



COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE OF GENERAL COUNSEL  
October 5, 2010

Terry Mutchler, Executive Director  
Office of Open Records  
Commonwealth Keystone Building  
400 North Street, 4th Floor  
Harrisburg, PA 17120-0225  
VIA FACSIMILE 717-425-5343


Re: Appeal No. 2010-0774

Dear Executive Director Mutchler,

Attached please find the Department of Labor and Industry's Petition for Reconsideration of the above-referenced determination. All parties have been served by copy of this letter.

Thank you for consideration of this matter.

Respectfully,



Thomas P. Howell  
Assistant Counsel

cc: Ronald Rudberg  
J. Chadwick Schnee, Appeals Officer

COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF OPEN RECORDS

In the matter of

Ronald Rudberg;  
Petitioner

v.

Pennsylvania Department of  
Labor and Industry;  
Respondent

Docket No. AP 2010-0774

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PETITION FOR RECONSIDERATION

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Pursuant to Section 35.241 of the General Rules of Administrative Practice and Procedure, 1 Pa. Code § 35.241, the Department of Labor and Industry (Department) petitions the Pennsylvania Office of Open Records (OOR) for reconsideration of its final determination entered to the extent that such determination was issued in favor of Ronald Rudberg (Requester) pursuant to the Right to Know Law (RTKL), 65 P.S. §§ 67.101-67.3104, on the following grounds.

1. On September 20, 2010, OOR rendered a final determination in Requester's appeal from the Department's partial denial of a June 30, 2010 request for records. The final determination is attached as Exhibit 1.

2. Relevantly, Requester sought personnel records relating to “position number 185116,” including “all interviewee . . . Employee Performance Reviews (EPR’s).”

3. In response to the request, the Department provided records, but withheld, *inter alia*, EPRs, citing 65 P.S. § 67.708(b)(7)(ii).

4. On appeal to the OOR, Requester asserted that the Department was not entitled to withhold records under 65 P.S. § 67.708(b)(7)(i), (iii), (iv), (v), (vi), (vii), (viii) and (ix); 65 P.S. § 67.708(b)(10); or 65 P.S. § 67.708(b)(12). Requester’s appeal is attached as Exhibit 2.

5. Requester never asserted that 65 P.S. § 67.708(b)(7)(ii) (relating to “a performance rating or review”) was inapplicable.

6. In response to Requester’s appeal, the Department submitted a letter brief and an affidavit addressing the non-existence of records, and the extent of the Department’s deliberations.

#### **ERRORS ASSERTED**

7. As set forth below, the OOR erred in *sua sponte* raising issues on appeal that were neither raised by the Requester nor communicated to the Department.

Specifically, section 1101 of the RTKL, 65 P.S. § 67.1101, requires that appeals “state the grounds upon which the requester asserts that the record is a public record . . . and shall address any grounds stated by the agency for delaying or denying the request.” Herein, although Requester asserted that no *other* subsection of 65 P.S. § 67.708(b)(7) appeared to apply, requester did not assert that 65 P.S. § 67.708(b)(7)(ii) (relating to “a performance rating or review”) was inapplicable. Further, the Requester never raised any allegation that the requested EPRs related to anyone other than agency employees. Thus, the Department was not provided notice that the applicability of 65 P.S. § 67.708(b)(7)(ii) was at issue before the Appeals Officer. Nevertheless, the OOR *sua sponte* disregarded the Department’s denial, and held that the Department “did not provide sufficient legal or factual basis that the EPRs related “to an agency employee.”

In fact, had the Department received notice that the applicability of 65 P.S. § 67.708(b)(7)(ii) was at issue, the Department would have provided additional information and argument regarding the requested “EPRs.” In particular, the Department would have pointed out that the term “EPR” is a term of art describing a specific performance review document that applies only to employees of Commonwealth Agencies.

In fact, section 9.2 of the Commonwealth’s personnel rules, found in Management Directive 505.7 (available at [www.oa.state.pa.us](http://www.oa.state.pa.us)), defines EPRs, stating:

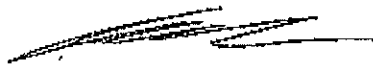
**9.2 Performance Evaluation Systems.**

(a) The performance evaluation instrument covering most commonwealth employees is the ***Employee Performance Review (EPR), Form 363L***. ***This instrument is used for all employees under the Governor's jurisdiction***, including management, supervisory and rank and file. The only exceptions are cabinet officials, Liquor Control Board Wine & Spirits Stores personnel, Department of Education teachers in the D4 bargaining unit, attorneys and law clerks under the jurisdiction of the Office of General Counsel and other categories of employees designated by the Office of Administration.

(emphasis added).<sup>1</sup> Thus, within the context of the request, *all EPRs* “relate to an agency employee.” The OOR’s determination to the contrary is without legal or factual support. Therefore, the OOR’s determination respect to such issue was flawed, and should be reconsidered.

WHEREFORE, the Department of Labor and Industry respectfully requests that the Office of Open Records reconsider its September 20, 2010 final determination in this matter any deny the appeal of Ronald Rudberg.

Respectfully submitted,



Thomas P. Howell  
Assistant Counsel

Dated: 10/05/2010

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<sup>1</sup> Management directives have the force and effect of law. *See Keim v. Commonwealth, Department of Health*, 543 A.2d 1261, 1265 (Pa. Cmwlth. 1988).

