 - He has not disclosed shown that he is an “adult resident of the Commonwealth.”

- He has not explained the intended use of the information, or otherwise demonstrated that it will not be used “for commercial or political purposes.”
 - Further, when making a request pursuant to the statutes cited in the preceding paragraph, the person making the request must identify the particular person about whom inquiry is made (McMullan v. Wohlgenuth, 453 Pa. 147, 308 A.2d 888 (1973)) and Mr. Neil has not stated that requirement, either.
- g. Because the General Assembly has seen fit to provide this alternative route for some – but not all – persons to obtain such information (adult persons acting without commercial or political purposes), it follows that the General Assembly similarly intended that such information should not be accessible through the RTKL.

Date: October 29, 2010



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P.O. Box 2675
Harrisburg, PA 17105-2675
(717) 783-2800

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF OPEN RECORDS

IN THE MATTER OF :
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DAVID NEIL, :
Complainant :
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v. : Docket No. AP 2010-0874
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PENNSYLVANIA DEPARTMENT :
OF PUBLIC WELFARE, :
Respondent :

EXHIBITS TO DPW'S
PETITION FOR RECONSIDERATION

EXHIBIT A AFFIDAVIT OF KATHI BRYAN

EXHIBIT B AFFIDAVIT OF ANDREA BANKES

EXHIBIT C AFFIDAVIT OF ROSE STRAUSER

EXHIBIT D SEPTEMBER 27, 2010 E-MAIL AND ATTACHMENT
FROM THE OFFICE OF OPEN RECORDS

EXHIBIT E SEPTEMBER 28, 2010 E-MAIL AND ATTACHMENT
FROM APPEALS OFFICER SCHNEE

EXHIBIT F OCTOBER 1, 2010 E-MAIL FROM THE OFFICE OF OPEN
RECORDS

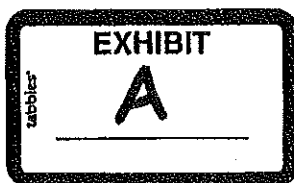
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 PENNSYLVANIA DEPARTMENT :
 OF PUBLIC WELFARE, :
 Respondent :

AFFIDAVIT

I, Kathi Bryan, hereby attest, under penalty of perjury, that the following statements of fact are true and correct:

1. The Right to Know Law (RTKL) Office of the Department of Public Welfare (DPW) is located in Room 234 of the Health and Welfare Building, in Harrisburg, Pennsylvania.
2. I am the agency open records officer (AORO) for DPW and, as such, I work in and oversee DPW's RTKL Office.
3. Besides myself, DPW's RTKL Office is staffed by two other DPW employees (Andrea Bankes and Rose Strauser), each of whom is also a fulltime employee, and each of us has worked in the DPW RTKL Office longer than the time (since January 1, 2009) that the new RTKL has been in effect.
4. Currently, and at all times since the new RTKL took effect, DPW's website notifies the public of that RTKL requests sent by e-mail should be sent to the following e-mail address: ra-dpwrtkl@state.pa.us. For purposes of this affidavit, that address is referred to as the "DPW RTKL Inbox."



5. Members of the public routinely e-mail RTKL requests directly to the DPW RTKL Inbox.
6. The RTKL recognizes that, sometimes, a person will send a RTKL request to someone other than the agency AORO and, in that circumstance it provides that the agency employee who receives the request is to forward it to the agency AORO. 65 P.S. § 67.703.
7. Pursuant to that provision, DPW has instructed its employees to forward e-mail requests to the DPW RTKL Inbox, and DPW employees do so on a routine basis. Thus, for instance, two program offices forwarded RTKL requests to us just this week.
8. When a new RTKL request arrives via e-mail, the clerical employee within my office (Rose Strauser) prints it out, date stamps it, stamps it with its unique 'tracking number,' scans this version of the request, and then e-mails the resulting PDF file to the affected program offices within DPW; and I receive a copy of each such transmittal.
9. Upon receiving a new RTKL request, I update the records of this office to show when the associated five-business-day period expires, in order to ensure that this office does not miss the deadline for sending a written response to the requester. For this reason as well, I have firsthand knowledge of each individual request.
10. In addition, in my capacity as DPW's AORO, I have access to the DPW RTKL Inbox and, when at work, I check that inbox multiple times each business day.

