

No. 1071 C.D. 2023

**IN THE COMMONWEALTH COURT
OF PENNSYLVANIA**

ANGELA COULOUMBIS,

Petitioner-Appellant,

v.

SENATE OF PENNSYLVANIA,

Respondent-Appellee.

On Appeal from a Final Determination of the
Legislative Reference Bureau, entered on Aug. 25, 2023,
LRB Appeal 2023-01, Senate RTKL Appeal 01-2023

REPRODUCED RECORD

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Counsel for Appellant

Date: Feb. 9, 2024

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**CERTIFICATE OF COMPLIANCE WITH PUBLIC ACCESS
POLICY**

I certify, pursuant to Pa. R.A.P. 127, that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Date: Feb. 9, 2024

/s/ Jim Davy

Jim Davy (No. 321631)

ALL RISE TRIAL & APPELLATE

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CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing document upon the persons and in the manner indicated below, which service satisfies the requirements of Pa. R.A.P. 121 and 2186:

By Email and PACFile

Kristin M. Kayer
Designated Appeals Officer, Senate of Pennsylvania
641 Main Capitol
Harrisburg, PA 17120
kkayer@palrb.us

Karl S. Myers
Counsel to Senate of Pennsylvania
1500 Market St., East Tower, Suite 1800
Philadelphia, PA 19102
Karl.myers@stevenslee.com

Date: Feb. 9, 2024

/s/ Jim Davy
Jim Davy (No. 321631)
ALL RISE TRIAL & APPELLATE
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Philadelphia, PA 19125
(215) 792-3579
jimdavy@allriselaw.org

Requester's Request



SENATE of PENNSYLVANIA RIGHT-TO-KNOW RECORDS REQUEST

Room 104 North Office Building
Harrisburg, PA 17120-3052
Phone: 717-787-7163
Fax: 717-783-4296
RTKofficer@occ.pasen.gov
www.pasen.gov

Request Date: 07/20/2023

REQUESTER INFORMATION:

Name (required): Angela Coulombs/Spotlight PA

Street Address (required): Spotlight PA P.O. Box 11728

City, State, Zip (required): Harrisburg, PA, 17108

E-mail: acoulombs@spotlightpa.org (please deliver information here)

Telephone: _____

Cell phone: 717-350-3339 (please contact me here)

How to contact you:

- E-mail
 Phone
 Cell Phone

How to deliver information:

- E-mail
 Mail
 Pickup

INFORMATION REQUESTED:

List and describe the legislative record(s) requested in specific detail:

Requester seeks communications between any Senate employee or senator and the lobbyists Megan Crompton, Will Dando, Tommy Johnson, Chris Petrone, Joe Scarnati or Nick Varischetti. The time period for the records sought is 5/15/2021 through the date of this request. The topic of the request is any communications regarding these lobbyists' client, the City of DuBois (Dept of State lobbying ID P66779).

Key words for search include: grant, money, DuBois, Suplizio, DCED (or Department of Community and Economic Development).

Requester notes that although Sec. 708(b)(29) of the Right to Know Law exempts from disclosure correspondence that would identify a person seeking assistance or constituent services, Section 29 does not apply to correspondence between a member of the General Assembly and a principal or lobbyist under 65 Pa.C.S. Ch. 13A (relating to lobbying disclosure).

The records described above are between Senate employees/Senators and a lobbyist under 65 Pa.C.S. Ch. 13A. The lobbyists named are all registered with the Department of State under the lobbying firm Allegheny Strategy Partners. Their lobbying IDs are: Crompton (L32049), Dando (L42615), Johnson (L66513), Petrone (L66749), Scarnati (L66511) and Varischetti (L66510).

Please provide the information in electronic format.

Written requests need not include an explanation why information is being sought or the intended use of the information unless otherwise required by law (Section 703).

Open Records Office Use Only

Handled By	Date Received	Request #	5 day Response Date

Senate's Denial

7/26/23 6:10 PM

Philadelphia Inquirer Mail - RTK Request RTK-2023-27 Angela Couloumbis - Response



Couloumbis, Angela <acouloumbis@spotlightpa.org>

RTK Request RTK-2023-27 Angela Couloumbis - Response

RTK Officer (Pennsylvania State Senate) <PASen@justfoia.com>
Reply-To: c8cd8d0b-e6fb-4d6d-859b-91e3063e077b.PASen@request.justfoia.com
To: acouloumbis@spotlightpa.org
Cc: rtkofficer@occ.pasen.gov

Wed, Jul 26, 2023 at 10:59 AM

Dear Ms. Couloumbis,

I am responding to your recent RTK request, which was received on Thursday July 20, 2023, in which you requested and noted the following:

"Requester seeks communications between any Senate employee or senator and the lobbyists Megan Crompton, Will Dando, Tommy Johnson, Chris Petrone, Joe Scarnati or Nick Varischetti. The time period for the records sought is 5/15/2021 through the date of this request. The topic of the request is any communications regarding these lobbyists' client, the City of DuBois (Dept of State lobbying ID P66779). Key words for search include: grant, money, DuBois, Suplizio, DCED (or Department of Community and Economic Development).

