[J-33A-2023 and J-33B-2023]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

TODD, C.J., DONOHUE, DOUGHERTY, WECHT, MUNDY, BROBSON, JJ.

PENNSYLVANIA INTERSCHOLASTIC ATHLETIC ASSOCIATION, INC.,	:	No. 71 MAP 2022
Appellant	:	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
v.	:	
SIMON CAMPBELL (OFFICE OF OPEN RECORDS),	:	
Appellee	:	ARGUED: May 24, 2023
PENNSYLVANIA INTERSCHOLASTIC ATHLETIC ASSOCIATION, INC.,	:	No. 72 MAP 2022
Appellant	:	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.
v.	:	
SIMON CAMPBELL (OFFICE OF OPEN RECORDS),	:	ARGUED: May 24, 2023
Appellee	:	

OPINION

JUSTICE MUNDY **DECIDED: February 21, 2024**

We granted review to determine whether Appellant, the Pennsylvania Interscholastic Athletic Association (PIAA), is validly classified as a state-affiliated entity and, as such, is subject to the Right to Know Law's record-disclosure mandates.

I. Background

PIAA is a non-profit corporation and voluntary-member organization which organizes interscholastic athletics and promotes uniform standards in interscholastic sports. It was created in 1913 by a group of high school principals as an unincorporated voluntary-membership organization. In 1978, it incorporated under Pennsylvania's Nonprofit Corporation Law (the "Nonprofit Law").[1] Its membership consists of a mix of public and private middle schools and high schools, including charter schools, about 1,400 in number. Schools become members when they apply for, and are accepted for, membership by PIAA. PIAA's funding comes from gate receipts and membership fees paid by school districts, which, PIAA claims, derive from ticket sales at their own regular-season contests. PIAA contends it does not receive any taxpayer funding.

In 2020, Appellee Simon Campbell, a private citizen, filed a records request under the Right to Know Law (the "RTKL"),[2] seeking eight categories of records to the extent those records exist in electronic form. He sought: (1) legal invoices, (2) cleared checks, (3) bank statements, (4) bank account transaction lists, (5) financial statements from independent auditors, (6) PIAA's most recent Form 990 filing with the IRS, (7) communications between PIAA officials and PIAA lawyers discussing PIAA improperly being included within the RTKL, and (8) a screenshot with the names of the software

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[1] Act of Nov. 15, 1972, P.L. 1063, No. 271 (as amended 15 Pa.C.S. §§ 5301-5997). The 1972 enactment was renumbered and amended by the Act of December 21,1988, P.L. 1444, No. 177, formerly 15 Pa.C.S. Pt. III Art. B (relating to domestic nonprofit corporations). *See* 15 Pa.C.S. § 5101 (relating to short titles). The 1988 law explains that Title 15 of Purdon's Pennsylvania Consolidated Statutes and its amendments, including Subpart II(C) (relating to nonprofit corporations), are "intended to provide uniform rules for the governance and regulation of the affairs of nonprofit corporations and of their officers, directors and members and of members of other bodies, regardless of the date or manner of incorporation[.]" 15 Pa.C.S. § 5106(a).

[2] Act of Feb. 14, 2008, P.L. 6, No. 3 (as amended, 65 P.S. §§ 67.101-67.3104).

programs in PIAA's possession which can perform redactions on PDF files or other electronic files.[3] PIAA replied, stating: items (1), (2), (3), (4), (7), and (8) do not exist; it had requested records for item (5) from its auditors and was awaiting their reply; and item (6) was available on PIAA's publicly-accessible website. PIAA also raised a general objection to the request, asserting it is not a Commonwealth authority or entity subject to the RTKL, and noting its intent to litigate the issue. Campbell appealed to the Office of Open Records ("OOR"). PIAA sought a stay of the appeal because it had already initiated a Petition for Review in the Commonwealth Court's original jurisdiction, seeking declaratory relief and raising the issue of whether PIAA is subject to the RTKL – and if so, challenging the constitutionality of that inclusion. *See PIAA v. Commonwealth*, No. 661 M.D. 2020, Petition for Review in the Nature of a Complaint for Declaratory and Injunctive Relief (Pa. Cmwlth.) (filed Dec. 18, 2020).

OOR denied the stay request and, thereafter, issued a final determination finding PIAA was subject to the RTKL and granting some of Campbell's requests.

Campbell appealed to the Commonwealth Court, challenging a portion of OOR's decision. For its part, PIAA provided Campbell with some of the records ordered by OOR and also moved for reconsideration, arguing OOR had erred by refusing to stay the appeal, finding PIAA is subject to the RTKL, granting access to unredacted legal invoices, and failing to give PIAA additional time to provide responsive records under prevailing law. PIAA attached an affidavit from its executive director, Dr. Robert Lombardi, who provided additional evidence concerning application of the attorney-client privilege and

[3] PDF stands for portable document format, a widely-used computer file format created by Adobe, Inc. *See Bowling v. Office of Open Records*, 990 A.2d 813, 816 n.6 (Pa. Cmwlth. 2010). Files in PDF format "look just like they would if printed, but can contain clickable links and buttons, form fields, video, and audio, and are text searchable using optical character recognition technology." *SEC v. Goldstone*, 301 F.R.D. 593, 608 n.13 (D.N.M. 2014) (internal quotation marks and citation omitted).

the attorney work-product doctrine as they relate to the legal invoices requested in item (1); the massive volume of records responsive to items (2)-(4); and information about the lack of any records responsive to item (7). After OOR denied reconsideration, PIAA cross-appealed, challenging OOR's original decision. Separately, PIAA sought appellate review of OOR's order denying the request for reconsideration.