11. During the time that the new RTKL has been in effect, the DPW RTKL Inbox has never received a RTKL request sent by David Neil, either directly or as a result of the request having been forwarded by a DPW employee.
12. In addition, during the time that the new RKTl has been in effect, my office (the DPW RTKL Office) has never received a hard-copy version of an RTKL request sent by David Neil, either directly or as a result of the request having been forwarded by a DPW employee.
13. In my capacity as a DPW employee, I have an e-mail address within the CWOPA e-mail system. However, I have never received (either directly or indirectly) any e-mail message in my inbox that is a RTKL request sent by David Neil.
14. In short, for at least the period during which the new RTKL has been in effect, the DPW RTKL Office has never received any RTKL request from David Neil.
15. Our first awareness of Mr. Neil came on September 27, 2010, as a result of the e-mail message Maryanne Brawley of the Office of Open Records (OOR) sent to the DPW RTKL Inbox, which informed us that Mr. Neil had filed an appeal with the OOR in which he alleged that he had submitted a RTKL request to DPW, and that DPW had failed to respond to it.
16. Upon receiving notice of Mr. Neil's appeal, and because Mr. Neil alleged that we had failed to respond to an e-mailed RTKL request that he allegedly sent to us, I began researching for records that would confirm that assertion, or for an absence of records, that would rebut it. In doing so, I examined:
 - a. the DPW RTKL Inbox.
 - b. my personal e-mail inbox.

c. other records of my office.

17. As a result of this search, I determined that the DPW RTKL Office has never received any RTKL request from Mr. Neil (e-mail or otherwise).

18. The appeal announced in Ms. Brawley's e-mail of September 27, 2010 is the *only* appeal that the OOR has ever notified us of, filed with the OOR by Mr. Neil against DPW.

19. On October 1, 2010, the DPW RTKL Office received an e-mail from the OOR, in which it informed him that Mr. Neil's appeal pertaining to DPW was dismissed.

20. In response to the OOR's message of October 1, 2010, my office ceased any further work pertaining to Mr. Neil's appeal.

The averments set forth above are true and correct to the best of my knowledge, information, and belief. I make this Affidavit under penalty of perjury as more fully set forth in 18 Pa.C.S. § 4904.



Kathi Bryan
Agency Open Records Officer
Department of Public Welfare

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF OPEN RECORDS

IN THE MATTER OF

DAVID NEIL,
Complainant

v.

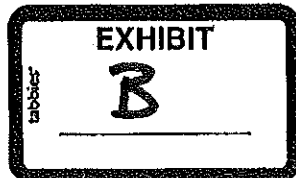
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AFFIDAVIT

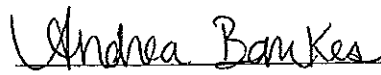
I, **Andrea Bankes**, hereby attest, under penalty of perjury, that the following statements of fact are true and correct:

1. The Right to Know Law (RTKL) Office of the Department of Public Welfare (DPW) is located in Room 234 of the Health and Welfare Building, in Harrisburg, Pennsylvania.
2. I am DPW's alternative agency open records officer (Alternate AORO) and, as such, I work in DPW's RTKL Office and, in the event of Ms. Bryan's absence, oversee the RTKL activities of that office.
3. In my capacity as a DPW employee, I have an e-mail address within the CWOPA e-mail system. However, I have never received (either directly or indirectly) any e-mail message in my inbox that is a RTKL request sent by David Neil.
4. On September 27, 2010, our office received an e-mail message sent from Maryanne Brawley of the Office of Open Records (OOR), informing this office that Mr. Neil had filed an appeal with the OOR in which he alleged that he had submitted a RTKL request to DPW, and that DPW had failed to respond to it.