Requester notes that although Sec. 708(b)(29) of the Right to Know Law exempts from disclosure correspondence that would identify a person seeking assistance or constituent services, Section 29 does not apply to correspondence between a member of the General Assembly and a principal or lobbyist under 65 Pa.C.S. Ch. 13A (relating to lobbying disclosure). The records described above are between Senate employees/Senators and a lobbyist under 65 Pa.C.S. Ch. 13A. The lobbyists named are all registered with the Department of State under the lobbying firm Allegheny Strategy Partners. Their lobbying IDs are: Crompton (L32049), Dandon (L42615), Johnson (L66513), Petrone (L66749), Scarnati (L66511) and Varischetti (L66510). Please provide the information in electronic format."

In reviewing your request, the following sections of the Right-to-Know Law (RTKL), 65 P.S. § 67.101 et. seq., are relevant:

Section 303(a) of the RTKL provides that "[a] legislative agency shall provide legislative records in accordance with this act." 65 P.S. § 67.303(a). Section 102 defines "legislative agency" to include the Senate. 65 P.S. § 67.102.

Section 305(b) provides that "A legislative record in the possession of a legislative agency . . . shall be presumed to be available in accordance with this act. The presumption shall not apply if: (1) the record is exempt under section 708; (2) the record is protected by a privilege; or (3) the record is exempt from disclosure under any other Federal or State law, regulation or judicial order or decree." 65 P.S. § 67.305(b). Accordingly, if the record requested is not considered a "Legislative record" under the RTKL, it is not presumed to be available to the public.

Section 102 of the Act provides the following definition of "legislative record": "Any of the following relating to a legislative agency or a standing committee, subcommittee or conference committee of a legislative agency:

1. A financial record.
2. A bill or resolution that has been introduced and amendments offered thereto in committee or in legislative session, including resolutions to adopt or amend the rules of a chamber.
3. Fiscal notes.
4. A co-sponsorship memorandum.
5. The journal of a chamber
6. The minutes of, record of attendance of members at a public hearing or a public committee meeting and all recorded votes taken in a public committee meeting.
7. The transcript of a public hearing when available.
8. Executive nomination calendars.
9. The rules of a chamber.
10. A record of all recorded votes taken in a legislative session.
11. Any administrative staff manuals or written policies.
12. An audit report prepared pursuant to the act of June 30, 1970 (P.L. 442, No. 151) entitled, "An act implementing the provisions of Article VIII, section 10 of the Constitution of Pennsylvania, by designating the Commonwealth officers who shall be charged with the function of auditing the financial transactions after the occurrence thereof of the Legislative and Judicial branches of the government of the Commonwealth, establishing a Legislative Audit Advisory Commission, and imposing certain powers and duties on such commission."
13. Final or annual reports required by law to be submitted to the General Assembly.

<https://mail.google.com/mail/u/0/?ik=e287bb00d0&view=pt&search=all&permmsgid=msg-f:1772495670857363674&siml=ncv-f:1772495670857363674>

002a

14. Legislative Budget and Finance Committee reports.
15. Daily legislative session calendars and marked calendars.
16. A record communicating to an agency the official appointment of a legislative appointee.
17. A record communicating to the appointing authority the resignation of a legislative appointee.
18. Proposed regulations, final-form regulations and final-omitted regulations submitted to a legislative agency.
19. The results of public opinion surveys, polls, focus groups, marketing research or similar efforts designed to measure public opinion funded by a legislative agency." 65 P.S. § 67.102.

Section 901 provides the general rule for responding to RTK requests.

Section 901. General rule.

Upon receipt of a written request for access to a record, an agency shall make a good faith effort to determine if the record requested is a public record, legislative record or financial record and whether the agency has possession, custody or control of the identified record, and to respond as promptly as possible under the circumstances existing at the time of the request. All applicable fees shall be paid in order to receive access to the record requested. 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. If the agency fails to send the response within five business days of receipt of the written request for access, the written request for access shall be deemed denied. 65 P.S. § 67.901.

The request is hereby denied as the records requested, if any exist, are not included within the definition of legislative record. Records that do not fall within the definition of legislative record are not covered by the presumption of accessibility under the RTKL. Please see the following final determinations, **Senate RTK Appeals: 01-2009 & 02-2009 Scoffaro** (Correspondence); **02-2012, Carollo** (Communications); **01-2013, Miller** (E-Mails); and **02-2016 Peillington** (E-Mails) where the denial of access to records that do not fall within the definition of legislative record have been appealed and the denials have been upheld. As the request has been denied, please find below information regarding the appeal process.

