

**[J-33A-2023 and J-33B-2023] [MO: Mundy, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

PENNSYLVANIA INTERSCHOLASTIC
ATHLETIC ASSOCIATION, INC.,

Appellant

v.

SIMON CAMPBELL (OFFICE OF OPEN
RECORDS),

Appellee

PENNSYLVANIA INTERSCHOLASTIC
ATHLETIC ASSOCIATION, INC.,

Appellant

v.

SIMON CAMPBELL (OFFICE OF OPEN
RECORDS),

Appellee

: No. 71 MAP 2022
:
: Appeal from the Order of the
: Commonwealth Court dated
: November 30, 2021 at Nos. 25 CD
: 2021 & 107 CD 2021 Affirming and
: partially denying the January 13,
: 2021 Final Determination of the
: Office of Open Records at No. AP-
: 2020-2639

: ARGUED: May 24, 2023
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: No. 72 MAP 2022
:
: Appeal from the Order of the
: Commonwealth Court dated
: November 30, 2021 at No. 170 CD
: 2021, Affirming the Office of Open
: Record's Order dated February 5,
: 2021 at No. AP-2020-2639 denying
: the Petition for Reconsideration.

: ARGUED: May 24, 2023
:
:

DISSENTING OPINION

JUSTICE DONOHUE

DECIDED: February 21, 2024

At issue in this appeal is whether the records of the Pennsylvania Interscholastic Athletic Association, Inc. ("PIAA"), are subject to the access provisions of the Right to Know Law ("RTKL").¹ Before this Court, PIAA raises two issues challenging the

¹ 65 P.S. §§ 67.101-67.3104.

Commonwealth Court's determination that they are. One issue presents a constitutional challenge to the terms of the RTKL, the other is a question of statutory interpretation.² The Majority recognizes this Court's preference for avoiding constitutional issues when an appeal can be resolved on other grounds. Majority Op. at 8 (citing *In re "B"*, 394 A.2d 419, 421-22 (Pa. 1978)). Unlike the Majority, I find that the constitutional issue is avoidable.

In my opinion, Section 3101.1 of the RTKL resolves these appeals. It states:

If the provisions of this act regarding access to records conflict with any other Federal or State law, the provisions of this act shall not apply.

65 P.S. § 67.3101.1. This language is plain and clear. Section 3101.1 provides that the RTKL's access provisions yield to those of any other conflicting state or federal law. *Energy Transfer v. Friedman*, 265 A.3d 421, 430 (Pa. 2021) ("[W]here a federal or state law prescribes certain procedures to access records in a manner that conflicts with the RTKL, the provisions of the other law prevail.").

The Nonprofit Corporation Law, under which PIAA incorporated and operates, contains two provisions regarding access to records. Section 5508(b) permits access to certain records by "members" upon written demand and only for "any proper purpose." 15 Pa.C.S. § 5508(b).³ Section 5512(a) allows directors access to "corporate books,

² PIAA argues (1) that its inclusion in the RTKL's definition of "state affiliated entity" constitutes special legislation that violates PIAA's equal protection rights and (2) that the Commonwealth Court erred in finding that the RTKL's access provisions supersede the Nonprofit Corporation Law's access provisions. *PIAA v. Campbell*, 289 A.3d 870, 870-71 (Pa. 2022) (per curiam).

³ In full, Section 5508(b) states, "On demand, in compliance with the requirements in subsection (b.1), a member has the right to examine, in person or by agent or attorney, during the usual hours for business for any proper purpose, the membership register, books and records of account, and minutes of, and consents in lieu of meetings by, the incorporators, members, directors and any other body, and to make copies or extracts therefrom." 15 Pa.C.S. § 5508(b).

records and documents” and “information regarding[] the assets, liabilities and operations of the corporation and any subsidiaries of the corporation ... that are controlled directly or indirectly by the corporation[.]” *Id.* § 5512(a).⁴ As a state-affiliated entity under the RTKL, PIAA is presumptively subject to its terms. See 65 P.S. § 67.102 (including PIAA among non-exhaustive list of state-affiliated entities and providing that state-affiliated entities are encompassed in definition of Commonwealth agencies); *id.* § 67.301 (providing that Commonwealth agencies are subject to the terms of the RTKL). The Nonprofit Corporation Law’s access provisions, which are narrowly drawn and restrict what records may be accessed and by whom, conflict with the RTKL’s broad access provision: “Unless otherwise provided by law, a public record, legislative record or financial record shall be accessible for inspection and duplication in accordance with this

