

- I. The Department advised Complainant that he may access his personnel file, containing some of the information, pursuant to the Personnel File Act, 43 P.S. §§1321 et seq.**

The Complainant denies that the Pennsylvania Insurance Department advised the Complainant that his official personnel file contains some of the information. To the contrary, in his October 18, 2010, letter, Pennsylvania Insurance Department's Open Records Officer, Peter J. Salvatore stated:

“Please note that the documents you requested are not contained in your official personnel file nor are they subject to disclosure under 43 P.S. §§ 1321 et seq.”

The Final Determination's erroneous statement that “[t]he Department advised him that he may access his personnel file, containing some of the information, pursuant to the Personnel File Inspection Act...” should be reconsidered. (Final Determination at 2.)

- II. The Notes/Work Product of HR Analyst Erdman are properly protected as they reveal the recommendation and deliberations of a member of an agency participating in the decision.**

The Complainant denies that Ms. Erdman's notes of the interviews conducted with Messrs. Riley, Waeger and Adams reveal the recommendation. Ms. Erdman's affidavit states in relevant part.

“Based on the information I secured during the interviews, the documents submitted by Mr. Riley, job descriptions and job classifications specification, I prepared a technical report with a recommendation to be submitted to the Office of Administration (OA).”

This averment establishes that at the time of the interviews, the recommendation had not been prepared. Consequently, Ms. Erdman's interview notes could not contain a recommendation. The OOR conclusion that, “[t]he Department may withhold the Notes/Workpapers of Item 1...” should be reconsidered. (Final Determination at 6.)

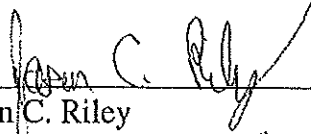
III. The Department identified as responsive records: Item 1, the Notes/Work Product (of HR Analyst Erdman), Item 2, the E-mails (between HR and OA), Item 3, the Approval, Item 4, the PAR, and Item 5, the Memo, regarding approval.

The Complainant submits that the aforementioned Items 1, 2, 3, 4 and 5 are not all of the requested records that the Department has withheld. In the Complainant's Position Statement, the Complainant averred:

“On March 29, 2010, Mr. Riley met with Ms. Erdman and Ms. Fleischauer to discuss the reclassification request. During this meeting, both Ms. Erdman and Ms. Fleischauer were observed taking noted [sic]...”

The Department has neither disclosed nor identified Ms. Fleischauer's notes as a record.

WHEREFORE, Complainant, Jason C. Riley, petitions the Office of Open Records to grant reconsideration of its Final Determination, issued November 17, 2010 and require the Pennsylvania Insurance Department to disclose notes taken while interviewing Messrs. Riley, Waeger and Adams.



Jason C. Riley
30 North Third Street, 8th Floor
Harrisburg, PA 17101
(717) 783-3770

DATED December 2, 2010

Brawley, Maryanne

From: Riley, Jason (INS)
Sent: Thursday, December 02, 2010 9:42 AM
To: DC, OpenRecords
Cc: Galli, Karen L.
Subject: Petition for Reconsideration (Docket No. AP 2010-0979)
Attachments: Petition for Reconsideration AP 2010-0979.pdf

I respectfully submit Complainant's Petition for Reconsideration of the November 17, 2010, Final Determination rendered by the Office of Open Records in the matter of *Jason Riley v. Department of Insurance*. Please find attached to this email a copy of the petition.

Thank you.

Jason C. Riley | Chief, Division of Policy Administration
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Mcare Fund | Bureau of Malpractice Administration
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pennsylvania
OFFICE OF OPEN RECORDS

December 10, 2010

Jason C. Riley
30 North Third Street, 8th Floor
Harrisburg, PA 17101

RE: Petition for Reconsideration received December 2, 2010, OOR Dkt. AP 2010-0979

Dear Mr. Riley:

We are in receipt of your Petition for Reconsideration that was received by this office on December 2, 2010, in connection with the Office of Open Records Final Determination in *Riley v. Pennsylvania Department of Insurance*, OOR Dkt. AP 2010-0979. We hereby deny your Petition.

Sincerely,

A handwritten signature in black ink, appearing to read "Nathanael J. Byerly".

Nathanael J. Byerly
Chief Counsel

cc: Terry Mutchler, Executive Director, Office of Open Records
Karen Galli, Esquire