The Commonwealth Court consolidated the three appeals and, in a published opinion and order, largely affirmed OOR's underlying final determination. *See Campbell v. PIAA*, 268 A.3d 502 (Pa. Cmwlth. 2021) (*en banc*). The court did, however, modify OOR's holding with regard to legal invoices paid by PIAA, directing PIAA to produce redacted copies of such invoices together with a privilege log. It also affirmed OOR's denial of PIAA's request for reconsideration. *See id*. at 521.

In reaching its holding, the court spoke to two topics pertinent to this appeal. The first is whether the RTKL's specific listing of PIAA as a "state-affiliated entity" constitutes invalid special legislation. That term is defined by the RTKL as follows:

> **"State-affiliated entity."** A Commonwealth authority or Commonwealth entity. *The term includes* the Pennsylvania Higher Education Assistance Agency and any entity established thereby, the Pennsylvania Gaming Control Board, the Pennsylvania Game Commission, the Pennsylvania Fish and Boat Commission, the Pennsylvania Housing Finance Agency, the Pennsylvania Municipal Retirement Board, the State System of Higher Education, a community college, the Pennsylvania Turnpike Commission, the Pennsylvania Public Utility Commission, the Pennsylvania Infrastructure Investment Authority, the State Public School Building Authority, *the Pennsylvania Interscholastic Athletic Association* and the Pennsylvania Higher Educational Facilities Authority. The term does not include a State-related institution.

65 P.S. § 67.102 (emphasis added).[4]

[4] The RTKL does not separately define "Commonwealth authority" or "Commonwealth entity." However, a "state-affiliated entity" is one type of Commonwealth agency. *See id* (defining "Commonwealth agency"). In turn, Commonwealth agencies are required to (continued…)

PIAA argued it could not be a state-affiliated entity because it: (a) receives no state funding, (b) has not been granted any powers by the Commonwealth, (c) is not administered or governed by any Commonwealth personnel, and (d) was not created by the General Assembly. PIAA also indicated that, even if it is listed as a state-affiliated entity in the above definition, its inclusion within the RTKL as such, when it does not meet the definition established for the class in which it is included, amounts to unconstitutional special legislation and violates PIAA's equal protection rights, as its inclusion in the RTKL as a state-affiliated entity bears no rational relationship to the purpose of the law and illegally discriminates against PIAA.

In response, the court stated PIAA is a Commonwealth agency "if the General Assembly says it is," *Campbell*, 268 A.3d at 510 (quoting *Harristown Dev. Corp. v. DGS*, 614 A.2d 1128, 1131 (Pa. 1992)), referencing that PIAA is enumerated as a state-affiliated entity in the above definition. The court acknowledged such identification may violate the Constitution's no-special-laws provision, *see* PA. CONST. art. III, § 32 ("The General Assembly shall pass no local or special law in any case which has been or can be provided for by general law[.]"), as well as equal protection. In assessing this claim, however, the court added that the Legislature retains the power to make classifications that bear a reasonable relationship to a legitimate state interest. *See Campbell*, 268 A.3d at 511 (citing and quoting *Pa. Tpk. Comm'n v. Commonwealth*, 899 A.2d 1085 (Pa. 2006); *Harrisburg Sch. Dist. v. Zogby*, 828 A.2d 1079 (Pa. 2003)). Thus, while similarly-situated persons must be treated alike, differential treatment is permitted as long as the rational-basis test is met. In *Harristown*, the court observed, a nonprofit corporation was deemed a state agency for RTKL purposes because it was the largest lessor of space to the state. Hence, for state-governmental purposes, the General Assembly could conclude the

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provide records in accordance with the RTKL, and they may not deny access based on the requester's intended use of the records. *See id*. § 67.301.

Commonwealth must be able to monitor Harristown's fiscal soundness. *See Harristown*, 614 A.2d at 1132.

Applying these precepts, the court referred to PIAA's website which states its board of directors is drawn from member school districts, the Pennsylvania School Boards Association, and the Pennsylvania Department of Education among other entities. The court also relied on a decision of this Court from the 1970s suggesting PIAA was funded by school district membership fees, "and so ultimately by the Commonwealth's taxpayers" (as well as by gate receipts at sporting events). *Campbell*, 268 A.3d at 512-13 (quoting *Sch. Dist. of City of Harrisburg v. PIAA*, 309 A.2d 353, 356-57 (Pa. 1973) (plurality)). Based on this information, the court held "the General Assembly's classification of PIAA as a 'state-affiliated entity' for the purpose of qualifying as [a Commonwealth] agency under the RTKL has a rational basis and furthers a legitimate state interest of transparency in PIAA's use of public funds in a manner that dramatically impacts students' lives." *Id*. at 513.