5. Upon receiving notice of Mr. Neil's appeal, and because Mr. Neil alleged that we had failed to respond to an e-mailed RTKL request that he allegedly sent to us, I began researching for records that would confirm that assertion, or for an absence of records, that would rebut it. In doing so, I examined:
 - a. the DPW RTKL Inbox.
 - b. my personal e-mail inbox.
 - c. other records of my office.
6. As a result of this search, I determined that the DPW RTKL Office has never received any RTKL request from Mr. Neil (e-mail or otherwise).
7. The appeal announced in Ms. Brawley's e-mail of September 27, 2010 is the *only* appeal that the OOR has ever notified us of, filed with the OOR by Mr. Neil against DPW.
8. On October 1, 2010, the DPW RTKL Office received an e-mail from the OOR, in which it informed him that Mr. Neil's appeal pertaining to DPW was dismissed.
9. In response to the OOR's message of October 1, 2010, I ceased any further work pertaining to Mr. Neil's appeal.

The averments set forth above are true and correct to the best of my knowledge, information, and belief. I make this Affidavit under penalty of perjury as more fully set forth in 18 Pa.C.S. § 4904.


Andrea Bankes
Alternate Agency Open Records Officer
Department of Public Welfare

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF OPEN RECORDS

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 PENNSYLVANIA DEPARTMENT :
 OF PUBLIC WELFARE, :
 Respondent :

AFFIDAVIT

I, Rose M. Strauser, hereby attest, under penalty of perjury, that the following statements of fact are true and correct:

1. The Right to Know Law (RTKL) Office of the Department of Public Welfare (DPW) is located in Room 234 of the Health and Welfare Building, in Harrisburg, Pennsylvania.
2. I am a fulltime DPW clerical employee and assigned to work in DPW's RTKL Office.
3. Currently, and at all times since the new RTKL took effect, DPW's website notifies the public of that RTKL requests sent by e-mail should be sent to the following e-mail address: ra-dpwrtkl@state.pa.us. For purposes of this affidavit, that address is referred to as the "DPW RTKL Inbox."
4. In my capacity as an employee of DPW's RTKL Office, I have access to the DPW RTKL Inbox and, when at work, I check that inbox multiple times each business day.
5. When a new RTKL request is received in the DPW RTKL Inbox, I print out the request, date stamp the paper copy, and use another stamp to show the unique

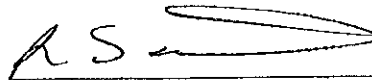


tracking number assigned to the request. I then this document and, among other things, send the resulting PDF version of the request to the affected program offices within DPW.

6. During the time that the new RTKL has been in effect, the DPW RTKL Inbox has never received a RTKL request sent by David Neil.
7. During the time that the new RTKL has been in effect, no employee of DPW has ever forwarded a RTKL request that was e-mailed to the employee by David Neil.

The averments set forth above are true and correct to the best of my knowledge, information, and belief. I make this Affidavit under penalty of perjury as more fully set forth in 18 Pa.C.S. § 4904.

Date: 10/29/20



Rose M. Strauser
Department of Public Welfare
Right to Know Law Office

Crumb, Leonard W

From: Brawley, Maryanne
Sent: Monday, September 27, 2010 1:14 PM
To: Bryan, Kathi; PW-RTKLgroup
Cc: Crumb, Leonard W
Subject: Newly docketed appeal with the OOR - 20100874
Attachments: 20100874 Neil - DPW.pdf

Good afternoon,
Please find attached a newly docketed appeal with the Office of Open Records. The last page of the file is our acknowledgement letter. Hard copy will not follow, unless requested.

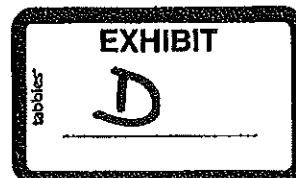
Thank you,



Maryanne Brawley
Executive Assistant to Terry Mutchler

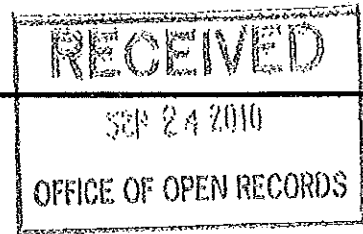
Office of Open Records
(717)346-9903
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225
<http://openrecords.state.pa.us>

Confidentiality Notice: This electronic communication is privileged and confidential and is intended only for the party to whom it is addressed. If received in error, please return to sender.



