

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Angela Couloumbis and Sam Janesch,	:	
Petitioners,	:	
	:	
v.	:	No. _____
	:	
Senate of Pennsylvania,	:	
Respondent.	:	

PETITION FOR REVIEW

Angela Couloumbis and Sam Janesch, investigative reporters for Pennsylvania news outlets *Spotlight PA* and *The Caucus*, petition for review of the final determination of the Senate Appeals Officer (“AO”) partially denying their request for production of records under Pennsylvania’s Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.* In support of their petition, they assert:

Jurisdiction

1. Appellate jurisdiction lies with this Honorable Court pursuant to 65 P.S. § 67.1301(a), 42 Pa.C.S. § 763(a)(2), and Rule 1511 of the Pennsylvania Rules of Appellate Procedure.

Parties

2. Petitioners are investigative reporters Angela Couloumbis and Sam Janesch.

3. Respondent is the Senate of Pennsylvania, a legislative agency subject to the RTKL. 65 P.S. §§ 67.102, 67.303.

Background

4. On October 15, 2021, Petitioners submitted an RTKL request (the “Request”) to the Senate.

5. The Request sought records pertaining to legal work performed by outside law firms or individual lawyers hired or retained by any Senate employee or the Senate.

6. By email dated November 19, 2021, the Senate informed Petitioners that it had granted in part and denied in part the Request.

7. The Senate granted the Request insofar as it produced records responsive to the Request.

8. The Senate denied the Request insofar as it redacted certain information found in the produced records.

9. The Senate asserted that all redactions of the produced records were necessary to protect (a) information subject to the attorney-client privilege, (b) information subject to the attorney work-product privilege, or (c) personal financial information. *See* 65 P.S. §§ 67.305(b)(2), 67.708(b)(6), 67.708(c).

10. On December 14, 2021, Petitioners timely appealed the partial denial of the Request to the Senate AO.

11. The Senate AO is designated by the Senate to receive and determine appeals of the Senate's RTKL decisions. 65 P.S. § 67.503(c)(2)(i). The Senate Secretary and Parliamentarian typically serves as the Senate AO. In this case, the Senate Secretary and Parliamentarian recused herself and referred the case to the Pennsylvania Legislative Reference Bureau; thus, for purposes of this appeal, the Senate AO is an attorney with the Legislative Reference Bureau.

12. In their appeal to the Senate AO, Petitioners challenged the Senate's partial denial of the Request pursuant to the attorney-client privilege and attorney work-product privilege.

13. In their appeal to the Senate AO, Petitioners did not challenge the Senate's partial denial of the request for the purpose of protecting personal financial information.

14. On December 27, 2021, Petitioners learned that the Senate had employed the law firm Kleinbard LLC to represent the Senate for purposes of Petitioners' appeal to the Senate AO.

15. Petitioners requested that Kleinbard LLC withdraw from representing the Senate in this matter because this matter concerns, among other things, public access to information on other work that Kleinbard LLC has performed for the Senate.

16. Kleinbard LLC declined to withdraw its representation of the Senate in this matter.

17. On January 28, 2022, the Senate AO issued a final determination in which it (1) confirmed that Kleinbard LLC was not required to withdraw from representing the Senate in this matter, and (2) affirmed the Senate's partial denial of the Request pursuant to the attorney-client privilege and attorney work-product privilege. A true and correct copy of the Senate AO's final determination is attached as Exhibit A.

Determination for Which Review is Sought

18. Petitioners seek review of the Senate AO's January 28, 2022 determination.

Objections to the Determination

19. The Senate AO erred in concluding that the Senate's partial denial of the Request pursuant to the attorney-client privilege and attorney work-product privilege was proper under the RTKL and the Supreme Court of Pennsylvania's construction thereof. *See, e.g., Levy v. Senate of Pennsylvania*, 619 Pa. 586 65 A.3d 361, 370 (2013). The Senate AO further erred in concluding that Kleinbard LLC was not required to withdraw from representing the Senate in this matter.

Relief Sought

WHEREFORE, Petitioners respectfully request that this Honorable Court:

- reverse the AO’s determination of January 28, 2022; *and*
- order that all redactions concealing information not strictly subject to the attorney-client privilege or work-product privilege be lifted from the responsive records; *and*
- order that the Senate provide particularized justifications for all redactions that remain in the responsive records, including by, at minimum, specifying the privilege that purportedly exempts each piece of redacted information from disclosure; *and*
- order that Kleinbard LLC withdraw from representing the Senate in this matter.

Respectfully submitted,

Dated: February 25, 2022

/s/ Paula Knudsen Burke

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CERTIFICATE OF COMPLIANCE WITH PUBLIC ACCESS POLICY

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

Dated: February 25, 2022

/s/ Paula Knudsen Burke

Paula Knudsen Burke

PA ID: 87607

PROOF OF SERVICE

I hereby certify that I have served the foregoing document, Petition for Review, upon the persons listed on the date and in the manner indicated below, which satisfies the requirements of Pa. R.A.P. 121:

Notification by email and first class mail addressed as follows:

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