The second issue of present relevance that the court addressed was whether the Nonprofit Law supersedes the RTKL in relation to PIAA. The court noted the RTKL states the presumption that a record possessed by a Commonwealth agency is public does not apply if the record is exempt from disclosure under any other state or federal law. The court continued that, under its precedent, an exemption only arises where the other statute "expressly provide[s]" a record is confidential or otherwise not subject to disclosure. *Id*. at 517 (quoting *Ali v. Phila. City Planning Comm'n*, 125 A.3d 92, 99-100 (Pa. Cmwlth. 2015)). As for the Nonprofit Law, the court referenced Section 5508(b), which states:

> **(b) Right of inspection by a member**.--Every member shall, upon written verified demand stating the purpose thereof, have a 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 records of the proceedings of the members, directors and any other body, and to make copies or extracts therefrom. A proper purpose shall mean a purpose reasonably related to the interest of the person as a member. In every instance where an attorney or other agent is the person who seeks the right of inspection, the demand shall be accompanied by a verified power of attorney or other writing that authorizes the attorney or other agent to so act on behalf of the member. The demand shall be directed to the corporation.

15 Pa.C.S. § 5508(b) (emphasis added).[5] The court additionally quoted Section 5512(a), which provides:

> **(a) General rule.**--To the extent reasonably related to the performance of the duties of the director, . . . 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[.]

Id. § 5512(a), quoted in *Campbell*, 268 A.3d at 517.

Although these provisions may suggest by implication that access to a nonprofit corporation's records is limited to members and directors, the intermediate court stated any such limitation must be express in order to amount to an exemption under the RTKL. *See Campbell*, 268 A.3d at 517 (quoting *Ali v. Phila. City Planning Comm'n*, 125 A.3d 92, 99-100 (Pa. Cmwlth. 2015)). As there is no express statement in the Nonprofit Law that corporate records are confidential, the court ultimately concluded they are not exempt from disclosure. *See id*.[6]

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[5] This provision was amended after briefing was complete. *See* Act of Nov. 3, 2022, P.L. 1791, No. 122, § 78, effective Jan. 3, 2023. The amendments do not alter our analysis.

[6] The Commonwealth Court additionally rejected a due process claim PIAA forwarded based on OOR's alleged commingling of prosecutorial and adjudicative functions. It also (continued…)

The Commonwealth Court thus affirmed OOR's final determination as modified with respect to PIAA's legal invoices. *See supra* note 6.

II. Issues

This Court granted PIAA's petition for allowance of appeal, limited to the following two issues:

> (1) Did the Commonwealth Court err in holding that the Right-to-Know Law's ("RTKL") singling out of PIAA for inclusion within the definition of a "state-affiliated entity" did not constitute special legislation and a violation of PIAA's equal protection rights where PIAA is a private non-profit corporation that receives no Commonwealth funding of any kind, has not been granted and does not exercise any legislatively-granted powers, is not controlled by Commonwealth personnel and was not created by an act of the General Assembly, and where the only bases used by the Commonwealth Court relied on facts not of record (or accurate) and a standard (whether an entity is a state actor under federal civil rights law) never before applied by any court to determine whether an entity is a Commonwealth Agency?
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> (2) Where a conflict concerning access to records exists between the Nonprofit Corporation Law of 1988 and the RTKL and where the RTKL provides that its record access provisions do not apply in the event of a conflict, did the Commonwealth Court err in holding that the provisions of the RTKL supersede those of the Nonprofit Corporation Law so as to negate the limitations in that law on disclosure of records of nonprofit corporations?

PIAA v. Campbell, 289 A.3d 870, 870-71 (Pa. 2022) (*per curiam*).[7]

Where a dispute raises constitutional and non-constitutional questions, this Court will resolve it on non-constitutional grounds and avoid the constitutional issue if possible. *See In re "B"*, 394 A.2d 419, 421-22 (Pa. 1978). Thus, we address the second issue first,

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granted partial relief to PIAA by modifying OOR's order and allowing PIAA to redact legal invoices. These facets of the intermediate court's ruling are not before this Court.

[7] Pursuant to appellate rule 521(a), PIAA timely notified the Office of Attorney General of the constitutional challenge raised, *see PIAA v. Campbell*, No. 107 C.D. 2021 (Pa. Cmwlth.), Letter dated Feb. 11, 2021, but the OAG has elected not to participate.

for if PIAA is exempt from disclosure due to the restrictions of the Nonprofit Law, we need not reach the constitutional question.