Right to Appeal

In accordance with Section 903 of the Right-to-Know Law, you are hereby notified of your rights to appeal a denial under Chapter 11 of the Act. 65 P.S. §67.903.

The Senate has appointed the Secretary of the Senate, to serve as Appeals Officer. 65 P.S. §67.503. The Appeals Officer can be contacted as follows:

Michael Gerdes
Senate Appeals Officer
Room 462, State Capitol Building
Harrisburg, PA 17120-3053
Telephone: (717) 787-5920
RTKAppeals@os.pasen.gov

Please be sure to include your complete contact information with any appeal, a copy of the original request and this denial.

Chapter 11 of the law governs the appeals process and provides for the following:

1. An appeal must be filed with the Senate's Appeals Officer within 15 business days of the mailing date of this response.
2. An appeal shall state the grounds upon which the requester asserts that the record is a legislative record, which includes a financial record and shall address any grounds stated by the agency for delaying or denying the request. 65 P.S. §67.1101(a)(1). An appeal must also be filed in accordance with the provisions of **Chapter 7 of Title 104** (Senate of Pennsylvania) of the Pennsylvania Code.
3. The Appeals Officer is required to make a final determination, in writing, within 30 days of receiving an appeal. Prior to making the final determination, the Appeals Officer may hold a hearing.

If you have any questions, please call Michael Sarfert of my staff or email me at RTKofficer@oc.pasen.gov.

Sincerely,

Donetta M. D'Innocenzo, Open Records Officer
Senate of Pennsylvania
Room 104 North Office Building | Harrisburg, PA 17120-3052
Office: 717.787.7163 Fax: 717.783.4296
RTKofficer@oc.pasen.gov | www.pasen.gov
Link to Senate RTKL website - <http://www.pasen.gov/RTKL/index.cfm>

7/26/23, 6:10 PM

Philadelphia Inquirer Mail - RTK Request RTK-2023-27 Angela Couloumbis - Response

Privileged Communication: The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material and may be subject to attorney client privilege, and exempt from disclosure under applicable law. Any review, retransmission, dissemination, copying or other use of, or taking of any action in reliance upon, this communication by persons or entities other than the intended recipient is prohibited. If you receive this in error, please contact the sender by reply email and delete the material from any computer. It is the responsibility of the recipient of this message to protect against harmful content.

Requester's Appeal

Gerdes, Michael

From: Couloumbis, Angela <acouloumbis@spotlightpa.org>
Sent: Thursday, July 27, 2023 11:28 AM
To: RTKAppeals
Cc: RTKofficer@occ.pasen.gov
Subject: Appeal of RTK Request RTK-2023-27
Attachments: SenateRTK.pdf; Senate Denial .pdf

**** External Email **** This email has come from an external source. Please use caution when opening attachments and clicking on links as they could contain malicious items.

**** External Email ****

This email has come from an external source. Please use caution when opening attachments and clicking on links as they could contain malicious items.

TO: Senate Appeals Officer Michael Gerdes
FROM: Angela Couloumbis, Spotlight PA

Dear Mr. Gerdes,

I am writing to appeal the Pa. Senate Open Records officer's denial of a Right to Know request that I submitted on Thursday, July 20, 2023. (I am attaching copies of the request and the denial letter).

My request sought communications between Senate employees or senators and lobbyists with Allegheny Strategy Partners regarding the city of DuBois for the time period covering 5/21/2021 to the present.

The Senate's Open Records officer responded on Wednesday, July 26, 2023, denying the request, stating that the records requested, if any exist, are not included within the definition of a legislative record.

I disagree.

The definition of "legislative record" within Section 102 of the Right to Know Law does not contain the word "email." However, there are nineteen categories of records that are considered "legislative records" and within those, there are certainly some emails that may be subject to disclosure.

For instance, a financial record (1) may be contained within an email. Financial records are the most broadly available category of records across all branches of government, including the legislature. If there are emails in the requested subject area concerning the expenditure of taxpayer money, they should be released.

Similarly, if emails in the requested subject area make offers of taxpayer money, they should also be released (the definition of "agency" includes a legislative agency and the definition of "financial record" includes an agency's receipt or disbursement of money, equipment, etc).

In addition, a co-sponsorship memo (4) could be contained within an email. For instance, a lobbyist could send an email with feedback about a co-sponsorship memo. "Legislative appointee" (16 and 17) could be contained within an email and exchanged between parties in the requested records. "Proposed regulations, etc" (18) may have been submitted by a lobbyist to a legislative agency regarding the requested subject area. "Public opinion" (19) about a certain subject could be contained within an email regarding the requested subject area.

In the Senate's denial letter of July 26, 2023, by simply stating that "emails" do not fall into the definition of a "legislative record," without any supporting attestation demonstrating a good faith search by the Senate using the requested search terms, the Senate has failed to uphold its duties under Sect. 901. The Senate Appeals

Officer should require the Senate to perform a good faith search and submit a detailed attestation and exemption log about what records may exist, and to explain with particularity which exemptions apply to specific records.