Brawley, Maryanne

From: DNeil55859@aol.com
Sent: Thursday, September 23, 2010 8:03 PM
To: DC, OpenRecords
Subject: right to know appeal



on Sept 3 2010 I sent an email right to know request to the department of public welfare. To date I have received no response from them. I request that this non-response be corrected and the information requested be released to me.
Thank you
David Neil

below is my original request along with my contact information

The following is requested under the Pennsylvania right to know act.
I request to know the total number of recipients of food stamps and cash benefits from the DPW living at each of these addresses. I do not seek to know the names or any identifying information on the persons receiving benefits I simply want to know how many recipients list each of these addresses as their home.
14530 Rt 28 Brockway, Pa., 336 Madison Ave, Brookville, Pa
thank you
David Neil
309 Quarry Av
Dubois, Pa., 15801
phone 814-503-8318



pennsylvania
OFFICE OF OPEN RECORDS

September 27, 2010

David Neil
309 Quarry Avenue
Dubois, PA 15801

Kathi Bryan
Agency Open Records Officer
Department of Public Welfare

RE: DOCKET # AP 20100874

Dear Parties:

Thank you for writing to the Office of Open Records regarding the Right-to-Know law, 65 P.S. §§67.101, ("RTKL"). The OOR has received an appeal on September 24, 2010. This letter will explain our process and provide the Agency a copy of the appeal.

The OOR will assign an Appeals Officer to review the case. If all procedural requirements have been met the Appeals Officer will review the file, consult with agency counsel as appropriate, seek any necessary additional information and issue a Final Determination. The Appeals Officer may conduct a hearing, but that decision is non-appealable. If all procedural requirements have not been met the parties will receive a letter stating why the appeal has not been accepted and that no further action is needed.

If additional information is necessary to reach a Final Determination, the Appeals Officer will ask for it in writing with a deadline for submission. If either party would like to submit unsolicited information they must do so within seven (7) business days from the date of this letter and provide a copy to the opposing party. Agencies are reminded that the burden of proof rests with them in citing the exception, law, regulation, judicial order or privilege to deny a request.

The OOR has 30 calendar days to issue a Final Determination. If you would like more information, please see our Web site, <http://openrecords.state.pa.us>, where all Final Determinations will be posted.

Respectfully,

Terry Mutchler
Executive Director

Crumb, Leonard W

From: Schnee, J. Chadwick
Sent: Tuesday, September 28, 2010 10:04 AM
To: Crumb, Leonard W; 'dneil55859@aol.com'
Cc: Bryan, Kathi
Subject: OOR Dkt. AP 2010-0874
Attachments: IntroLetter.pdf

Please find attached correspondence related to the above appeal.

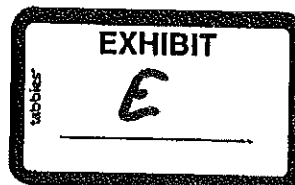
Thank you for your time.



J. Chadwick Schnee

Attorney
Office of Open Records
(717)346-9903
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225
<http://openrecords.state.pa.us>

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September 28, 2010

David Neil
309 Quarry Avenue
Dubois, PA 15801

Kathi Bryan
Department of Public Welfare
Right to Know Law Office
P.O. Box 2675
Harrisburg, Pennsylvania 17105-2675

RE: *Neil v. Department of Public Welfare*, OOR Dkt. AP 2010-0874

Dear Parties:

I am the appeals officer assigned to the above-referenced appeal and am writing to introduce myself. You will also receive a letter from Executive Director Terry Mutchler explaining the appeals process and schedule for submitting any additional information you would like considered. The record in this matter will close on October 6, 2010 absent a request from this office for clarification. This means that submissions received after the close of business on that date will not be considered unless they were specifically requested by me.

Please include Docket No. AP 2010-0874 on all submissions related to this appeal and provide copies to each other of anything sent to me. Submissions via facsimile or e-mail are preferred to ensure timely receipt.