III. The Nonprofit Law

As noted above, PIAA was incorporated in 1978 under the Nonprofit Law, which is the only other act presently in question. By its terms the RTKL subordinates its own record-access requirements to conflicting extrinsic statutory provisions that specify different procedures for record access and make records public or nonpublic in nature. *See Energy Transfer v. Friedman*, 265 A.3d 421, 430-32 (Pa. 2021) ("The RTKL contains two caveats related to how other laws impact its presumption that a record is public and, therefore, subject to public disclosure. These caveats concern the nature of a record and the accessibility of a record, which are distinct concepts."). *See generally Dep't of Labor & Indus. v. Heltzel*, 90 A.3d 823, 830 (Pa. Cmwlth. 2014). Its definition of a "public record" expressly excludes documents otherwise legally exempt from disclosure. *See* 65 P.S. § 67.102 (excluding, *inter alia*, records that are exempt from disclosure under "any other . . . [s]tate law or regulation"). Section 305 is similar in that it indicates the presumption that a record of a Commonwealth agency is public does not apply where that record is exempt from disclosure under any other state or federal law or regulation or judicial order or decree. *See* 65 P.S. § 67.305(a)(3)). The next section of the RTKL adds:

> Nothing in this act shall supersede or modify the public or nonpublic nature of a record or document established in Federal or State law, regulation or judicial order or decree.

Id. § 67.306. Similarly, if another state or federal law sets forth different procedures that must be followed to access or inspect documents, those procedures take precedence over any procedures otherwise established by the RTKL. *Accord Heltzel*, 90 A.3d at 832-33. Section 3101.1 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.

The purport of these provisions is that where a record is exempt from disclosure under another law, the RTKL does not require disclosure, or where the other law allows access to the record pursuant to an incongruent set of procedures, the RTKL does not override those procedures.[8] *See Energy Transfer*, 265 A.3d at 430 ("[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.").

PIAA seeks to apply these principles by suggesting the Nonprofit Law makes corporate records unavailable to general requesters insofar as it allows certain types of records to be requested only by members who are able to state a "proper purpose" – which is defined under the Nonprofit Law as "a purpose reasonably related to the interest of the person as a member." 15 Pa.C.S. § 5508(b). Due to issues relating to privacy, privilege, and confidentiality, moreover, corporate members may not receive other types of records absent specific statutory authorization. *See Lewis v. Pa. Bar Ass'n*, 701 A.2d 551, 554-55 (Pa. 1997). PIAA reasons that if a member may only obtain a limited class of records, and only upon demonstrating a valid purpose as a member, sound logic dictates that non-members are foreclosed from any such access. *Accord Ciamaichelo v. Independence Blue Cross*, 928 A.2d 407, 415 (Pa. Cmwlth. 2007). PIAA contrasts these limitations with the RTKL's directive that any person may request a broad class of records for any reason or no reason at all – as agencies are prohibited from requiring a requester to state the purpose for the request. *See* 65 P.S. § 67.703; *see also id*. § 67.1308(2)

[8] Conversely, another law may clearly make a record subject to disclosure even where it would otherwise be exempt under Section 708(b), 65 P.S. § 67.708(b). *See Heltzel*, 90 A.3d at 832.

(forbidding RTKL-based policies or regulations from requiring a statement of purpose or motive in requesting access to records).

Further, only corporate directors are given express permission to inspect and copy corporate books, records, and documents or obtain information regarding corporate assets, liabilities, and operations. *See id*. § 5512(a) (quoted above). When a corporation refuses to disclose such documents to a director, the latter's remedy is not via the RTKL but through a petition to compel under Section 5512(b), 15 Pa.C.S. § 5512(b). *See generally In re: Application by Nonprofit Corp. Trustees to Compel Inspection*, 157 A.3d 994, 1001 (Pa. Cmwlth. 2017) (referring to this as a director's "only recourse").

These facets of the Nonprofit Law, by necessary implication, preclude generalized access to such documents by non-members and non-directors. It would be illogical to suppose the Nonprofit Law intends that strangers to a corporation are entitled to a wider scope of corporate records, under more lenient procedural prerequisites, than those which corporate members and directors are permitted to inspect. *See* Brief for Appellant at 36 (describing the Nonprofit Law as "restrict[ing] access to records of nonprofit corporations to their members and directors, and only for limited purposes," and concluding that "[b]ecause the record access provisions of this comprehensive statute conflict with the RTKL, they control"). In this regard, we do not endorse the Commonwealth Court's suggestion that the RTKL's subordination provisions are only triggered by another law that "expressly" makes the documents in question "confidential, private, and/or not subject to public disclosure." *Campbell*, 268 A.3d at 517 (quoting *Ali v. Phila. City Planning Comm'n*, 125 A.3d 92, 99-100 (Pa. Cmwlth. 2015)). The RTKL never says the other law must do so expressly and we are not at liberty to add that word to the statute. *See generally In re November 3, 2020 General Election*, 240 A.3d 591,

611 (Pa. 2020) (noting it is not a reviewing court's role to rewrite a statute to supply terms not present therein).