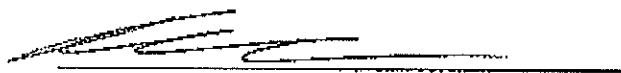
**CERTIFICATE OF SERVICE**

I hereby certify that I am serving the preceding Petition for Reconsideration of the Department upon the persons and as indicated in the manner below.

Terry Mutchler, Executive Director  
Office of Open Records  
400 N. Front Street, 4<sup>th</sup> Floor  
Harrisburg, PA 17120-0225  
(via email: [tmutchler@state.pa.us](mailto:tmutchler@state.pa.us))

J. Chadwick Schnee, Appeals Officer  
Office of Open Records  
400 N. Front Street, 4<sup>th</sup> Floor  
Harrisburg, PA 17120-0225  
(via email: [jschnee@state.pa.us](mailto:jschnee@state.pa.us))

Ronald L. Rudberg  
9 Columbus Street  
Belle Vernon, PA 15012  
(Via First-Class Mail, postage prepaid)



Thomas P. Howell  
Assistant Counsel  
Office of Chief Counsel  
Workers' Compensation Division  
1171 South Cameron Street Room 327  
Harrisburg, PA 17104-2501  
(717) 783-4467

Dated: October 5, 2010

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EXHIBIT 1



**pennsylvania**  
OFFICE OF OPEN RECORDS

LABOR & INDUSTRY  
22 SEP 22 P 1:09  
PENNSYLVANIA DEPARTMENT OF LABOR & INDUSTRY  
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

RONALD RUDBERG,  
Complainant

v.

PENNSYLVANIA DEPARTMENT OF  
LABOR & INDUSTRY,  
Respondent

Docket No.: AP 2010-0774

**INTRODUCTION**

Ronald Rudberg (the "Requester") submitted a request (the "Request") to the Pennsylvania Department of Labor & Industry ("L&I") generally seeking various employment-related records pursuant to the Right-to-Know Law, 65 P.S. §§ 67.101 *et seq.*, ("RTKL"). L&I partially denied the Request under various RTKL exemptions and the Requester appealed to the Office of Open Records ("OOR"). For the reasons set forth in this Final Determination, the appeal is granted in part and denied in part and L&I is not required to take further action.

**FACTUAL BACKGROUND**

On June 30, 2010, the Request was filed, seeking a variety of records related to "Position No. 185116, Announcement No. 23-407," including:

1. For each interview conducted for the above noted position notes, written evaluations, and grading/scoring notes of each of the interviewees by each interviewer who conducted the interviews....
- [2.] For each interview referenced in paragraph 1 above, the interview questions that were posed to each interviewee....
- [3.] The equal Employment Review Certificate (EERC) Form STD-483 for the Position Number 185116 herein referenced interviews.
- [4.] Any document related to or reflects the scoring criteria, notes and process for the interviews references in paragraph 1 above.
- [5.] For all interviewees, copies of their SC[S]C applications submitted for position number 185116. Additionally, all interviewee resumes, Employee Performance Reviews (EPR's) and any other materials submitted for the above referenced interviews.
- [6.] The dates all three interviewers attended the [L&I] Interview and Selection Training for managers and supervisors.
- [7.] Information as to how the interview panel was selected and who determined the interview panel members.
- [8.] An explanation as to why a representative of the EEOC was not present for this particular interview.
- [9.] A copy of the policy/procedure of when and when not an EEOC representative participates in interviews.

Within five business days, L&I invoked a thirty-day extension to respond pursuant to 65 P.S. § 67.902(b). On August 9, 2010, L&I granted the Request for item 3 and item 5 with respect to the application and résumé of the successful applicant with redactions for personal identification information under 65 P.S. § 67.708(b)(6), but denied the remainder of the Request. With respect to the employment applications, résumés and EPRs for the unsuccessful applicants, L&I withheld these records under 65 P.S. § 67.708(b)(7). Additionally, L&I denied access to items 1, 2 and 4 of the Request under the 65 P.S. § 67.708(b)(7) and the "internal, predecisional deliberations" exemption pursuant to 65 P.S. § 67.708(b)(10).<sup>1</sup> The EPR for the individual hired was withheld under the personnel records exemption. Further, L&I denied items 6, 7 and 8, stating that

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<sup>1</sup> L&I also cited the exemption for "notes and working papers" under 65 P.S. § 67.708(b)(12), but did not address this exemption on appeal.

these items sought answers to questions rather than records. Finally, item 9 was denied based on its nonexistence.

The Requester appealed to the OOR on August 23, 2010, contending that L&I improperly denied access to the applications, résumés and EPRs for the unsuccessful applicants, as well as items 1, 2 and 4. The Requester also stated that L&I should have provided responsive records related to items 6, 7 and 8. The OOR invited both parties to supplement the record. L&I provided a position statement further explaining its reasons for denying access to responsive records, as well as a sworn affidavit from its Labor Relations Coordinator.