All facts relied upon must be supported by an affidavit made under penalty of perjury by a person with firsthand knowledge. Please see our website for sample forms. The Office of Open Records website is searchable and both parties are encouraged to review prior decisions that may impact the decision in this appeal.

Ms. Bryan, this appeal states that a Right-to-Know request was sent on September 3, 2010 and no response was received. As a result, the request is therefore deemed denied under the Right-to-Know Law, 65 P.S. §§ 67.102 *et seq.* If a timely response was sent, please provide a copy. If not, you are invited to submit a legal and factual position for denial of the request in accordance with the deadline above.

Please note that the agency has the burden of overcoming the presumption that records are public and supplement the record in accordance with the deadline set forth above. Any response should be supported by sufficient factual background and a detailed legal analysis with citation to any relevant section(s) of the Right to Know Law, relevant case law, and/or Final Determinations of the OOR.

If either party has already submitted something requested in this letter, there is no need to send it again.

Contact me with any questions regarding the above. Thank you in advance for your cooperation in this process.

Very truly yours,



Appeals Officer
J. Chadwick Schnee, Esq.
jschnee@state.pa.us

cc: Leonard Crumb, Esq. (via e-mail only)

Crumb, Leonard W

From: DC, OpenRecords
Sent: Friday, October 01, 2010 11:20 AM
To: DNeil55859@aol.com
Cc: Bryan, Kathi; PW-RTKLgroup
Subject: RE: right to know request appeal

October 1, 2010

David Neil
309 Quarry Ave.
DuBois, Pa 15801

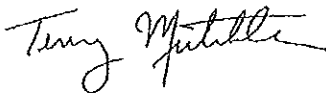
RE: Appeal received October 1, 2010

Dear Mr. Neil,

I am writing with regard to the above-mentioned appeal. You state in your appeal that the date of your Right-to-Know request was August 20, 2010 and that you did not receive a response from DPW. The Right-to-Know Law requires a response within five business days or the request is deemed denied, 65 P.S. §67.901. An appeal must be filed within fifteen business days of a deemed denial, 65 P.S. §67.1101. Your appeal was filed on October 1, 2010, more than a month after your request was deemed denied. For this reason, the Office of Open Records dismisses your appeal as untimely.

You may submit another request to the agency if you choose. Please note the statutory time frames set forth above if you need to file another appeal with our Office. Also be aware when filing an appeal that you must submit a copy of your Right-to-Know request submitted to the agency.

Respectfully,



Terry Mutchler
Executive Director

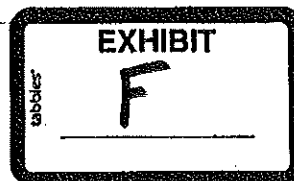
Cc: Open Records Officer, Department of Public Welfare



Maryanne Brawley
Executive Assistant to Terry Mutchler
Office of Open Records
(717)346-9903
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225
<http://openrecords.state.pa.us>

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From: DNeil55859@aol.com [mailto:DNeil55859@aol.com]
Sent: Friday, October 01, 2010 7:09 AM



To: DC, OpenRecords

Subject: right to know request appeal

On Aug 20 2010 I submitted the following right to know request to the Department of corrections right to know request. The agency has yet to respond to this request. I appeal their failure to respond as these records should be open to the public.

I am requesting all records, documents and written reports of the inspection conducted by the Department of Corrections of the facility known as Just For Jesus located at 14530 Route 36 Brockway Pa and Just For Jesus Challenge 336 Madison Ave Brookville Pa. This request is made under the right to know law. You may respond via email.

Thank You

David Neil

309 Quarry Ave.

DuBois, Pa.

15801

PENNSYLVANIA ADMINISTRATIVE CODE
Commonwealth of Pennsylvania
Pennsylvania Codes
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*** THIS DOCUMENT IS CURRENT THROUGH THE NOVEMBER 2010
SUPPLEMENT ***

*** Changes effective through 40 Pa.B. 5282 (September 11, 2010) ***

TITLE 1. GENERAL PROVISIONS
PART II. GENERAL RULES OF ADMINISTRATIVE
PRACTICE AND PROCEDURE
CHAPTER 35. FORMAL PROCEEDINGS
SUBCHAPTER I. REOPENING AND REHEARING
REHEARING OR RECONSIDERATION

1 Pa. Code § 35.241 (2010)

§ 35.241. Application for rehearing or reconsideration

(a) *Form, filing and service.* An application for rehearing or reconsideration may be filed by a party to a proceeding within 15 days, or another period as may be expressly provided by statute applicable to the proceeding, after the issuance of an adjudication or other final order by the agency. The application shall be made by petition, stating specifically the grounds relied upon.

