

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Sean Donahue,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 56 C.D. 2014
	:	
Pennsylvania Department of Labor	:	Submitted: August 8, 2014
and Industry,	:	
	:	
Respondent	:	

OPINION NOT REPORTED

**MEMORANDUM OPINION
PER CURIAM**

FILED: September 29, 2014

Sean Donahue (Requester), pro se, petitions for review of a Final Determination of the Office of Open Records (OOR) granting, in part, and denying, in part, Requester’s appeal from the Department of Labor and Industry’s (Department) deemed denial of five separate requests (Requests) submitted by Requester pursuant to the Right to Know Law¹ (RTKL). On appeal, Requester argues that the OOR erred by denying his appeal because he is seeking public records that were in the possession of the Department prior to his RTKL Requests and readily available for disclosure without the need for research by the Department. Discerning no error, we affirm.

¹ Act of February 14, 2008, P.L. 6, 65 P.S. §§ 67.101 – 67.3104.

The facts and history of this matter, as set forth in the certified record and the Final Determination, are as follows. The Chief Counsel for the Department sent Requester a letter, dated October 13, 2011, stating as follows:

Please allow this to serve as the official position of the Pennsylvania Department of Labor & Industry (Department) as it relates to your future dealings with the Department, and the local Workforce Investment Board. This letter and the protocols are prompted by your past dealings with the Department and the Board.

Your past activities have included sending a plethora of e-mails to employees of the Department and other officials of state government. Many of these e-mails have been inappropriate and inaccurate, as well as threatening. Moreover, you have also filed false criminal charges against the Site Administrator of the PA CareerLink® Schuylkill County at Hazleton. While these charges were ultimately dismissed in early 2011, like the e-mails, the false charges were disruptive to the individuals involved, and wasted public funds and resources. In view of this activity, you are requested to abide by all of the following:

First, it has been determined that you are employable with your present skills and education and therefore you do not require training to become employable. That determination has been reviewed by the Office of Equal Opportunity within the Department of Labor and Industry, and the Executive Committee of the local Workforce Investment Board, and both entities affirmed that decision. Therefore, no training can be provided to you and no more training requests will be considered.

Second, we have no ability to provide you with assistance at the PA CareerLink® Schuylkill County at Hazleton. Instead, you may avail yourself of the [J]ob search and other services provided by the PA CareerLink® Schuylkill County at Hazleton by remotely accessing them from your home or other computer. This will provide you with the same access to search for employment that meets your current skills and abilities as you would find at the PA CareerLink® Schuylkill County at Hazleton.

As indicated above, the repeated sending of e-mails to the PA CareerLink® Schuylkill County at Hazleton and Department staff, including the Secretary of Labor & Industry must cease. You are advised to stop communicating with all PA CareerLink® Schuylkill County at Hazleton and Department staff through e-mail. Any further e-mails or communications will be considered harassment by communication and we reserve the right to contact the local or state police.

Lastly, we have consulted with the Luzerne/Schuylkill Workforce Investment Board who [sic] is in agreement that the above protocols are appropriate and will be implemented by that office as well.

I look forward to your complete cooperation in these matters.

(October 13, 2011 Letter from Department to Requester (October 13, 2011 Letter), Attachment to RTKL Request, R. Item 1.) Requester then submitted, via email, to the Department five separate Requests pursuant to the RTKL seeking the following records or information related to the October 13, 2011 Letter:

1. With regard to the second paragraph of the attached copy of the [Letter], in which [the Department] claims that I send [the Department] a “plethora” of emails, please email me a copy of all alleged emails that [the Department] considers to be included in “plethora.”
2. With regard to the second paragraph of the attached copy of the [Letter], in which [the Department] claims that I send [the Department] “inappropriate” of [sic] emails, please email me a copy of all alleged emails that [the Department] considers to be included in “inappropriate.”
3. With regard to the second paragraph of the attached copy of the [Letter], in which [the Department] claims that I send [the Department] “inaccurate” of [sic] emails, please email me a copy of all alleged emails that [the Department] considers to be included in “inaccurate.”
4. With regard to the second paragraph of the attached copy of the [Letter], in which [the Department] claims that I send [the Department] a “threatening” of [sic] emails, please email me a copy of

all alleged emails that [the Department] considers to be included in “threatening.”