Campbell suggests that, even if the RTKL and the Nonprofit Law conflict in terms of record access, the RTKL should take precedence because its record disclosure requirements are more specific and it was enacted later in time. *See* Brief for Appellee at 25 (citing 1 Pa.C.S. § 1933 (directing that when a general statutory provision conflicts with a special one, the special provision prevails over the general provision unless the general provision was enacted later and the General Assembly clearly intended it to trump the special provision)). Campbell overlooks that the RTKL's subordination provisions are more specific than those appearing in Section 1933 of the Statutory Construction Act, and they were enacted later in time. Thus, although the Statutory Construction Act provides guidance when courts are faced with conflicting statutes, that guidance does not apply in the context of a conflict with the RTKL, which directs that such conflicts be resolved in favor of the other law. *See Hearst Television v. Norris*, 54 A.3d 23, 31 (Pa. 2012).

With that said, in this case the particular nonprofit corporation involved in the current records request is specifically named as a state-affiliated entity – which, as explained, subjects it to the RTKL's record-access provisions as a Commonwealth entity. As such, Campbell argues the Nonprofit Law should not be understood to make corporate records confidential "where a nonprofit corporation meets the definition of a Commonwealth agency under the RTKL." Brief for Appellee at 22 (emphasis added). This position is logically sound, at least as it pertains in the present case. When the RTKL was enacted in 2008, the General Assembly was aware that PIAA was incorporated pursuant to the Nonprofit Law. If the General Assembly had intended for the RTKL to subordinate its record-access requirements to the Nonprofit Law where PIAA is concerned, it is hard to see why it would have included PIAA by name in the enumerated

list which forms part of the RTKL's definition of a state-affiliated entity. *See* 65 P.S. § 67.102 (defining "state-affiliated entity") (quoted above).

We, therefore, find the RTKL materially ambiguous, as both PIAA and Campbell have suggested reasonable interpretations of the statute insofar as how it operates with respect to PIAA's records. *See JP Morgan Chase Bank N.A. v. Taggart*, 203 A.3d 187, 194 (Pa. 2019) (observing a statute is ambiguous when there are two reasonable interpretations of its provisions).[9] This ambiguity should be resolved using the tools of statutory construction as set forth in the Statutory Construction Act. Under that enactment, when construing a statute our overarching goal is to ascertain and effectuate

[9] The dissent argues the finding of a statutory ambiguity is always based "on the text of the statute, not how it is applied." Dissenting Op. at 4. Regardless, judicially determining the meaning of statutory text is virtually always done in relation to its application to specific situations, and thus we have noted that "we sit to decide concrete cases." *Commonwealth v. Perrin*, 291 A.3d 337, 346 n.7 (Pa. 2023) (quoting *D.P. v. G.J.P.*, 146 A.3d 204, 217 (Pa. 2016)). Moreover, there is typically a core set of circumstances to which the text of an enactment plainly applies, with ambiguities surfacing in borderline scenarios. *See, e.g.*, *Greenwood Gaming & Entm't v. Dep't of Revenue*, 90 A.3d 699, 713 (Pa. 2014) (whereas a statute authorizing an exclusion from taxable gross terminal revenue (GTR) for cash and cash equivalents supplied "as a result of playing a slot machine" clearly subsumed ordinary slot payouts, holding it was unclear if it was also intended to apply to promotional giveaways that were not connected to the playing of a specific machine); *Commonwealth v. Moran*, 104 A.3d 1136, 1146 (Pa. 2014) (acknowledging a "latent ambiguity" evident from the parties' "conflicting yet viable interpretations of [a criminal statute] *as applied here*" (emphasis added)); *see also Greenwood Gaming & Entm't v. Dep't of Revenue*, 263 A.3d 611, 623 (Pa. 2021) (Saylor, C.J., concurring) (reflecting majority agreement that the statutory term "services" would clearly apply to vouchers for services redeemable at local businesses, but it was uncertain whether concert tickets also qualified as services). In all events, we presently find an ambiguity based on the RTKL's express textual reference to PIAA – something the dissent overlooks in its rejoinder. Further, the dissent characterizes the above as suggesting that "particular facts determine the statutory analysis." Dissenting Op. at 5 n.6. In fact, our point is that textual ambiguities often come to light when the text is applied in particular circumstances, as evidenced by the cases cited. That is hardly a controversial observation, and it is one with which the dissent appears to agree. In terms of our present task, an ambiguity in the RTKL is now evident because this is the first time we have considered how its text should be applied to PIAA.

the intent of the Legislature. *See O'Rourke v. Commonwealth*, 778 A.2d 1194, 1201 (Pa. 2001) (citing 1 Pa.C.S. § 1921(a)). In so doing, we may consider, among other things, the occasion and necessity for the statute, the object to be attained thereby, and the mischief to be remedied. *See* 1 Pa.C.S. § 1921(c).