Finally, in terms of a plain language reading of the Right to Know Law, the legislative intent behind Sec. 708(b)(29) is quite clear. The legislature intended for communications between a constituent and a member of the General Assembly to be exempt.

Notably, however, the exception to the exemption clearly states that "This paragraph **shall not** apply to correspondence between a member of the General Assembly and a principal or lobbyist under 65 Pa.C.S. Ch. 13A (relating to lobbying disclosure)." (emphasis added).

"Correspondence" is not defined in Sec. 102 of the Right to Know Law, but a basic and widely understood meaning of the noun "correspondence" is "communication by letters or email." Merriam-Webster Dictionary (2023).

Thank you for your consideration,
Angela Coulombis
Spotlight PA
acoulombis@spotlightpa.org
717-350-3339

Senate Appeals Officer Recusal Letter

MICHAEL GERDES
SECRETARY OF THE SENATE

462 MAIN CAPITOL
HARRISBURG, PA 17120-3053
717-787-5920
FAX: 717-772-2344
E-MAIL: mgerdes@sos.pasen.gov



Senate of Pennsylvania

July 28, 2023

Donetta D’Innocenzo
Open Records Officer
Senate of Pennsylvania
104 North Office Building
Harrisburg, PA 17120
RTKofficer@occ.pasen.gov
VIA EMAIL

Angela Couloumbis
Spotlight PA
P.O. Box 11728
Harrisburg, PA 17108
acouloumbis@spotlightpa.org
VIA EMAIL

**Re: Senate RTK Appeal 01-2023
Appeal of RTK Request RTK-2023-27 – Couloumbis**

Dear Ms. D’Innocenzo and Ms. Couloumbis:

Please be advised that I am in receipt of the above-captioned Right-to-Know Law appeal, which appeal was emailed to me yesterday, and which is attached hereto.

Please be further advised that I am recusing myself from resolving this appeal. Although I believe I could dutifully handle this appeal, the Legislative Reference Bureau (LRB) will handle this appeal. To that end, via separate correspondence I have forwarded the record to-date to Mr. DeLiberato, Director of the LRB.

Sincerely,

A handwritten signature in black ink that reads "Michael Gerdes".

MICHAEL GERDES
Senate Appeals Officer

CC: Vincent DeLiberato, Director
Legislative Reference Bureau
VIA EMAIL

LRB Appeals Officer Assignment Letter

VINCENT C. DELIBERATO, JR
DIRECTOR



STEPHANIE F. LATIMORE
ASSISTANT DIRECTOR

MICHAEL PAVLICK
ASSISTANT DIRECTOR

LEGISLATIVE REFERENCE BUREAU
501 NORTH 3RD STREET
ROOM 641 MAIN CAPITOL BUILDING
HARRISBURG, PA 17120-0033

July 28, 2023

Donetta D'Innocenzo
Open Records Officer
Senate of Pennsylvania
104 North Office Building
Harrisburg, PA 17120
VIA EMAIL

Angela Couloumbis
Spotlight PA
PO Box 11728
Harrisburg, PA 17108
VIA EMAIL

RE: Senate RTK Appeal 01-2023
Appeal of RTK Request RTK-2023-27-Couloumbis

Dear Ms. D'Innocenzo and Ms. Couloumbis:

Due to the recusal of the Secretary of the Senate, the subject appeal will be handled in the Legislative Reference Bureau by Kristin M. Kayer, Esq. She will be assisted by Suellen M. Wolfe, Esq. Both individuals are Bureau attorneys.

Attorney Kayer can be reached electronically at kkayer@palrb.us and by United States mail at 501 North Third Street, Room 641 Main Capitol Building, Harrisburg PA 17120-0033. Please copy all parties in any correspondence. If a telephone call is necessary, Attorney Kayer will initiate it.

Respectfully,

Vincent C. DeLiberato, Jr. / SFR
Vincent C. DeLiberato, Jr.
Director

CC: Michael Gerdes
Kristin M. Kayer
Suellen M. Wolfe
VIA EMAIL

008a

Submission Schedule



LEGISLATIVE REFERENCE BUREAU

ROOM 641 MAIN CAPITOL BUILDING
HARRISBURG, PENNSYLVANIA 17120-0033

July 31, 2023

Donna D'Innocenzo
Open Records Officer
Senate of Pennsylvania
104 North Office Building
Harrisburg, PA 17120
VIA U.S. MAIL AND EMAIL

Angela Coulombis
Spotlight PA
PO Box 11728
Harrisburg, PA 17108
VIA U.S. MAIL AND EMAIL

**RE: LRB RTK Appeal 2023-01
(Senate RTK Appeal 01-2023)**

Dear Ms. D'Innocenzo and Ms. Coulombis:

This letter establishes the submission schedule for documents in the above-captioned RTK appeal. As you know, Ms. Coulombis has appealed a denial of access to certain records. The bureau received the appeal on Friday, July 28, 2023, from the Senate of Pennsylvania.