#### LEGAL ANALYSIS

The RTKL is “designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials and make public officials accountable for their actions.” *Bowling v. OOR*, 990 A.2d 813, 824 (Pa. Commw. 2010). The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. § 67.503(a). An appeals officer is required “to review all information filed relating to the request.” 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. The decision to hold a hearing or not hold a hearing is discretionary and non-appealable. *Id.* The law also states that an appeals officer may admit into evidence testimony, evidence and documents that the appeals officer believes to be reasonably probative and relevant to an issue in dispute. *Id.* Here, neither party requested a hearing, the facts are undisputed, and the OOR has the necessary, requisite information and evidence before it to properly adjudicate the matter.

L&I is a Commonwealth agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.301. Records in possession of a Commonwealth agency are presumed public unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. An agency bears the burden of proving the applicability of any cited exemptions. *See* 65 P.S. § 67.708(b).

Section 708 of the RTKL clearly places the burden of proof on the public body to demonstrate that a record is exempt. In pertinent part, Section 708(a) states: "(1) The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence." 65 P.S. § 67.708(a). Preponderance of the evidence has been defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." BLACK'S LAW DICTIONARY 1064 (8th ed.); *see also Commonwealth v. Williams*, 567 Pa. 272, 786 A.2d 961 (2001).

**1. Applications, résumés and EPRs for the unsuccessful applicants**

Under the RTKL, certain "records relating to an agency employee," such as a "performance rating or review" or an "employment application of an individual who is not hired" by an agency, are exempt. *See* 65 P.S. § 67.708(b)(7). Based on the underlying purpose of the RTKL, however, "exemptions from disclosure must be narrowly construed." *Bowling*, 990 A.2d at 824.

The OOR has previously held that résumés and applications of individuals not hired are exempt under 65 P.S. § 67.708(b)(iv). *See Bartley v. Lock Haven University*, OOR Dkt. AP 2009-0931, 2009 PA O.O.R.D. LEXIS 733. As a result, the OOR holds

that the résumés and applications of unsuccessful applicants were properly withheld from public access under this exemption.

The Requester does not dispute that the EPR for the individual hired by L&I was properly withheld under 65 P.S. § 67.708(b)(7)(ii). Unquestionably, the EPRs constitute “a performance rating or review” — the issue here is whether the EPRs for the unsuccessful, non-employee applicants “relat[e] to an agency employee.” See 65 P.S. § 67.708(b)(7).

In *Kirkpatrick v. Department of Public Works*, the OOR, upon the filing of a Petition for Reconsideration of its Final Determination, specifically rejected the argument that “interview summaries and scoring matrices” for applicants are exempt under 65 P.S. § 67.708(b)(7). OOR Dkt. AP 2009-0422 (on reconsideration), 2010 PA O.O.R.D. LEXIS 475. Instead, the OOR held that these summaries of applicant interviews were properly withheld because they document the “internal, predecisional deliberations” of the agency because “the records were created internally by [agency] management and before a decision was made regarding which of the candidates would be hired.” *Id.* Unlike the agency in *Kirkpatrick*, L&I only asserted that 65 P.S. § 67.708(b)(7) applied to these records, rather than the exemption for “internal, predecisional deliberations” under 65 P.S. § 67.708(b)(10). Because L&I did not provide sufficient legal or factual basis that the EPRs related “to an agency employee” rather than merely applicants for employment or assert that 65 P.S. § 67.708(b)(10) applies to these records, the OOR has no choice but to find that L&I improperly withheld responsive EPRs for unsuccessful applicants. See *Bowling*, 990 A.2d at 824 (“exemptions from disclosure must be narrowly construed”). L&I may, however, redact personal identification information on

these EPRs pursuant to 65 P.S. § 67.708(b)(6). Additionally, to the extent that any applicant is currently a public employee, L&I may redact these individuals' home addresses pursuant to Judge Friedman's Order in *Pa. State Educ. Ass'n v. Dep't of Cmty. & Econ. Dev.*, 981 A.2d 383, 386 (Pa. Commw. Ct. 2009), which has since been affirmed by the Supreme Court. See *Campbell v. State Employees' Retirement System*, OOR Dkt. AP 2010-0568, 2010 PA O.O.R.D. LEXIS 496; *Verley v. Midland Borough*, OOR Dkt. AP 2010-0744, 2010 PA O.O.R.D. LEXIS 708.

**2. Items 1, 2 and 4 were properly denied**

With respect to items 1, 2 and 4 of the Request, L&I states that responsive records are exempt under 65 P.S. § 67.708(b)(10)(i) as reflecting the "internal, predecisional deliberations of an agency." In its sworn affidavit, L&I affirms that these records

were created and used as part of [L&I's] deliberations to determine which interviewees were the most appropriate candidates for the instant position [and that d]isclosure of interview notes, written evaluations, grading/scoring notes, and interview questions would reveal the predecisional thoughts and reasoning of the panelists with respect to a contemplated course of action. Further, such records were used in such deliberations.

The OOR finds that this affidavit provides sufficient evidence that items 1, 2 and 4 were used in the internal, predecisional deliberations surrounding the decision to award employment to an individual. See *Kirkpatrick*, OOR Dkt. AP 2009-0422 (on reconsideration); *Bair v. Dept. of Environmental Protection*, OOR Dkt. AP 2010-0684, 2010 PA O.O.R.D. LEXIS 581; *Kyle v. Dept. of Community and Economic Development*, OOR Dkt. AP 2009-0801, 2009 PA O.O.R.D. LEXIS 310.

