

pennsylvania

OFFICE OF OPEN RECORDS

Executive Director
Office of Open Records
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225

Re: Right to Know Law Appeal - Denial or Partial Denial by Agency

Dear Executive Director:

This is an appeal under the Pennsylvania Right to Know Law, 65 P.S. §67.101. I requested documents from Slatington Borough. The Agency denied or partially denied my request for information. I am appealing the denial of my request, under section 1101 of the Law and provide the following information in accordance with the Law:

Requester's name: Chad Trego - 8/18/2010
Address/City/State/Zip: 403 E. Church St. Slatington, PA 18080
Date of Right to Know request: 6/28/2010 Date of Agency Response: 8/2/2010
Telephone and fax number: 484-695-9267
Concise statement of facts (may attach additional pages if necessary)

Name and address of Agency: Borough of Slatington, 125 Walnut St. Slatington, PA 18080

Name and title of the Agency official who denied the request for information:

Edmund J. Healy - Solicitor

Description of the records requested: Ordinance Enforcement letters - Dkt # AP 2010-0641

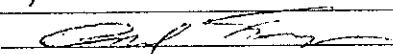
This is a "PETITION FOR RECONSIDERATION." (found no "petition" form on OOR website)

List any grounds upon which the requester asserts that the record is a public record:

Not the subject of any form of "investigation," OEO verbiage "comply or be subject to fine"

Address any grounds relied upon by the Agency for denial of the request:

65 PS 67.708(b) (16), (17)

Respectfully Submitted,  (must be signed)

Required documents to include with appeal – copies of original RTK request, Agency denial

To Commonwealth of Pennsylvania Office of Open Records,

Greetings. This is a "Petition for Reconsideration" regarding Docket # AP 2010-0641, (*no "petition" form was discovered on the OOR website*). Slatington Borough Solicitor Edmund Healy's original response to my appeal asserted that "*for appeals relating to the Borough's nondisclosure of documents pertaining to Borough criminal ordinances, you must submit your appeal to: Office of District Attorney, Lehigh County Courthouse, 455 W. Hamilton Street, Allentown, PA 18101-1614.*" Likewise, on 8/2/2010 the OOR's Appeals Officer J. Chadwick Senhee Esq. stated in response to this matter that "*the OOR does not have jurisdiction over this appeal, as the request seeks records that qualify as criminal investigative records of a local agency,*" and goes on to say that "*such records are beyond OOR's jurisdiction and must be appealed to the county District Attorney's office for determination.*"

Please know that in my telephone conversation with the Lehigh County District Attorney's Appeals Officer Christie Bonesch, she states that such a matter "*does not fall within her jurisdiction,*" as she "*only handles appeals regarding actions of a criminal nature that are issued by law enforcement agencies.*" She stated that she does "*not deal with matters regarding code enforcement.*" and went to say that they are both two entirely different categories. I asked whether there was any other individual within her agency whose jurisdiction this would fall under to which she replied "*I'm it,*" meaning that she is the only Appeals Officer for the Lehigh County District Attorney's office & that her jurisdiction is specific to law enforcement matters exclusively. In light of her statements, please regard this submission as a "Petition for Reconsideration" by the OOR as a result of erroneous directives issued by both Slatington Borough's Solicitor & the Pennsylvania Office of Open Records.

You may have taken note in Mr. Healy's response to my appeal that he quotes from the Pennsylvania Borough Code 53 PS § 48301 ("*Any violation or failure to comply with any provision of any borough ordinance shall constitute a summary offense and prosecution for every such offense shall be according to the practice in the case of summary convictions*") and goes on to state "*the Borough Codified Ordinances follow said mandate.*" He also included a copy of the aforementioned which reads; **Article III, Violations and Penalties, § 1-17, Prosecution of violators; collection of fines, penalties and costs, A. Failure to comply with the provisions of any borough ordinance shall constitute a summary offense. Prosecution for each offense shall be before a District Justice for the borough.**"

You may have also noted that Mr. Healy states without equivocation in his response to my appeal that "*in truth, it could not be more related to a criminal investigation.*" Said statement would of course nullify his assertion that denial of my request could also be justified under RTK Law 65 PS § 67.708(b) (17).

Since no prosecution has clearly taken place before a District Justice in direct response to or as a direct result of the letters issued by the Code Enforcement Officers that I seek in my RTK request, such letters cannot be construed as either citations or as pertaining to a "*criminal investigation*" of a "*failure to comply with the provisions of any borough ordinance.*" Interpreting the aforesaid Codified Ordinance mandate more simplistically in comparison to the lack of any formal action; if there were an offense, there would have been prosecution. Likewise, if there was no prosecution, there was no offense. Ergo, the letters I seek are and were of no legal consequence and would be exempt from RTK Law 65 PS § 67.708(b) (16).

Furthermore, as I had asserted in my original appeal; "*the aforementioned verbiage denotes said letters were dispatched as based on her (Code Enforcement Officer's) observance of the individual's property & are in the nature of non-investigative, non-criminal general correspondence which convey to the violator an insight into existing rules & adding a warning that future non-compliance may be subject to criminal actions.*" With that in mind, said letters are clearly of a neutral correspondence between two public officials regarding a foreboding of what could be and are neither exempt from disclosure under 65 PS § 67.708(b) (16) or (17).

I look forward to your reconsideration of this matter. Thank you.

Sincerely,
Chad Trego

Brawley, Maryanne

From: Chad Trego [ctrego2@verizon.net]
Sent: Wednesday, August 18, 2010 10:40 PM
To: DC, OpenRecords
Subject: Petition for Reconsideration - AP 2010-0641
Attachments: RTK - Petition for Reconsideration - OEO letters 8-18-10.jpg; RTK Petition for Reconsideration - OEO letter 8-18-2010.doc

Greetings PA OOR,

Since I was unfortunately unable to locate a specific "Petition for Reconsideration" form on your website, please find attached an OOR Appeal form which should serve said purpose. Please also find attached a MS Word document outlining the details of said petition.

I look forward to your response & hopeful resolution of this matter. Thank you.

Sincerely,
Chad Trego

8/19/2010



August 24, 2010

Chad Trego
403 E. Church Street
Slatington, PA 18080

Re: *Trego v. Slatington Borough*, OOR Dkt. AP 2010-0641

Dear Mr. Trego:

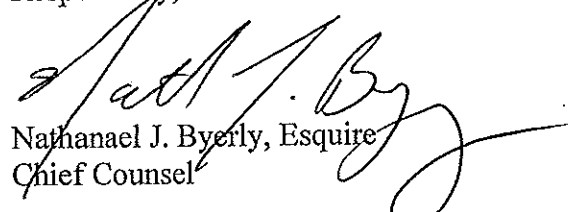
Thank you for writing to the Office of Open Records (OOR) regarding the Right-to-Know Law ("RTKL"), 65 P.S. §§67.101, *et seq.*

As stated in the OOR's August 2, 2010 letter, under the RTKL your appeal should have been sent to the open records appeals officer who is designated by the Lehigh County District Attorney. See 65 P.S. § 67.503(d)(2). When there is a question as to what type of record has been requested, the appeals officer designated by the District Attorney is to determine in writing whether the record requested is a criminal investigative record. See 65 P.S. § 67.503(d)(2).

Should the designated appeals officer determine that the requested records are not criminal records, the OOR will entertain a petition to reinstate your appeal.

If you have any questions, the Office of Open Records website contains helpful information regarding the procedure surrounding both the request and appeal process under the RTKL. The web address is: <http://openrecords.state.pa.us>.

Respectfully,


Nathanael J. Byerly, Esquire
Chief Counsel