5. Please email me all documents necessary to fully disclose on what grounds and under what authority [the Department] has overruled the federal Jobs for Veterans Act, which requires that I be given priority use of services.
6. Please email me all documents necessary to disclose under what authority [the Department] was able to authorize use of police force to prevent me from using the Career Link and its services.
7. With regard to the second paragraph of the attached copy of the [Letter], in which [the Department] claims that I “filed false criminal charges against the Site Administrator,” please email me a copy of all documents that you possess on this matter.

(Final Determination at 2 (alterations in original).) Requester’s RTKL Requests were deemed denied because the Department did not respond to the Requests.² Thereafter, Requester filed five separate appeals with the OOR, which the OOR consolidated. (Final Determination at 2-3.)

The OOR invited the parties to supplement the record and, in response, Requester submitted a statement setting forth the reasons why he believed his appeal should be granted. (Requester’s OOR Response, R. Item 5.) Therein, Requester stated that he was seeking copies of the specific emails referred to in the October 13, 2011 Letter. (Requester’s OOR Response at 1.) Requester contended, *inter alia*, that no emails met the descriptions ascribed to them by the Department in the October 13, 2011 Letter and that the Department was abusing its power by

² See Section 901 of the RTKL, 65 P.S. § 67.901 (providing that “[i]f 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”). The Department states in its response to the OOR’s invitation to supplement the record and in its brief that it did not respond because Requester’s Requests, which were submitted via email, were misfiled. (Department’s OOR Response, R. Item 4; Department’s Br. at 4.)

making false claims that he was a threat to Department employees. (Requester's OOR Response at 1.) Requester contended further that the Department has used the October 13, 2011 Letter against him to deny him CareerLink services and jobs, and to justify calling the police if he attempted to enter the CareerLink facility. (Requester's OOR Response at 1.) Finally, Requester contended that he had a right to see the emails that are defined and described in the October 13, 2011 Letter as "plethora," "inappropriate," "inaccurate," and "threatening" because these emails are the basis for the allegations against him by the Department and its employees. (Requester's OOR Response at 1.)

The Department submitted a position statement asserting that Requester's appeal should be denied with respect to the records sought in Items 1-5 because: (1) the Department "does not compile, maintain, format or organize [R]equester's myriad emails according to whether such emails constitute a 'plethora,' [or are] 'inappropriate,' 'inaccurate,' or 'threatening'"; (2) Requester's request for emails that could be considered "threatening" is repetitive and places an unreasonable burden on the Department because it previously provided Requester "with emails in response to [a prior] request for emails that could be regarded as 'threatening'";³ and (3) the RTKL Requests do not constitute an actual request for identifiable records. (Department's OOR Response at 1-2 (citing Sections 506, 703 and 705 of

³ While the Department did not offer any specifics regarding Requester's prior RTKL requests, Requester has attached to his brief in this matter a letter, dated March 3, 2011, from counsel for the Luzerne/Schuylkill Workforce Investment Board to the Acting Director of the Department's Bureau of Workforce Development Partnership which states that Requester filed eight RTKL requests since January 2011. (Requester's Br., Ex. I.)

the RTKL⁴), R. Item 4.) With respect to the records sought in Item 5, the Department also asserted that nothing in the RTKL requires an agency to conduct legal research in order to respond. (Department's OOR Response at 2.) The Department advanced this same assertion with respect to the records sought in Item 6. (Department's OOR Response at 2.) Finally, with respect to the records sought in Item 7, the Department stated that it would provide the requested documents, including the docket sheet denoting the filing of criminal charges against the Site Administrator and the dismissal of those charges, subject to any applicable legal privileges and exceptions permitted by the RTKL. (Department's OOR Response at 2.)

The OOR issued a Final Determination, without conducting a hearing, granting Requester's appeal, in part, and requiring the Department to disclose all records in its possession sought in Item 7. (Final Determination at 7.) The OOR denied Requester's appeal in all other respects. The OOR reasoned that Requester's RTKL Requests, as set forth in Items 1-4, were "not requests for records, but rather a request for the Department to research and analyze whether records fit the description of the words identified in the Requests and compile them

⁴ 65 P.S. §§ 67.506, 67.703, 67.705. Section 506 of the RTKL provides, in pertinent part, that "[a]n agency may deny a requester access to a record if the requester has made repeated requests for that same record and the repeated requests have placed an unreasonable burden on the agency." 65 P.S. § 67.506(a)(1). Section 703 of the RTKL provides, in pertinent part, that "[a] written request should identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested." 65 P.S. § 67.703. Section 705 of the RTKL provides that, "[w]hen responding to a request for access, an agency shall not be required to create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which the agency does not currently compile, maintain, format or organize the record." 65 P.S. § 67.705.