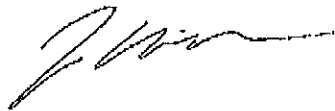
**2. No responsive records exist related to items 6, 7 and 8**

L&I provided an affidavit from its Labor Relations Coordinator affirming under penalty of perjury that no responsive records exist. Such an affidavit serves as sufficient evidence of the nonexistence of responsive records under the RTKL. *See Moore v. OOR*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010); *see, e.g., Treichler v. Washington Township Municipal Authority*, OOR Dkt. AP 2010-0680, 2010 PA O.O.R.D. LEXIS 592; *Anderson v. Dept. of State*, OOR Dkt. AP 2010-0642, 2010 PA O.O.R.D. LEXIS 552. Consequently, the OOR finds that L&I established that no responsive records exist related to items 6, 7 and 8 of the Request.

#### CONCLUSION

For the foregoing reasons, Requester's appeal is **granted in part and denied in part** and L&I is required to provide all EPRs for unsuccessful applicants, subject to redactions for home addresses and personal identification information pursuant to 65 P.S. § 67.708(b)(6), within thirty (30) days. This Final Determination is binding on all parties. Within thirty (30) days of the mailing date of this Final Determination, any party may appeal to the Commonwealth Court, 65 P.S. § 67.1302(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond according to court rules as per Section 1303 of the RTKL. This Final Determination shall be placed on the OOR website at: <http://openrecords.state.pa.us>.

FINAL DETERMINATION ISSUED AND MAILED: September 20, 2010



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APPEALS OFFICER  
J. CHADWICK SCHNEE, ESQ.

Sent to: Ronald Rudberg; Thomas Howell, Esq.

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EXHIBIT 2

2



**pennsylvania**  
OFFICE OF OPEN RECORDS

**RECEIVED**  
AUG 23 2010  
OFFICE OF OPEN RECORDS

Executive Director  
Office of Open Records  
Commonwealth Keystone Building  
401 North Street, 4<sup>th</sup> 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 Dept. of L&I, AORO. 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: Ronald L. Rudberg  
Address/City/State/Zip: 9 Columbus St., Belle Vernon, PA 15011  
Date of Right to Know request: June 29, 2010 Date of Agency Response: August 9, 2010  
Telephone and fax number: 412-427-7496  
Complete statement of facts (may attach additional pages if necessary)

I requested records for a SCSC Appeal No. 26608. I requested the same records for a previous SCSC Appeal No. 26228 and received the records. Continued on next Page...

Name and address of Agency: Dept. of L&I, Room 1415 L&I Bldg Harrisburg PA 17106

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

Sorinmer O'Leary, Agency Open Records Officer

Description of the records requested: Information related to job interview for position #185116, announcement # 23-407. Written evaluation, grading, interview questions, notes, etc.

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

Not exempt under 65 P.S. § 67.708(b)(7) (k)(10), (b)(12) 65 P.S. §§ 67.708(b)(7), (b)(10).

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

Denied under 65 P.S. § 67.708(b)(7) (b)(10), (b)(12) 65 P.S. § 67.708(b)(7), (b)(10).

Respectfully Submitted, Ronald L. Rudberg (must be signed)

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

3.

Concise statements of fact continued:

This time the Agency denied my request. This denial has placed me at a huge disadvantage in preparing for my SCSC Appeal No. 26908 by withholding/delaying information required to proceed with this case. I believe that withholding this information is not in compliance with the intent of the RTK Law. The requested information is indeed public information contrary to the Agency Open Records Officer's assumption and claims under 65 P.S. § 67.708(b)(7) (b)(10), (b)(12) 65 P.S. §§ 67.708(b)(7), (b)(10) and are not exempt from disclosure as claimed. The records I received in the past, as previously mentioned for SCSC Appeal No. 26228, were the *Interview Factors & Rating Forms* (including notes) written by all interviewers for all interviewed candidates as provided by the Department of Labor & Industry.

Further information as to why I believe the information requested is public information is described in "BOLD" print on the following page regarding the Right to Know Law Request No. 10-114, letter dated August 9, 2010 by Somma O'Leary, Agency Open Records Officer.

Area in contention is the timeliness of the responses to my RTK requests.

6/30/2010 - Original RTK request faxed to Agency Open Records Officer (AORO).

6/31/2010 - First day of the five business day for Agency response.

7/8/2010 - Date interim response sent by Agency

Agency did not respond as required within 5 business days

7/8/2010 - Date interim response sent by Agency requesting an additional 30 days to respond

8/9/2010 - Date response sent from Agency

Agency did not respond within 30 days

These timeliness issues have made it impossible for me to prepare for my SCSC hearing. I requested and was granted by the SCSC to reschedule my hearing. It was subsequently rescheduled to 9/27/2010. Now, having to appeal the denial of certain RTK requested records I will again be unable to properly prepare in a timely manner for an SCSC Appeal.

I request that all the requested information be released to the Appellant immediately.

**Pennsylvania**  
DEPARTMENT OF LABOR & INDUSTRY

RIGHT TO KNOW LAW OFFICE

4.