⁴ Section 5512(a) provides as follows: To the extent reasonably related to the performance of the duties of the director, including those arising from service as a member of a committee of the board of directors, a director of a nonprofit corporation is entitled:

(1) in person or by any attorney or other agent, at any reasonable time, to inspect and copy corporate books, records and documents and, in addition, to inspect, and receive information regarding, the assets, liabilities and operations of the corporation and any subsidiaries of the corporation incorporated or otherwise organized or created under the laws of this Commonwealth that are controlled directly or indirectly by the corporation; and

(2) to demand that the corporation exercise whatever rights it may have to obtain information regarding any other subsidiaries of the corporation.

15 Pa.C.S. § 5512(a).

act.” *Id.* § 67.701(a).⁵ Section 3101.1 tells us, in clear and unambiguous terms, that because of this conflict, the RTKL’s access provisions do not apply.

The Majority avoids this conclusion by placing significance on the fact that PIAA is named in the RTKL as a state-affiliated entity. *See id.* § 67.102. Reasoning that it is “hard to see why” the General Assembly would explicitly include PIAA in a list of state-affiliated entities if it intended for the RTKL to subordinate its access provisions, Majority Op. at 12-13, the Majority concludes that the RTKL’s access provisions do not subordinate to the Nonprofit Corporation Law’s access provisions, but only insofar as PIAA is concerned. *Id.* at 14.

To reach this conclusion, the Majority engages principles of statutory interpretation; particularly, it considers the “occasion and necessity for the statute, the object to be attained thereby, and the mischief to be remedied” *Id.* at 13 (citing 1 Pa.C.S. § 1921(c)). In order to avail itself of these principles of statutory interpretation, the Majority first finds the RTKL “materially ambiguous, as both [parties] have suggested reasonable interpretations of the statute **insofar as how it operates with respect to PIAA’s records.**” *Id.* (emphasis added). As the bolded language reveals, the Majority does not find ambiguity in the language of the RTKL, but in its application in the present situation. But when assessing ambiguity for purposes of statutory interpretation, the focus is on the text of the statute, not on how it is applied. *See, e.g., Kornfeind v. New Werner Holding Co.*, 280 A.3d 918, 925 (Pa. 2022) (“A statute is ambiguous when there are at least two reasonable interpretations of the text.”); *Commonwealth v. Giulian*, 141 A.3d 1262, 1268 (Pa. 2016) (“When the parties read a statute in two different ways and the statutory

⁵ The breadth of this provision promotes the RTKL’s goal of expanding access to official government information by maximizing access to public records. *McKelvey v. Pa. Dep’t of Health*, 255 A.3d 385, 400 (Pa. 2021).

language is reasonably capable of either construction, the language is ambiguous.”). I find no ambiguity in Section 3101.1; its text is clear and unambiguous.⁶

Moreover, that PIAA is identified in the RTKL cannot possibly alter the applicability of Section 3101.1. PIAA is named among a list of entities that are deemed to be state-affiliated entities for the purposes of the RTKL; it is not named as an entity to be singled out and exempted from Section 3101.1. In other words, the explicit naming of PIAA as a state-affiliated entity only subjects it to the RTKL’s terms.⁷ One of those terms is Section 3101.1. The Majority’s rationale renders Section 3101.1 meaningless, as it would require us to find that simply by virtue of making an entity subject to the RTKL, the General Assembly would not have intended for the RTKL to subordinate its access provisions in