in such a manner as to answer a question.” (Final Determination at 6.) The OOR determined that “[t]he RTKL does not require the Department to provide records in response to such a request.” (Final Determination at 6.) The OOR determined further that the RTKL Requests seeking records in Items 5 and 6 required “the Department to conduct legal research and analysis as to whether any documents provide grounds and authority” for the Department’s barring of Requester from having any direct contact with the Schuylkill County PA CareerLink. (Final Determination at 6.) The OOR concluded that the Department was not required to conduct legal research and analysis in order to respond to a RTKL request. (Final Determination at 6.) Requester now petitions this Court for review of the OOR’s Final Determination.⁵

Initially, we note that 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. Office of Open Records, 990 A.2d 813, 824 (Pa. Cmwlth. 2010), aff’d, 75 A.3d 453 (Pa. 2013). When presented with a RTKL request, an agency is required to make a good faith effort to determine whether it has possession, custody, or control of the requested records. Section 901 of the RTKL, 65 P.S. § 67.901. However, an agency is not required “to compile, maintain, format or organize a record in a manner in which the agency does not currently compile, maintain, format or organize the record.” Section 705 of the RTKL, 65 P.S. § 67.705. In addition, the RTKL request must “identify or describe the records sought with sufficient

⁵ This Court’s standard of review of a final determination of the OOR is *de novo* and our scope of review is plenary. Bowling v. Office of Open Records, 75 A.3d 453, 477 (Pa. 2013).

specificity to enable the agency to ascertain which records are being requested.”
Section 703 of the RTKL, 65 P.S. § 67.703.

In support of this appeal, Requester argues that the records he is seeking in Items 1-4 are public records that the Department acknowledged in its October 13, 2011 Letter were in its possession prior to the date of his RTKL Requests. Requester asserts that it was the Department that applied specific descriptive terminology to its own records; therefore, the Department should not be permitted to claim that it must conduct research to determine what records it was referring to in its October 13, 2011 Letter. Requester asserts that the Department was aware when it sent the October 13, 2011 Letter which emails it considered to be inappropriate, inaccurate, and threatening. Requester asserts further that records recently released by the United States Department of Labor indicate that the Department possesses specific records that are directly responsive to his Requests for the records in Items 1-6;⁶ therefore, the OOR’s Final Determination must be reversed.

⁶ In support of this assertion, Requester has attached to his brief a letter, dated February 29, 2012, authored by the assistant chief counsel of the Commonwealth’s Governor’s Office of General Counsel and addressed to a senior investigator with the United States Department of Labor, Veterans’ Employment and Training Service. (Requester’s Br., Ex. E.) The letter is in response to the senior investigator’s request for more information regarding Requester and “specifically for information on events that led up to . . . [the] letter of October 13, 2011.” (Requester’s Br., Ex. E.) The letter recaps the events that led up to the issuance of the October 13, 2011 Letter and attaches two sets of documents. As explained in the letter, “[t]he first set includes a few documents showing highlights of matters occurring through March, 2011. These matters are important precursors to the additional matters that began about June, 2011, represented by the second set of attached documents.” (Requester’s Br., Ex. E.) Requester has not included the documents that were purportedly attached to this letter.

In Items 1-4 of the Requests, Requester sought copies of all the emails the Department characterized in the October 13, 2011 Letter as “plethora,” “inappropriate,” “inaccurate,” or “threatening.” Based on the information provided by the Department, the OOR determined that the Department did not compile, maintain or organize Requester’s emails according to whether such emails constitute a plethora or whether they were inappropriate, inaccurate or threatening. The OOR determined further that, in order for the Department to respond to Requester’s Requests, the Department would need to research every email that Requester has sent to the Department and analyze which of the emails fit within the description of “inappropriate,” “inaccurate,” or “threatening.”⁷ The RTKL does not require an agency to reorganize or categorize public records in order to comply with a RTKL request if the agency does not routinely compile or organize the records in the manner or format requested. Section 705 of the RTKL, 65 P.S. § 67.705. Accordingly, we conclude that the OOR did not err by denying Requester’s appeal from the Department’s denial of his request for the information set forth in Items 1-4 of his RTKL Requests.