Ms. D'Innocenzo, as the Senate of Pennsylvania's Open Records Officer, may electronically file a memorandum of law and any other evidentiary documentation in support of her denial of access to me by the close of business Monday, August 7, 2023. A copy of any and all submissions shall also be served on Ms. Coulombis.

Ms. Coulombis may submit a memorandum of law or any other evidentiary documentation in support of her appeal to me by close of business Monday, August 14, 2023. A copy of any and all submissions shall also be served on Ms. D'Innocenzo.

If this submission schedule creates a hardship on either party, I will consider a modification of the designated dates. I anticipate this appeal will be resolved by August 28, 2023. Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Kristin M. Kayer".

Kristin M. Kayer
Appeals Officer

Modification of Submission Schedule



LEGISLATIVE REFERENCE BUREAU

ROOM 641 MAIN CAPITOL BUILDING
HARRISBURG, PENNSYLVANIA 17120-0033

August 4, 2023

**RE: LRB RTKL Appeal 2023-01
(Senate RTK Appeal No. 02-2023)
REVISED**

Karl S. Myers
Stevens & Lee
1500 Market Street
East Tower, Suite 1800
Philadelphia, PA 19102
VIA U.S. MAIL & EMAIL

Angela Coulombis
Spotlight PA
PO Box 11728
Harrisburg, Pa. 17108
VIA U.S. MAIL & EMAIL

Donna D'Innocenzo
Open Records Officer
Senate of Pennsylvania
104 North Office Building
Harrisburg, PA 17120
VIA U.S. MAIL & EMAIL

Dear Mr. Myers, Ms. Coulombis and Ms. D'Innocenzo:

Mr. Myers, appointed counsel for the Senate, requests a schedule modification and filing extension for the above captioned appeal. Accordingly, the Senate's deadline is extended to Wednesday, August 9, 2023 to file documents for the Senate. Ms. Coulombis's deadline to file documents is extended to Friday, August 18, 2023.

Sincerely,

A handwritten signature in black ink, appearing to read "Suellen M. Wolfe".

Suellen M. Wolfe
Associate Counsel,
for Appeals Officer Kristin Kayer

Senate's Brief Stevens & Lee

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August 9, 2023

By Email

Kristin M. Kayer, Esquire
Appeals Officer
Legislative Reference Bureau
501 N. Third Street
641 Main Capitol
Harrisburg, PA 17120-0033
kkayer@palrb.us

**Re: *Couloumbis v. Senate of Pennsylvania*
LRB Appeal 2023-01
(Senate RTK Appeal 01-2023; Senate RTK Request 2023-27)**

Dear Appeals Officer Kayer:

We represent the Senate of Pennsylvania and its Open Records Officer in the above matter. We write to make the Senate's timely merits submission in response to the requester's appeal. For the reasons below, the Senate requests denial of the appeal and an order that the Senate need not take further action on the request.

I. Background

The requester, Angela Couloumbis, submitted a Right-to-Know Law request to the Senate on July 20, 2023. She requested "communications between any Senate employee or senator and the lobbyists Megan Crompton, Will Dando, Tommy Johnson, Chris Petrone, Joe Scarnati or Nick Varischetti. The time period for the records sought is 5/15/2021 through the

Kristin M. Kayer, Esquire
August 9, 2023
Page 2

date of this request. The topic of the request is any communications regarding these lobbyists' client, the City of DuBois (Dept of State lobbying ID P66779)."

The Senate timely issued its final response on July 26, 2023, denying the request. Requester appealed on July 27, 2023. The Senate's Appeals Officer recused and referred the matter to the Legislative Reference Bureau. The Bureau assigned the appeal to Appeals Officer Kristin M. Kayer, Esquire, to be assisted by Suellen M. Wolf, Esquire.

The Senate was directed to make a written submission in support of its position by August 9, 2023. It now timely submits this letter brief and requests denial of the appeal.

II. Argument

A. The appeal should be denied because communications are not "legislative records."

This matter arises under the Right-to-Know Law, 65 P.S. §67.101 to §67.3104. The starting point is the Law's plain language, as the "clearest indication of legislative intent is generally the plain language of a statute." *Off. of Governor v. Donahue*, 59 A.3d 1165, 1168 (Pa. Commw. 2013), *aff'd*, 98 A.3d 1223, 1237-38 (Pa. 2014). "When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." *Levy v. Senate of Pa.*, 65 A.3d 361, 380 (Pa. 2013) (quoting 1 Pa.C.S. §1921(b)). Thus, where statutory language is unambiguous, there is "no need to resort to other indicia of legislative intent." *Donahue*, 59 A.3d at 1168-69.