We have previously characterized the RTKL as remedial legislation 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." *SWB Yankees LLC v. Wintermantel*, 45 A.3d 1029, 1034 (Pa. 2012) (quoting *Bowling v. OOR*, 990 A.2d 813, 824 (Pa. Cmwlth. 2010)). Along these lines, we have explained that

> the objective of the RTKL "is to empower citizens by affording them access to information concerning the activities of their government." *SWB Yankees LLC v. Wintermantel*, 45 A.3d 1029, 1042 (Pa. 2012). As the Commonwealth Court has noted, the enactment of the RTKL in 2008 was a dramatic expansion of the public's access to government documents. Whereas before a requester had the burden to prove that documents should be disclosed, the RTKL presumes documents in the possession of an agency are public records subject to disclosure, unless protected by a specific exception. 65 P.S. § 67.305. Indeed, Section 708 places the burden of proving an exception squarely on the agency by a preponderance of the evidence. 65 P.S. § 67.708. These significant changes demonstrate a legislative purpose of expanded government transparency through public access to documents. The Commonwealth Court has aptly recognized that courts should liberally construe the RTKL to effectuate its purpose of promoting "access to official government information in order to prohibit secrets, scrutinize actions of public officials, and make public officials accountable for their actions." *Allegheny County Dept. of Admin. Services v. A Second Chance, Inc.*, 13 A.3d 1025, 1034 (Pa. Cmwlth. 2011) (citation omitted).

Levy v. Senate of Pa., 65 A.3d 361, 381 (Pa. 2013); *see also*; *Chester Water Auth. v. DCED*, 249 A.3d 1106, 1118 (Pa. 2021) (Dougherty, J., concurring) (expressing that, in view of the RTKL's overriding purpose of ensuring transparency in Pennsylvania government, exceptions to disclosure are to be construed narrowly).

In light of these observations, we find that the General Assembly's decision expressly to name PIAA as a state-affiliated entity, and thus as a Commonwealth agency, reflects that the legislative body did not intend for the RTKL's record-access provisions to be subordinated to those of the Nonprofit Law where PIAA is concerned. Subordination in the present case would run counter to the RTKL's general statutory objective regarding openness and accountability in governmental actions as delineated above. As well, construing the RTKL as requiring subordination relative to PIAA would be in substantial tension with the principle that the General Assembly intends the entire enactment to be "effective and certain," 1 Pa.C.S. § 1922(2), and as such, it does not intend any statutory text as "mere surplusage." *Commonwealth v. Koskey*, 812 A.2d 509, 513 (Pa. 2002).

In summary, then, both PIAA and Campbell offer reasonable interpretations of the RTKL. Upon application of the tools of statutory construction to resolve the ambiguity thus identified we conclude that the General Assembly intended to subject PIAA to the record-disclosure scheme of the RTKL, otherwise it would not have included PIAA by name in its definition of "state-affiliated entity."

IV. Special Legislation

Having determined that the General Assembly intended for PIAA to be subject to the RTKL's record-disclosure scheme, the constitutional challenge raised by PIAA is salient.

A. Introduction

The challenge arises under the Pennsylvania Constitution's no-special-laws clause, which provides that the "General Assembly shall pass no local or special law in any case which has been or can be provided for by general law[.]" PA. CONST. art. III, §32. The clause was originally added to the Constitution in 1874 to end privileged legislation for specific localities and private entities. *See Harrisburg Sch. Dist. v. Zogby*,

828 A.2d 1079, 1088 (Pa. 2003). It has been interpreted since then to contain equal protection guarantees and, more specifically, to prohibit legislation limited to a specific class of identifiable members, where that class is "closed or substantially closed to future membership[.]" *W. Mifflin Area Sch. Dist. v. Zahorchak*, 4 A.3d 1042, 1048 (Pa. 2010). To be valid, the class must be open, that is, it must be so defined that other members can come in. *See Pa. Tpk. Comm'n v. Commonwealth*, 899 A.2d 1085, 1097-98 & n.18 (Pa. 2006). If the legislative classification is realistically open to new members, it will generally be deemed valid even if it only includes a single member at the time of enactment. *See Harristown Dev. Corp v. DGS*, 614 A.2d 1128, 1132 n.9 (Pa. 1992); *compare Harrisburg Sch. Dist. v. Hickok*, 761 A.2d 1132, 1136 (Pa. 2000) (invalidating a provision of the Education Empowerment Act giving special treatment to a "class" of school districts defined by having borders coterminous with Pennsylvania's capital city), *with Zogby*, 828 A.2d at 1091 (upholding the same act as amended so only the Harrisburg School District was initially certified as an empowerment district, but other school districts could later be certified depending on changed conditions). PIAA charges that the RTKL's definition of a "state-affiliated entity" violates this principle by using an enumerated list of entities and by including PIAA as the only private non-profit corporation in that list.[10]

[10] The enumerated entities are "the Pennsylvania Higher Education Assistance Agency and any entity established thereby, the Pennsylvania Gaming Control Board, the Pennsylvania Game Commission, the Pennsylvania Fish and Boat Commission, the Pennsylvania Housing Finance Agency, the Pennsylvania Municipal Retirement Board, the State System of Higher Education, a community college, the Pennsylvania Turnpike Commission, the Pennsylvania Public Utility Commission, the Pennsylvania Infrastructure Investment Authority, the State Public School Building Authority, the Pennsylvania Interscholastic Athletic Association and the Pennsylvania Higher Educational Facilities Authority." 65 P.S. §67.102. With the exception of "a community college," the list consists of named entities.