We now turn to the OOR’s determination that the Department would need to conduct legal research and analysis to respond to Requester’s RTKL Requests for all documents disclosing the Department’s authority to overrule federal law and authorize the use of police force to prevent him from using CareerLink and its services. This Court has held that a request that requires an agency to conduct

⁷ As noted by the Department, it is likely that Requester is already in possession of copies of all of the emails because he drafted and sent these emails to the Department. (Department’s OOR Response at 2 n.1; Department’s Br. at 8 n.1)

“legal research and analysis, not only to ascertain that which is being requested, but also to determine whether a particular law and/or document possesses the legal significance necessary to make it responsive to the request” lacks specificity. Askew v. Office of the Governor, 65 A.3d 989, 994 (Pa. Cmwlth. 2013).

Here, in Item 5, Requester requested all documents necessary to fully disclose on what grounds and under what authority the Department has overruled the federal Jobs for Veterans Act. However, Item 5 does not set forth a specific instance where the Department has overruled the federal Jobs for Veterans Act with respect to Requester or any other individual. Requester simply states that this federal law requires that he be given priority use of services. Accordingly, the request set forth in Item 5 would require the Department to research which documents possess the legal significance necessary to respond to this request; therefore, pursuant to Askew, the request lacks the specificity required by Section 703 of the RTKL, 65 P.S. § 67.703.

In Item 6, Requester requested all documents necessary to disclose under what authority the Department was able to authorize use of police force to prevent Requester from utilizing the services offered by CareerLink. As support for this RTKL Request, Requester stated that the Department’s employees called the police after the October 13, 2011 Letter was sent to him and used the letter to authorize the use of police force to prevent him from accessing CareerLink services. (Requester’s Br. at 14.) Requester has included in his brief a copy of a November

22, 2011 police report to purportedly show that police force was used to prevent him from accessing the services offered by CareerLink.⁸

Upon review of the information requested in Item 6, it appears that Requester is asking the Department to explain what authority justified an employee's telephoning the police on November 22, 2011. However, the RTKL does not require an agency to perform research to create or compile a document that does not exist in order to respond to a RTKL request. The Department is only required to provide existing public records in its possession that are requested in a RTKL request. Therefore, the OOR did not err in affirming the Department's denial of Requester's request for the information set forth in Item 6 of his RTKL Requests.

⁸ The November 22, 2011 police report details an incident that occurred on that date where the Site Administrator of CareerLink telephoned the police because she believed she observed Requester outside the facility. (Requester's Br. at 55.) The police report states that the Site Administrator informed the responding officer that the Department was still receiving threatening emails from Requester after the October 13, 2011 Letter was sent to him requesting that he stop sending such emails and, if he failed to comply, charges of harassment may be filed. The police report states further that the responding officer read the October 13, 2011 Letter and noted that, while Requester could still access all services offered by CareerLink, he was requested not to visit the facility or send any emails. The police report states that CareerLink declined to file harassment charges against Requester; however, the responding officer made phone contact with Requester. The responding officer asked Requester to comply with the October 13, 2011 Letter and further informed Requester that he could be charged with harassment if he did not comply. The police report states that Requester "became very irate on the phone" and told the officer how to do his job, that Requester was smarter than the officer, and that the officer should respect Requester for his military service. (Requester's Br. at 55.) The police report states that the responding officer then terminated the conversation and it was later determined that no charges would be filed against Requester.

It is apparent from Requester's brief that, in submitting his RTKL Requests, Requester was attempting to use the RTKL in an effort to force the Department to justify its official position set forth in the October 13, 2011 Letter as it relates to Requester's future dealings with the Department. Requester asserts that the Department has systematically denied him the right to due process and wrongfully and illegally deprived him of the benefits and privileges that he dutifully earned through honorable and distinguished service to his country. Requester contends that the Department has summarily exercised "new self-declared supra-agency powers in the form of extra-executive, extra-judicial and extra-territorial authorities" in contravention of its authority under federal and state law. (Requester's Br. at 69.) Because the Department "evades using proper judicial channels," Requester insists that this Court "must expand the jurisdiction of [the] RTKL to allow it to serve as the legal laymans' and poor mans' subpoena" so that he may conduct discovery to prove the wrongs that he believes have been illegally committed against him. (Requester's Br. at 69-70.) However, while we empathize with what appears to be Requester's efforts to secure employment after serving his country, we cannot permit the RTKL to be used for any purpose other than that for which it was designed.

For the foregoing reasons, the OOR's Final Determination is affirmed.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Sean Donahue,	:	
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Petitioner	:	
	:	
v.	:	No. 56 C.D. 2014
	:	
Pennsylvania Department of Labor	:	
and Industry,	:	
	:	
Respondent	:	

PER CURIAM

ORDER

NOW, September 29, 2014, the Final Determination of the Office of Open Records, entered in the above-captioned matter, is **AFFIRMED**.