The Right-to-Know Law language here is clear and unambiguous. The Senate of Pennsylvania is a “legislative agency.” 65 P.S. §67.102. A “legislative agency” is presumptively to provide requested “legislative records.” *Id.*, §67.303(a). But a “legislative record” must not be disclosed if exempt under the Law, protected by a privilege, or shielded by other law, regulation, or judicial order. *Id.*, §67.305(b).

The Law defines “legislative records” as 19 specific kinds of items:

- (1) A financial record.
- (2) A bill or resolution
- (3) Fiscal notes.
- (4) A cosponsorship memorandum.
- (5) The journal of a chamber.
- (6) The minutes of, record of attendance of members at a public hearing or a public committee meeting and all recorded votes taken in a public committee meeting.
- (7) The transcript of a public hearing when available.
- (8) Executive nomination calendars.
- (9) The rules of a chamber.
- (10) A record of all recorded votes taken in a legislative session.
- (11) Any administrative staff manuals or written policies.
- (12) An audit report
- (13) Final or annual reports required by law to be submitted to the General Assembly.
- (14) Legislative Budget and Finance Committee reports.
- (15) Daily legislative session calendars and marked calendars.

- (16) A record communicating to an agency the official appointment of a legislative appointee.
- (17) A record communicating to the appointing authority the resignation of a legislative appointee.
- (18) Proposed regulations, final-form regulations and final-omitted regulations submitted to a legislative agency.
- (19) The results of public opinion surveys, polls, focus groups, marketing research or similar efforts designed to measure public opinion funded by a legislative agency.

Id., §67.102.

In short, the plain language of the Law presumptively requires the Senate to produce the above 19 types of items, but it is not required to produce anything else.

Here, the request is for communications. Communications are not on the above list. The Law does not require the Senate to produce them. Thus, it correctly denied the request. *See Appeal of Carollo*, June 18, 2012 (Senate RTK Appeal 02-2012) (Appeals Officer decision denying appeal seeking Senate communications and correspondence); *Appeal of Scolforo*, Feb. 24, 2009 (Senate RTK Appeal 01-2009 & 02-2009) (denying appeal seeking Senate correspondence with lobbyists); *Appeal of Miller*, Jan. 17, 2014 (Senate RTK Appeal 01-2013) (denying appeal seeking Senate email messages); *Appeal of Pellington*, Jan. 20, 2017 (Senate RTK Appeal 02-2016) (same).¹

B. Requester offers no valid reason to sustain her appeal.

Requester offers three reasons to find otherwise, but each lacks merit.

¹ These decisions are publicly available here: www.secretary.pasen.gov/RTKL.cfm.

First, requester concedes the definition of “legislature record” does not include “email,” but contends disclosure is still required because email messages could be located within some of the 19 categories of legislative records. Requester did not ask for any of those 19 categories of items, however. Nor did she ask for email. She asked for communications. Requester cannot change her request now. *See Smith Butz v. Pa. Dep’t of Env’tl. Prot.*, 142 A.3d 941, 945 (Pa. Commw. 2016) (“Once an RTKL request is submitted, a requester is not permitted to expand or modify the request on appeal.”).

Even if requester could alter her request at this stage, then it would lack specificity. Her request is for “communications between any Senate employee or senator” and six lobbyists over a more than 26 month period. Responding would require the Senate to undertake the impossible task of searching across the entire universe of Senate communications for items that might be connected with these 19 categories. Under settled law, such burdensome requests lack sufficient specificity. *See, e.g., Pa. Dept. of Educ. v. Pittsburgh Post-Gazette*, 119 A.3d 1121, 1124 (Pa. Commw. 2015) (holding “all emails” request insufficiently specific); *Mollick v. Township of Worcester*, 32 A.3d 859, 871-72 (Pa. Commw. 2011) (same).

Under settled law, the Senate also did not have to expand the request as requester suggests. The Senate was obliged only to apply the common meaning of the request’s words and phrases. *See Off. of the Dist. Attorney v. Bagwell*, 155 A.3d 1119, 1142-43 (Pa. Commw. 2017) (“In determining whether a request is sufficiently specific, an agency should rely on the common meaning of words and phrases, be mindful of the remedial purpose of the RTKL, and construe the specificity of the request in the context of the request, rather than envisioning everything the

request might conceivably encompass.”). In arguing to the contrary, requester seeks alteration of the plain language of her request and the 19 statutory categories of “legislative records.”

For instance, the Law defines a “financial record” as a document showing an agency’s “receipt or disbursement of funds.” 65 P.S. §67.102. This can include a voucher, purchase order, or executed contract. *Id.* The request here never used any of those words or made even a vague reference to a financial record or Senate expense.

The term “co-sponsorship memorandum” self-evidently encompasses only a memorandum—not any associated materials. Bill sponsors seeking co-sponsors write these memoranda. *See* www.legis.state.pa.us/cfdocs/legis/CSM (public database of co-sponsorship memoranda). Lobbyists and lobbying clients do not issue them. And comments or feedback related to these memoranda (whether sent by email, letter, or other communication) are not themselves co-sponsorship memoranda.