Many special-law challenges alleging a closed class involve an attempt by the General Assembly to evade the constitutional prohibition by cleverly defining a closed class of one or a handful of entities in seemingly general terms. *See Zahorchak*, 4 A.3d at 1048-49; *see also Sample v. City of Pittsburgh*, 62 A. 201, 203-04 (Pa. 1905) (discussing cases); *accord White Constr. Co. v. City of Beloit*, 206 N.W. 908, 909 (Wis. 1926) (holding that a legislative classification violated the rule against special laws where its definition encompassed two cities but other cities could not "grow into it"). The present controversy is different in two ways. First, the Legislature here is up front about its intent to include a defined set of named entities in the classification. Second, the statute is hybrid in nature: it includes general definitional text indicating that a state-affiliated is a "Commonwealth authority or Commonwealth entity," followed by a list of examples. The list, as noted, includes PIAA as well as a number of governmental or quasi-governmental agencies. *See supra* note 10.[11]

B. PIAA and RTKL's list of examples

In light of the above, if we look only at the second part of this definition, *i.e.*, the list of examples, notable issues arise. A list of this sort, if it were the entirety of the definition of a state-affiliated entity, would be constitutionally problematic because it represents a

[11] The RTKL is not the only statute that uses this type of definition. The Procurement Code also defines state-affiliated entity as a Commonwealth authority or Commonwealth entity, followed by a list of examples, albeit PIAA is not in that list. *See* 62 Pa.C.S. § 103. The same is true for the Confidence in Law Enforcement Act, *see* 53 P.S. § 752.2, the Pennsylvania Web Accountability and Transparency (PennWATCH) Act, *see* 72 P.S. § 4664.2, and the Electronic Transactions Act, *see* 73 P.S. § 2260.103.

Separately, whether one considers the RTKL's list to be examples of a Commonwealth authority or Commonwealth entity, or simply a list of bodies that are defined to be state-affiliated entities, as *amicus* Pennsylvania Newsmedia Association claims, *see* Brief at 6, the analysis under Article III, Section 32 is the same.

closed class instead of a class defined by general descriptors capable of encompassing other similarly-situated organizations. To see the problem, we may envision a competing athletic organization similar to PIAA, should one eventually be formed, consisting of Pennsylvania public, private, and charter schools that are *not* members of PIAA. *See La. High Sch. Athletic Ass'n v. State*, 107 So. 3d 583, 590 (La. 2014) ("*LHSAA*") (describing a situation in which there was more than one private athletic association of high schools). Article III, Section 32, like the Equal Protection Clause, reflects the principle that "like persons in like circumstances must be treated similarly." *Zogby*, 828 A.3d at 1088 (citing *Commonwealth v. Albert*, 758 A.2d 1149, 1151 (Pa. 2000)). By including PIAA while excluding any future competitor,[12] the list of examples, if it stood alone, would arguably

[12] PIAA references passages of Dr. Lombardi's affidavit which highlight the existence of other organizations governing interscholastic extracurricular activities, including athletics:

> 26. Among other organizations which regulate non-PIAA interscholastic athletic competitions in Pennsylvania are Rugby PA, the Inter-Academic Association of Philadelphia and Vicinity (Inter-Act League), Central Pennsylvania Interscholastic Hockey League (ice hockey), the Mid-Atlantic Prep League (MAPL), Pennsylvania Independent Schools Athletic Association (PISAA), the Interstate Preparatory League, the Pennsylvania Interscholastic Cycling League, and the Pennsylvania Interscholastic Esports Association.
>
> 27. Non-athletic organizations joined by schools include ones regulating interscholastic academic competitions, such as the Pennsylvania High School Speech League, local chapters of the National Forensic League, the Pennsylvania Bar Association (for the Statewide Mock Trial Competition), the Pennsylvania Math League, and the Pennsylvania Interscholastic Marching Band Association.

Lombardi Affidavit at ¶¶ 26-27, *reprinted in* RR. 139a; *see also* Brief for Appellant at 7 & n.3. PIAA highlights that none of these organizations are mentioned in the RTKL.

run afoul of that mandate. *Accord LHSAA*, 107 So. 3d at 601.[13]

Significantly, though, the list of examples does not stand alone. It is coupled with a more general definition that includes any "Commonwealth authority" or "Commonwealth entity." And PIAA itself concedes the General Assembly may include it within the scope of the RTKL if it creates a class defined in general terms that encompass PIAA rather than simply identifying PIAA by name. *See* Brief for Appellant at 11-12 ("While there is little doubt that the General Assembly could have constitutionally included PIAA within the scope of the RTKL, to do so, it was required to create a class within which PIAA met the definition."). Therefore, we will inquire whether PIAA fits within the general portion of the definition. If so, then PIAA's inclusion in the enumerated list is of little consequence because such inclusion will not alter the classification: PIAA could be excised from the list and it would still be a state-affiliated entity. Further, PIAA's hypothetical future competitor would also presumably fit within the general description, thereby avoiding the equal-protection violation discussed above.