August 9, 2010

Mr. Ronald L. Rudberg  
14 Ellnd Lane

**Bolded font are my responses to why the Agency**

Ellie Vernon, PA 18012

**is wrong Re: release of public information.**

Re: Right to Know Law Request No. 10-114

Dear Mr. Rudberg:

On June 30, 2010, the Department of Labor and Industry (Department) received your attached request for information pursuant to the Pennsylvania Right-To-Know Law, 65 P.S. §§ 67.101, et seq. (RTKL). The Department subsequently informed you that it would require an additional thirty days to respond to your request.

After review, your request is granted in part and denied in part as follows. The records for which access is granted are enclosed. Specifically, the Department has provided the OEO certification requested in paragraph 3 of your request. Further, the Department has provided the application and resume of the successful applicant, in response to paragraph 6 of your request. Pursuant to the fee provisions established by the Office of Open Records, the cost of fulfilling your request is \$2,50 (\$25 per page for application for 10 pages). Kindly remit payment in that amount to the Department of Labor and Industry, with a check made payable to the Commonwealth of Pennsylvania. Further, please note that failure to pay for records provided in response to a RTKL request to any executive agency will preclude you from obtaining further records from another executive agency, pursuant to the provisions of section 901 of the RTKL and Section IV (b) of our agency's RTKL Policy, as published on our website [www.vv.ll](http://www.vv.ll)

However, the Department has withheld information that is exempt from disclosure by law, as follows:

- We redacted Social Security Numbers, home addresses, email addresses, and telephone numbers from the records that we have provided. This information is exempt from disclosure under 65 P.S. § 67.708(b)(6).

**I agree with this exemption from disclosure.**

- We did not provide employment applications, resumes or EPRs of individuals not hired by the agency as requested in paragraph 5 of your request. This information is exempt from disclosure under 65 P.S. § 67.708(b)(7). We further did not provide "notes, written evaluations, and grading/scoring notes of each of the interviewees," or the "interview questions that were posed to each interviewee" as requested in paragraphs 1 and 2 of your request. This information is exempt from disclosure under 65 P.S. §§ 67.708(b)(7), (b)(10), (b)(12). Similarly, we did not provide "an original document related to or reflects the scoring criteria, notes and process for the interviews referenced in paragraph 1" as requested in paragraph 4 of your request. This information is exempt from disclosure under 65 P.S. §§ 67.708B(B)(7), (b)(10).

**Nothing in 65 P.S. § 67.708(b)(7) the release of the requested information is**

5.

applicable as the request is not restricted in (B) (7) (i), (iii), (iv), (v), (vi) (vii), (viii), and (ix). (B) (7) (iii) does not apply as the request is not covered by a collective bargaining agreement as the requested information of "notes, written evaluations, and grading/scoring notes of each of the interviewees," and the "interview questions that were posed to each interviewee" are not covered by a collective bargaining agreement as the interview was conducted for a Manager I position that is not covered under a union negotiated labor agreement. Also no other points apply to restrict disclosure under 65 P.S. § 67.708(b)(7) (i) (iv), (v), (vi), (vii), (viii), and (ix). Nothing under 65 P.S. § 67.708 (B) (10) is applicable as it addresses disclosing the requested records as this section appears to relate to budget recommendations, legislative amendments, and legislative proposals, open meeting, requesting Commonwealth funds, public opinion surveys, trade secrets, donations and donors, unpublished lecture notes. 65 P.S. § 67.708 (B) (12) does not appear to be applicable to deny the disclosure as this part pertains to working papers and notes taken for an officials or employees own personal use. The requested interview Factors and Rating forms and notes are not personal records.

- We did not provide EPRs of the individual hired by the agency. This information is exempt from disclosure under 65 P.S. § 67.708(b)(7).  
All other further research I am in agreement with this der lat.

- We did not provide "the dates all three interviewers attended the . . . interview and selection training for managers and supervisors." We further did not provide "information as to how the interview panel was selected and who determined the interview panel members," nor did we provide "an explanation as to why a representative of the EEOC was not present for this particular interview." Under the RTKL, agencies are not required to answer questions posed in RTKL requests, but only to provide public records, See 65 P.S. § 67.703, *DIPerna v. Churchill Borough*, OOR No. AP 2009-0112 and *Cohen v. Pennsylvania Department of Labor and Industry*, OOR No. AP 2009-0099. As this portion of your RTKL request seeks answers to questions, rather than public records, it is denied.

Pertaining to the above paragraph nothing appears to prevent the disclosure of "the dates all three interviewers attended the . . . interview and selection training for managers and supervisors." This training is an L&I training program to prepare managers and supervisors to "...ensure a fair and equitable selection process" per the Office of Equal Opportunity Information Bulletin, No. 02-4 Amended. This information is requested to determine if the interviewers were properly trained to "...ensure a fair and equitable selection process."

I will amend my request from supplying "...information as to how the interview panel was selected and who determined the interview panel members." My request is amended to ask for the public record that determines the procedure and policy for choosing interview panels in the Department of Labor and Industry. This is important in light of having fair and equitable interviewers assigned to interview situations. Also of import is that one of the interviewers (Ms. Denise Varchimac, Director, BURS) on the subject panel sat on the interview panel of SCSC Appeal No. 26228 which was in the appeal process during the interviewing of the position noted in SCSC Appeal No. 25608.