(b) *Specification of errors.* The petitions for rehearing or reconsideration shall state concisely the alleged errors in the adjudication or other order of the agency. If an adjudication or other order of the agency is sought to be vacated, reversed or modified by reason of matters that have arisen since the hearing and decision or order, or by reason of a consequence that would result from compliance therewith, the matters relied upon by the petitioner shall be set forth in the petition.

(c) *Response.* No answers to petitions for rehearing or reconsideration will be entertained by the agency. If, and to the extent, however, that rehearing or reconsideration is granted by the agency head, a response in the nature of an answer may be filed by any participant within 15 days after the issuance of the order granting rehearing or reconsideration. The response shall be confined to the issues upon which rehearing or reconsideration has been granted.

(d) *Action on.* Unless the agency head acts upon the application for rehearing or reconsideration within 30 days after it is filed, or within the lesser time as may be provided or prescribed by law (see subsection (e)), the application shall be deemed to have been denied.

(e) *Shortened period for agency action when judicial review is sought.* Under Pa.R.A.P. No. 1701(b)(3)(ii) (relating to effect of appeal generally), if a party files a timely petition for review of an adjudication or other final order which is a quasijudicial

order for purposes of judicial review, the agency may grant an application for rehearing or reconsideration only within the time prescribed by Pa.R.A.P. No. 1512 (relating to time for petitioning for review) for the filing of a petition for review; otherwise the application shall be deemed to have been denied. Under Pa.R.A.P. No. 1512, the time prescribed for the filing of a petition for review is measured from the date of entry of the original adjudication or other final order and not from the date of filing of the application for rehearing or reconsideration.

(f) *Concurrent filing of petition for review and application for rehearing or reconsideration.* Under this section, agency denial of an application for rehearing or reconsideration may occur after the expiration of the period permitted by Pa. R.A.P. No. 1512 for the filing of a petition for review. Therefore, Pa.R.A.P. No. 1701(b) contemplates that a party may elect to concurrently petition for review and apply for rehearing or reconsideration of an adjudication or other final order and:

(1) If rehearing or reconsideration is denied, the original adjudication or other order will be subject to judicial review upon the previously filed petition for review.

(2) If rehearing or reconsideration is granted within the time contemplated by subsection (e):

(i) The timely order granting rehearing or reconsideration automatically renders inoperative a petition for review theretofore or thereafter filed with respect to the prior adjudication or other final order.

(ii) The petitioning party shall and another party may file a praecipe with the prothonotary of the court in which the inoperative petition for review is filed to cause a note to be made on the docket of the court that the petition has been stricken under Pa.R.A.P. No. 1701(b).

(iii) If a timely order granting rehearing or reconsideration has been entered under this section, the time for filing a petition for review begins to run anew after the entry of the decision on rehearing or reconsideration, whether or not that decision amounts to a reaffirmation of the prior adjudication or other final order. A new petition for review shall be filed to seek judicial review of the decision on rehearing or reconsideration.

AUTHORITY:

The provisions of this § 35.241 amended under section 506 of The Administrative Code of 1929 (*71 P. S. § 186*).

SOURCE:

The provisions of this § 35.241 amended through May 20, 1977, effective May 21, 1977, 7 Pa.B. 1308; amended June 17, 1994, effective June 18, 1994, 24 Pa.B. 3025. Immediately preceding text appears at serial pages (172983) to (172984) and (187251).