⁶ In response to this dissent, the Majority states that “judicially determining the meaning of statutory text is virtually always done in relation to its application to specific situations[.]” Majority Op. at 13 n.9. With all due respect, the meaning of a statute, including the determination of whether its text is ambiguous, is determined from the words of the statute. The rules of statutory interpretation provide that “[w]hen **the words** of the statute are not explicit, the intention of the General Assembly may be ascertained by considering” certain enumerated factors. 1 Pa.C.S. § 1921(c) (emphasis added). One of these enumerated factors is the “consequence[] of a particular interpretation.” *Id.* § 1921(c)(5). So while the application of a particular interpretation may be a proper consideration for statutory interpretation, it is only a proper consideration **after** a determination has been made that the statutory language is ambiguous. *See id.*

Our law unequivocally provides that ambiguity is assessed within the text of the statute under consideration, not, as the Majority believes, by how the statute is applied. To say that circumstances create statutory ambiguity turns our rules of statutory interpretation on their head. The Majority cites three cases in support of its perplexing claim. *See* Majority Op. at 13 n.9 (citing *Greenwood Gaming & Entm’t v. Dep’t of Revenue*, 90 A.3d 699, 713 (Pa. 2014); *Commonwealth v. Moran*, 104 A.3d 1136, 1146 (Pa. 2014); *Greenwood Gaming & Entm’t v. Dep’t of Revenue*, 263 A.3f 611, 623 (Pa. 2021) (Saylor, C.J. concurring)). But these cases do no more than demonstrate the unremarkable truth that particular facts bring the need for statutory interpretation to light. They do not provide, much less suggest, that the particular facts determine the statutory analysis.

⁷ *See* 65 Pa.C.S. § 67.102 (defining “Commonwealth agency” as including state-affiliated entities; defining PIAA as a state-affiliated entity); *id.* § 67.301(a) (“A Commonwealth agency shall provide public records in accordance with this act.”).

the face of conflicting state or federal laws. This is exactly the opposite of what Section 3101.1 says and the Majority's interpretation of it is untenable. We must presume that the General Assembly intends the entirety of a statute to be effective; accordingly, we cannot construe statutory sections in such a way that one section nullifies, excludes or cancels another, unless the statute expressly says so. *Tr. Under Agreement of Taylor*, 164 A.3d 1147, 1157 (Pa. 2017); *see also* 1 Pa.C.S. § 1921(a). The RTKL does not say that the application of Section 3101.1 is limited in any way.

The RTKL applies to a broad swath of government agencies and state-affiliated entities. The fact of the matter is that there are myriad other laws that affect the same government agencies and state-related entities. *See, e.g., Energy Transfer*, 265 A.3d 421 (discussing the terms of the RTKL and the Public Utility Confidential Security Information Disclosure Protection Act as they apply to the Public Utility Commission); *Pennsylvanians for Union Reform v. Dep't of State*, 138 a.3d 727 (Pa. Commw. 2016), *appeal denied*, 164 A.3d 462 (Pa. 2016) (finding that access provisions of the RTKL subordinate to access provisions of Voter Registration Act when request for voter information is made to Pennsylvania Department of State). Our General Assembly was well aware of this when it crafted Section 3101.1. We cannot read it out of the statute in an attempt to give effect to the General Assembly's perceived intent to provide access to government information so as to facilitate transparency and accountability in public institutions and elected officials. *See Energy Transfer*, 265 A.3d at 428-29 (explaining that courts may not disregard clear and unambiguous statutory language under pretext of pursuing its spirit); 1 Pa.C.S. § 1921(b). If the General Assembly intended that the RTKL supersede the limitations on access to documents contained in Nonprofit Corporation Law, it could have amended the Nonprofit Corporation Law to accommodate that intent.

Thus, I dissent. I conclude that by giving effect to Section 3101.1, as we must, the RTKL's access provisions subordinate to those of the Nonprofit Corporation Law; therefore PIAA is not bound by the access provisions of the RTKL. Not only is this, in my view, the proper statutory interpretation, but it allows us to resolve this appeal without reaching the remaining constitutional question. *See Renner v. Ct. of Common Pleas of Lehigh Cnty.*, 234 A.3d 411, 417 n.6 (Pa. 2020) (“[W]hen a case raises both constitutional and non-constitutional issues, a court should not reach the constitutional issue if the case can properly be decided on non-constitutional grounds.”).