- We did not provide a copy of the policy/procedure of when and when not an EEOC representative participates in interviews because the Department does not have such a record in its possession, custody or control. 65 P.S. § 67.705.

6.

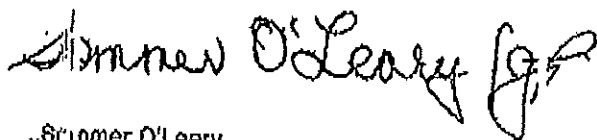
**I'm in agreement with the Agency response in this request.**

With regard to the records that were not produced and also with regard to the fees required for production of the records to which access was granted, you have a right to appeal this response. In writing to Terry Mutchler, Executive Director, Office of Open Records (OOR), Commonwealth Keystone Building, 400 North Street, 4<sup>th</sup> Floor, Harrisburg, Pennsylvania 17100. If you choose to file an appeal you must do so within 15 business days of the mailing date of this response and send to the OOR:

- 1) this response;
- 2) your request and
- 3) the reasons: why you think the record is public (a statement of the grounds you assert for the requested record being a public record); and why you think the agency is wrong in its reasons for saying that the record is not public (a statement that addresses every ground stated by the agency for this denial). If the agency gave several reasons why the record is not public, state which ones you think were wrong.

Also, the OOR has an appeal form available on the OOR web site at: <https://www.lead.state.pa.us/public/oor/appealformgeneral.pdf>.

Sincerely,



Stephen O'Leary  
Agency Open Records Officer  
Room 1415 Labor & Industry Building  
P. O. Box #62086

Harrisburg, PA 17108-2065

Attachment

Enclosures

10-114



**pennsylvania**  
OFFICE OF OPEN RECORDS

PA DEPT. OF L & I

JUN 30 2010

RTKL OFFICE

(5)

STANDARD RIGHT-TO-KNOW REQUEST FORM

DATE REQUESTED: June 29, 2010

REQUEST SUBMITTED BY:  E-MAIL  U.S. MAIL  FAX  IN-PERSON

NAME OF REQUESTER: Ronald L. Rudberg

STREET ADDRESS: 524 Blind Lane

CITY/STATE/COUNTY/ZIP(Required): Belle Vernon, PA 15012

TELEPHONE (Optional): 412-427-7495

RECORDS REQUESTED: \*Provide as much specific detail as possible so the agency can identify the information.

RE: Job Interview information for Position No. 115116, Announcement No. 23-407 - BVRB Pittsburgh District Office - Vocational Rehabilitation Manager I.

1. For each interview conducted for the above noted position notes, written evaluations, and grading/scoring notes of each of the interviewees by each interviewer who conducted the interviews.

Continued on next page

DO YOU WANT COPIES?  YES  NO  
DO YOU WANT TO INSPECT THE RECORDS?  YES  NO  
DO YOU WANT CERTIFIED COPIES OF RECORDS?  YES  NO

\*\* PLEASE NOTE: RETAIN A COPY OF THIS REQUEST FOR YOUR FILES \*\*  
\*\* IT IS A REQUIRED DOCUMENT IF YOU WOULD NEED TO FILE AN APPEAL \*\*

FOR AGENCY USE ONLY

RIGHT TO KNOW OFFICER: SOMMER O'LEARY

DATE RECEIVED BY THE AGENCY: 6-30-10

AGENCY FIVE (5) BUSINESS DAY RESPONSE DUE: 7-8-0

\*\*Public bodies may fill anonymous verbal or written requests. If the requester wishes to pursue the relief and remedies provided for in this Act, the request must be in writing. (Sect 702.) Written requests need not include an explanation why information is sought or the intended use of the information unless otherwise required by law. (Section 703.)



9

July 8, 2010

Mr. Ronald L. Rudberg  
524 Blind Lane  
Bellevue, PA 15012

Re: Right to Know Law Request No. 10-111

Dear Mr. Rudberg:

On June 30, 2010, the Department of Labor and Industry (Department) received your attached request for information pursuant to the Pennsylvania Right-To-Know Law, 65 P.S. §§ 67.101, *et seq.* (RTKL). Under the RTKL, a written response to your request is due on or before July 8, 2010.

This is an interim response, not a final response, to your request. Under the provisions of 65 P.S. §67.902(b)(2), you are hereby notified that your request is being reviewed for the reason(s) checked below and this agency will require up to an additional 30 days, i.e., until August 9, 2010, in which to respond to your request.

- X Your request is under legal review which is necessary to determine whether a requested record is a "public record" for purposes of the RTKL.
- X The extent or nature of the request precludes a response within the required time period.

Our final response will include a total for the estimated or actual fees owed, if applicable. We are unable to determine that estimate at this time, due to the reasons for our requiring the extension for our response. If you have any questions regarding this letter, please contact me.

Sincerely,

Somner O'Leary  
Agency Open Records Officer  
Room 1415 Labor & Industry Building  
P.O. Box #62065  
Harrisburg, PA 17106-2065

Attachment



# pennsylvania

DEPARTMENT OF LABOR AND INDUSTRY

Highway Construction

Mr. Ronald R. Rudberg  
2400 Williams  
Bellefonte, PA 16823

Dear Mr. Rudberg:

On June 30, 2010, the Department of Labor and Industry received your application for a license to operate a highway construction business. In addition, you have a passport to work in the United States.