And a “proposed regulation” is a “document intended for promulgation as a regulation.” 71 P.S. §745.3. It is published in the Pennsylvania Bulletin under the Commonwealth Documents Law, 45 P.S. §§1101, *et seq.* Communications related to proposed regulations are not themselves proposed regulations.

Second, requester challenges the sufficiency of the Senate’s denial because, according to requester, the Senate had to submit an attestation of a good faith search under section 901 of the Law. Requester offers no legal support for this contention—nor can she. A governmental response to a request need only provide “specific reasons for the denial.” 65 P.S. §67.903(2). Attestations and other evidence can be submitted later. *See id.*, §67.708, §67.1101, §67.1102; *McGowan v. Pa. Dep’t of Env’tl. Prot.*, 103 A.3d 374, 381 (Pa. Commw. 2014) (the RTKL

charges an “appeals officer with the obligation of determining, in the first instance, whether an agency has met its burden of proof”).

In any event, requester mischaracterizes section 901. It mandates “a good faith effort to determine if the record requested is a ... legislative record.” 65 P.S. §67.901. Here, the Senate made a good faith determination that communications fall outside the definition of a “legislative record.” It was not required to search for and assemble materials that it does not have to disclose under the Law to begin with.

Third, Requester argues for disclosure based on the Law’s exemption 29. That provision excludes the following from disclosure:

Correspondence between a person and a member of the General Assembly and records accompanying the correspondence which would identify a person that requests assistance or constituent services. This paragraph shall not apply to correspondence between a member of the General Assembly and a principal or lobbyist under 65 Pa.C.S. Ch. 13A (relating to lobbying disclosure).

65 P.S. §67.708(b)(29). Requester argues the carve-out for lobbyist correspondence in the second sentence of this exception means that lobbyist correspondence must be produced.

Requester’s argument should be rejected because it turns the analysis on its head. The “preliminary, threshold issue that must be decided before reaching the question of whether any exceptions under Section 708 of the RTKL apply” is whether a document is subject to disclosure at all. *Off. of Governor v. Bari*, 20 A.3d 634, 640 (Pa. Commw. 2011) (emphasis added). The requester has the initial burden to prove a requested piece of information is public and presumptively subject to disclosure. *Id.* Here, requester has not shown, and cannot show, that

communications are presumptively subject to disclosure. They are not on the list of 19 items that make up “legislative records.” The analysis ends there—and does not reach any exception.²

Requester’s contention also should be rejected because, if adopted, it would effectively rewrite the Law to add a 20th category—lobbyist communications—to the definition of “legislative records.” Tribunals may not “add, by interpretation, to a statute, a requirement which the legislature did not see fit to include.” *Summit School v. Dep’t of Educ.*, 108 A.3d 192, 199 (Pa. Commw. 2015); *see also Dep’t of Health v. OOR*, 4 A.3d 803, 812 (Pa. Commw. 2010) (a court may not “insert a word the legislature failed to supply into a statute”).

This is not the first time a requester tried to use exemption 29 to create a 20th category of legislative records. In *Appeal of Scolforo*, Feb. 24, 2009 (Senate RTK Appeal 01-2009 & 02-2009), the requester asserted that exemption 29 “should be read to supplement and expand the definition of legislative records.” *Id.* at 5. The Appeals Officer rejected this argument, explaining that “in the first instance, correspondence between a member of the Senate and a lobbyist is not in and of itself a legislative record.” The Officer similarly explained that “exception provisions of the Act cannot be applied to transform such records into accessible legislative records.” *Id.* at 6-7. Requester’s argument failed 14 years ago in *Scolforo*, and it should fail again now.

² Exemption 29 is plainly intended to protect correspondence with legislators even if found in the possession of non-legislative agencies. *See, e.g., Van Sickle v. London Grove Township*, No. AP 2013-0623, 2013 WL 1933812 (OOR May 3, 2013) (finding exemption 29-covered material in the possession of a township was protected from disclosure).

Kristin M. Kayer, Esquire
August 9, 2023
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III. Conclusion

For these reasons, the Senate of Pennsylvania and its Open Records Officer request denial of the requester's appeal and an order that the Senate need not take any further action regarding the request.

Respectfully submitted,

/s/ Karl S. Myers

Karl S. Myers

Enclosures

cc: Angela Couloumbis (by Email: acouloumbis@spotlightpa.org)
Suellen M. Wolfe, Esquire (by Email: swolfe@palrb.us)

Requester's Response

Kristin Kayer

From: Angela Couloumbis <acouloumbis@spotlightpa.org>
Sent: Friday, August 18, 2023 11:01 AM
To: Kristin Kayer; Suellen Wolfe
Cc: Myers, Karl S.
Subject: Requester submission - LRB Appeal 2023-01 - Couloumbis

August 18, 2023

To: Kristin M. Kayer, Esquire
Appeals Officer
Legislative Reference Bureau
501 N. Third Street
641 Main Capitol
Harrisburg, PA 17120-0033
kkayer@palrb.us

Re: Couloumbis v. Senate of Pennsylvania
LRB Appeal 2023-01
(Senate RTK Appeal 01-2023; Senate RTK Request 2023-27)

Dear Appeals Officer Kayer,

"When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." *Levy v. Senate of Pa.*, 65 A.3d 361, 380 (Pa. 2013) (quoting 1 Pa.C.S. §1921(b)).