Brawley, Maryanne

From: Byerly, Nathanael
Sent: Monday, November 01, 2010 12:30 PM
To: Brawley, Maryanne
Subject: FW: NEIL v. DPW: PETITION FOR RECONSIDERATION
Attachments: Neil v DPW Petition for Reconsideration.pdf; Neil v DPW EXHIBITS to Petition for Recon.pdf; Reconsideration Regulation (1 Pa.Code 35.241).docx

Reconsideration request for opening.....not sure you got it...thanks



Nathanael Byerly

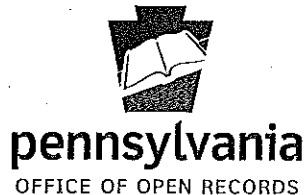
Chief Counsel
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Commonwealth Keystone Building
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Harrisburg, PA 17120-0225
www.newPA.com | www.visitPA.com

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From: Crumb, Leonard W
Sent: Friday, October 29, 2010 2:48 PM
To: Mutchler, Terry
Cc: Byerly, Nathanael; 'DNeil55859@aol.com'
Subject: NEIL v. DPW: PETITION FOR RECONSIDERATION

Attached to this e-mail are (1) a Petition for Reconsideration, filed pursuant to the regulation at 1 Pa.Code § 35.241; (2) the exhibits to that petition; and (3) a copy of the regulation. I am providing the latter in order to ensure that Mr. Neil receives a copy of it.

Mr. Neil: I am precluded from advising you regarding the regulation, including subsection (c). Should you have any questions regarding what to file, and when, I believe the OOR has guidance on its website.



November 23, 2010

Leonard W. Crumb
Senior Assistant Counsel
Department of Public Welfare
Health and Welfare Building, 3d F. West
PO Box 2675
Harrisburg, PA 17105-2675

RE: Petition for Reconsideration, OOR Dkt. AP 2010-0874

Dear Mr. Crumb:

We are in receipt of your Petition for Reconsideration that was received by this office on November 5, 2010, in connection with the Office of Open Records Final Determination docketed as *Neil v. Department of Public Welfare*, OOR Dkt. AP 2010-0874.

On September 27, 2010, the OOR notified the Department that Mr. Neil had filed an appeal with the OOR and that it was docketed as AP 2010-0874. The appeal was related to a September 3, 2010 right-to-know request allegedly sent to the Department. On September 28, 2010, an OOR Appeals Officer sent a letter inviting the parties to submit information in support of their legal positions. The Appeals Officer set a record close date of October 6, 2010.

On October 1, 2010, the OOR notified the Department that Mr. Neil had filed an appeal with the OOR. The appeal was related to an August 20, 2010 right to know request allegedly sent to the Department. The OOR dismissed the appeal as untimely.

In your petition for reconsideration, you state that upon receipt of the OOR's October 1, 2010 notification, the Department ceased preparing any materials to respond to the appeal docketed at 2010-0874. As a result, the OOR issued a Final Determination granting the appeal on October 16, 2010, because the Department failed to meet its burden under the Right-to-Know Law having submitted no legal argument in support of its denial.

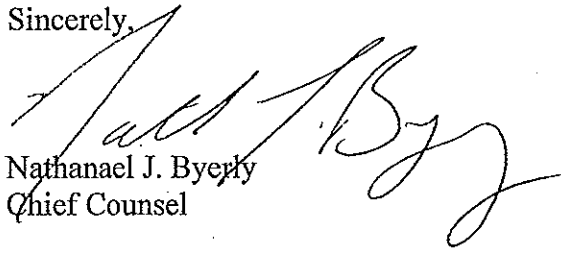
In your petition, you assert that the OOR erred in sending the October 1, 2010 e-mail to the Department. This is incorrect. The October 1, 2010 letter dismissed an untimely appeal related to an August 20, 2010 right-to-know request, not the September 3, 2010 request at issue in the appeal docketed at 2010-0874.



pennsylvania
OFFICE OF OPEN RECORDS

You also argue that the Department reasonably relied on the October 1, 2010 letter. We disagree. The October 1, 2010 letter clearly relates to a different right-to-know request than that in the appeal docketed at 2010-0874. As such, we hereby deny your Petition.

Sincerely,


Nathanael J. Byerly
Chief Counsel

cc: Terry Mutchler, Executive Director, Office of Open Records
David Neil