As a result, you are eligible to apply for a license to operate a highway construction business. The application and fee must be submitted to the Department of Labor and Industry, Bureau of Occupational Safety and Health, 2400 Williams, Bellefonte, PA 16823.

The Department of Labor and Industry will review your application and determine if you are eligible to operate a highway construction business. If you are eligible, you will be issued a license to operate a highway construction business. The license will be valid for one year.

If you have any questions, please contact the Department of Labor and Industry at (717) 771-1234.

Thank you for your interest in operating a highway construction business in Pennsylvania.

Sincerely,  
[Signature]

Department of Labor and Industry  
Bureau of Occupational Safety and Health  
2400 Williams  
Bellefonte, PA 16823  
Phone: (717) 771-1234  
Fax: (717) 771-1235  
www.dli.state.pa.us

Mr. Ronald R. Rudberg  
2400 Williams  
Bellefonte, PA 16823

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Sincerely,  
[Signature]

Department of Labor and Industry  
Bureau of Occupational Safety and Health  
2400 Williams  
Bellefonte, PA 16823  
Phone: (717) 771-1234  
Fax: (717) 771-1235  
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Mr. Ronald R. Rudberg  
2400 Williams  
Bellefonte, PA 16823

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Sincerely,  
[Signature]

Department of Labor and Industry  
Bureau of Occupational Safety and Health  
2400 Williams  
Bellefonte, PA 16823  
Phone: (717) 771-1234  
Fax: (717) 771-1235  
www.dli.state.pa.us

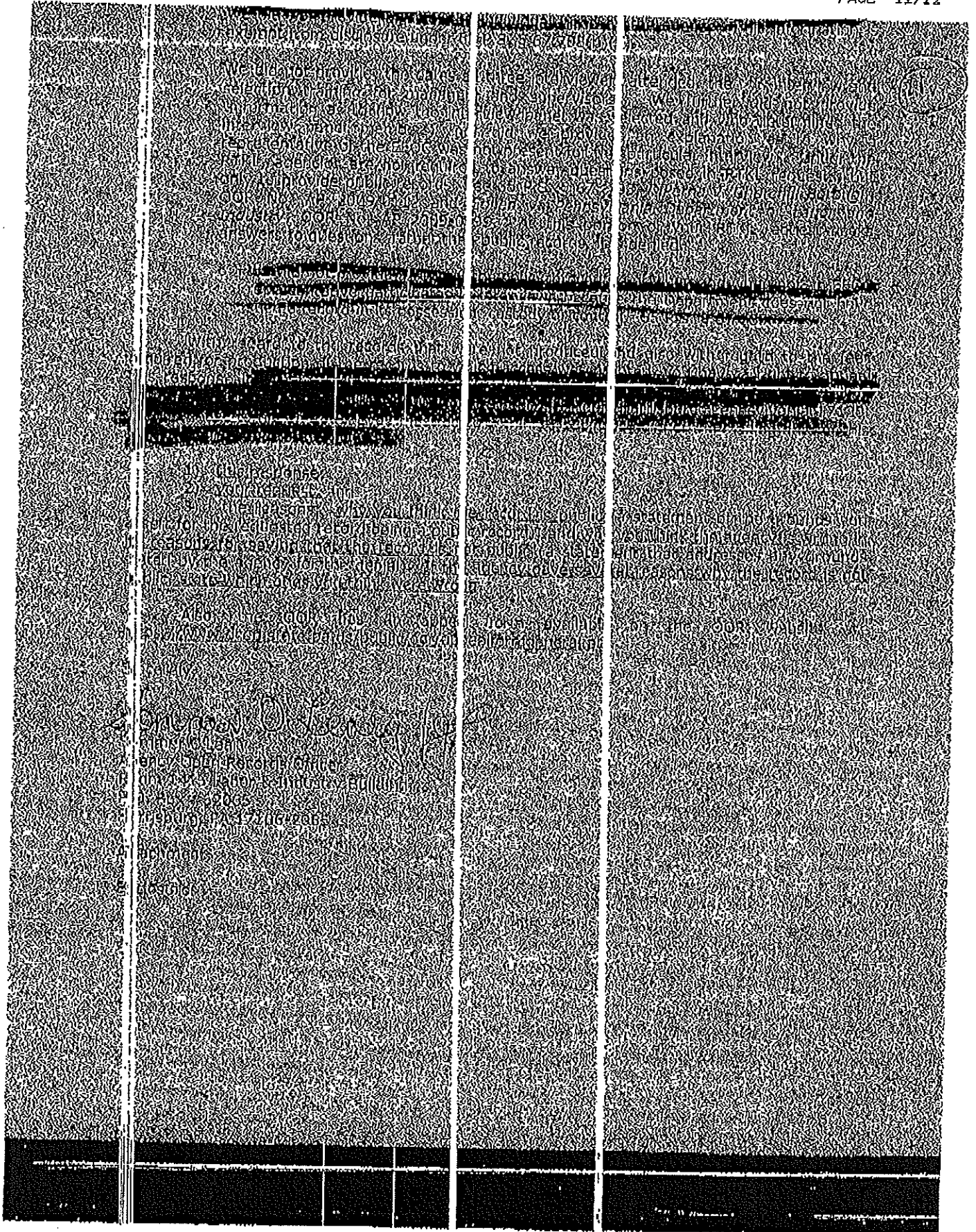
Mr. Ronald R. Rudberg  
2400 Williams  
Bellefonte, PA 16823