The words of the Right to Know Law, as stated in Sec. 708(b)(29), could not be any clearer: Correspondence between a member of the General Assembly and a lobbyist or principal is not exempt from public disclosure.

The act is explicit on this point. If it intended to specifically exempt those records from disclosure, it would have plainly stated it, as it does for correspondence between members of the General Assembly and constituents.

Requester in this case is not asking for records in the "spirit" of the law. Requester in this case is asking for records explicitly laid out in the law as subject to public disclosure.

Additionally, requester is not trying to create a 20th category of legislative records, as counsel for the Senate states in his Aug, 9th response. Requester is trying to access documents that the law clearly, plainly and unambiguously requires to be publicly accessible. For as though the records sought by requester are not described in one of the 19 categories of legislative records, they are unequivocally records subject to disclosure by the legislature. To argue anything different would be ignoring the plain language of the law.

Finally, requester does not follow Senate counsel's reasoning regarding a supposed distinction between an email and a communication. However, suffice it to say that emails are a form of communication rather than something distinct from it, as Senate's counsel appears to be arguing.

For the reasons above, requester respectfully asks that the Senate be required to follow the plain and unequivocal language of the Right-to-Know law.

Thank you for your consideration,
Angela Coulombis
Spotlight PA
717-350-3339

**Aug. 25, 2023 Final Determination of the Legislative
Reference Bureau in LRB Appeal 2023-01, Senate
RTKL Appeal 01-2023**

The Final Determination is reproduced as Appendix A to Appellant's
Brief, pursuant to Pennsylvania Rules of Appellate Procedure 2111 and
2175

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Angela Couloumbis,	:	
Petitioner,	:	
	:	
v.	:	No. _____
	:	
Senate of Pennsylvania,	:	
Respondent.	:	

PETITION FOR REVIEW

Angela Couloumbis, an investigative reporter for Pennsylvania news outlet *Spotlight PA*, petitions for review of the final determination of the Senate Appeals Officer (“AO”) denying her request for production of records under Pennsylvania’s Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.* In support of her petition, she asserts:

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. Petitioner is an investigative reporter for the nonprofit news outlet Spotlight PA.

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

Background

4. On July 20, 2023, Petitioner submitted an RTKL request (the “Request”) to the Senate.

5. The Request sought records pertaining to communications between any Senate employee or senator and certain registered lobbyists.

6. By email dated July 26, 2023 the Senate denied the Request.

7. The Senate denied the Request based on a determination that the requested records are not within the definition of a “legislative record” as provided for in the RTKL. 65 P.S. § 67.102

8. On July 27, 2023, Petitioner timely appealed the partial denial of the Request to the Senate AO.

9. 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).

10. The Senate AO recused himself and referred the case to the Pennsylvania Legislative Reference Bureau, where one its lawyers was designated the Senate AO.

11. In their appeal to the Senate AO, Petitioner challenged the Senate’s denial.

12. On August 25, 2023, the Senate AO issued a final determination affirming the Senate’s denial of the Request. A true and correct copy of the Senate AO’s final determination is attached as Exhibit A.

Determination for Which Review is Sought

13. Petitioner seeks review of the Senate AO’s August 25, 2023 determination.

Objections to the Determination

14. The Senate AO erred in concluding, first, that the records at issue in Petitioner’s Request do not even fall within the definition of “legislative records” for purposes of 65 P.S. § 67.102. Second, and relatedly, the Senate AO erred in concluding that records at issue in the Request were exempt from disclosure under the RTKL, specifically under 708(b)(29). The RTKL specifically contemplates that “correspondence between a member of the General Assembly and a principal or lobbyist under 65 Pa.C.S. Ch. 13A (relating to lobbying disclosure),” exactly what Petitioner sought here, is available through the RTKL.

Relief Sought

WHEREFORE, Petitioner respectfully requests that this Honorable Court reverse the AO’s determination of August 25, 2023 *and* order that all requested records be provided.

Date: September 22, 2023

/s/ Jim Davy

Jim Davy

PA Bar ID #321631

ALL RISE TRIAL & APPELLATE

P.O. Box 15216

Philadelphia, PA 19125

(215) 792-3579

jimdavy@allriselaw.org

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: September 22, 2023

/s/ Jim Davy
Jim Davy
PA ID: 321631

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, if required by counsel, first class mail, as follows:

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