Mr. Ronald R. Rudberg  
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Bellefonte, PA 16823

Mr. Ronald R. Rudberg  
2400 Williams  
Bellefonte, PA 16823

Mr. Ronald R. Rudberg  
2400 Williams  
Bellefonte, PA 16823



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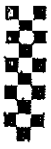
Page 2. RTK request Re: Interview for Position Number 185116, Announcement Number 23-407

The appellant contends the interviewers did not follow the Department of Labor & Industry, Office of Equal Opportunity Interview and Selection Guidelines. The notes and written criteria/evaluations/scorings from this interview will bear on this issue and appeal. Additionally, the notes and evaluations/scorings of the interviewee, including the interview of the successful candidate, are relevant to the question of fairness and impartiality of the process.

- i. For each interview referenced in paragraph 1 above, the interview questions that were posed to each interviewee.

The appellant contends that the questions posed during the interview were not reasonably designed to identify the skills and qualifications of each applicant relative to the essential functions of the position. The list of questions asked by the interviewers is relevant to this issue, in that production of the list of questions will permit an examination of whether the questions were directed to identify the skills, knowledge, abilities, and qualifications of the applicants for the essential functions of the position.

- i. The Equal Employment Review Certificate (EERC) Form ST-433 for the Position Number 185116 herein referenced interviews.
- j. Any document related to or reflects the scoring criteria, notes and process for the interviews referenced in paragraph 1 above.
- k. For all interviewees, copies of their SC5 applications submitted for position number 185116. Additionally, all interviewee resumes, Employee Performance Reviews, (EPR's) and any other materials submitted for the above referenced interviews.
- ii. The dates all three interviewers attended the Department of Labor & Industry Interview and Selection Training for managers and supervisors.
- iii. Information as to how the interview panel was selected and who determined the interview panel members.
- iv. An explanation as to why a representative of the EEOC was not present for this particular interview.
- v. A copy of the policy/procedure of when and when not an EEOC representative participates in interviews.



1.

**Ronald L. Rudberg**  
 Phone: 412-427-7495  
 FAX: 724-243-3181  
 Address: 9 Columbus St., Belle Vernon, PA 15012

# FAX

ATTN: Mr. Terry Mutchler, Executive Director, Office of Open Records

DATE: August 23, 2010

FAX: 717-425-5343

FROM: Ronald L. Rudberg

PHONE: H - 724-243-3181, C - 412-427-7495

RE: Appeal of RTK request (Right to Know Law Request No. 10-114)

MESSAGE: Please find my appeal notice to the above including a Table of Contents for your convenience.

This fax transmission is intended only for the use of the individual or entity that it is addressed to, and may contain information that is privileged, confidential, and exempt from disclosure under applicable laws (including 45 CFR, Parts 160 & 164, Standards for Privacy of Individually Identifiable Health Information; and 42 CFR, Part 2, Confidentiality for Alcohol and Drug Abuse Patient Records and all applicable state laws). The Federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patients.

If the reader of this message is not the intended recipient, or is the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this email transmission in error, please notify the sending party immediately. Thank you for your courtesy and consideration for confidentiality and security.

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- Page 1. Fax Cover Sheet**
- Page 2. OOR Appeal Form**
- Page 3. Concise statement of fact continued**
- Pages 4, 5, & 6. RTK response dated August 9, 2010 from  
AORO with Appellant's responses added in  
BOLDED FONT**
- Page 7 & 8. Original Standard Right-To-Know Request  
Form by Appellant**
- Page 9. Original Right-To-Know response from AORO  
dated July 8, 2010**
- Page 10. Second Right-To-Know response from AORO  
dated August 9, 2010**



**pennsylvania**  
OFFICE OF OPEN RECORDS

August 23, 2010

Ronald Rudberg  
9 Columbus Street  
Belle Vernon, PA 15012

Sommer O'Leary  
Agency Open Records Officer  
Department of Labor & Industry  
Room 1415, L&I Bldg  
Harrisburg, PA 17106

RE: DOCKET # AP 20100774

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 August 23, 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



October 18, 2010

Thomas P. Howell, Esquire  
Assistant Counsel  
Office of Chief Counsel  
Workers' Compensation Division  
1171 South Cameron Street Room 327  
Harrisburg, PA 17104-2501

RE: Petition for Reconsideration OOR Dkt. AP 2010-0774

Dear Mr. Howell:

We are in receipt of your Petition for Reconsideration dated October 5, 2010 in connection with the Office of Open Records Final Determination in *Ronald Rudberg v. Pennsylvania Department of Labor & Industry*, OOR Dkt. AP 2010-0774. We hereby deny your Petition.

Sincerely,



Nathanael J. Byerly  
Chief Counsel

cc: Terry Mutchler, Executive Director, Office of Open Records  
Ronald Rudberg