C. PIAA and the RTKL's general definition of state-affiliated entity

[13] As for the Commonwealth Court's reliance on *Harristown Development Corp. v. DGS*, 614 A.2d 1128 (Pa. 1992), for the position that PIAA is a Commonwealth agency "if the General Assembly says it is," *Campbell*, 268 A.3d at 510 (quoting *Harristown*, 614 A.2d at 1131), we find *Harristown* of little relevance to the present case. In that matter, we held that Harristown, a private nonprofit corporation, was an "agency" subject to the prior version of the RTKL, as well as the Sunshine Act (which opens the meetings of covered agencies to the public). But we did so based on a statute indicating as a general matter that *any* nonprofit corporation leasing real estate to the Commonwealth in excess of $1,500,000 per year was covered by those statutes. *See id*. at 1130 (quoting 71 P.S. § 632(d). Harristown was not named in the statute. It fell within the legislative class because it met the class's generalized description.

As explained, the first part of the statutory definition encompasses "Commonwealth authorities" and "Commonwealth entities" generally.[14] The parties have not identified any statute or other source of law designating PIAA as an "authority" of any type. The question becomes, then, whether PIAA is a Commonwealth entity. Unfortunately, the RTKL does not define the phrase "Commonwealth entity." We must therefore discern whether the General Assembly intended a meaning sufficiently broad to include an entity that functions in the manner PIAA does.

PIAA is clearly an entity,[15] and its member schools are located throughout Pennsylvania, but that does not necessarily answer the question of whether PIAA is a "Commonwealth entity" for RTKL purposes. To shed light on that question we look at the RTKL's definitional section overall, *see Meyer v. Cmty. Coll. Of Beaver Cty.*, 93 A.3d 806, 813 (Pa. 2014) (noting statutory words are interpreted with reference to their context), and we observe that a Commonwealth entity is one kind of state-affiliated entity, *see* 65 P.S. § 67.102 (defining "State-affiliated entity"), which in turn is one type of Commonwealth agency. *See id*. (defining "Commonwealth agency"). A Commonwealth entity is therefore one kind of Commonwealth agency. This is relevant because the RTKL's substantive provisions apply to, *inter alia*, Commonwealth agencies, *see id*. (defining "agency"). For example, a "public record" is a record of, *inter alia*, a Commonwealth agency that is not otherwise exempt from disclosure. *See id*. (defining "public record"). It thus makes sense to ask whether PIAA is materially similar to other Commonwealth agencies that the RTKL subjects to its record-disclosure mandates.

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[14] Here the term Commonwealth refers only to Pennsylvania. *See* 1 Pa.C.S. § 1991.

[15] In common parlance virtually anything can be an entity. *See* WEBSTER'S NEW WORLD COLLEGE DICTIONARY 475 (4th ed. 1999) (defining entity in relevant part as anything real in itself). In the law, an entity is defined to include corporations, including not-for-profit corporations. *See* BLACK'S LAW DICTIONARY 532 (6th ed. 1990).

Pursuant to the RTKL, Commonwealth agencies consist of Executive Branch offices, departments, boards, multistate agencies, or commissions, including the Governor's Office, the Office of Attorney General, the Department of the Auditor General, the Treasury Department, any organization established by law "to perform an essential government function," and independent agencies – which in turn are defined as "any board, commission or other agency or officer of the Commonwealth not subject to the policy supervision and control of the Governor." *See id*. (defining "Commonwealth agency").[16] The purport of this somewhat mind-numbing list of commissions, boards, offices, and the like, is that Commonwealth agencies, generally speaking, are bodies covering the Commonwealth as a whole that are involved in some aspect of its governance. *See generally Uniontown Newspapers v. Dep't of Corr.*, 243 A.3d 19, 33 (Pa. 2020) (stating the RTKL's purpose is to promote openness and accountability in government) (quoting *SWB Yankees LLC v. Wintermantel*, 45 A.3d 1029, 1041 (Pa. 2012)).

Importantly, however, the records covered by the RTKL are not limited strictly to those in the custody of formal government agencies as such. The category as to which the General Assembly sought to promote openness and accountability also includes, for example, some records possessed by private contractors that perform a government function on behalf of an agency. The RTKL recasts these as "public record[s] of the agency for purposes of this act." 65 P.S. § 67.506(d). Further, the term "government function," as it is used in Section 506(d), has been construed broadly to include activities that are not normally thought of as governmental in nature, such as amusements. In *SWB Yankees*, we addressed whether a private company that operated a minor league baseball team and its stadium should be viewed as engaging in a governmental function

[16] Commonwealth agencies and independent agencies are expressly defined to exclude judicial agencies and legislative agencies. *See id*.

for Section 506(d) purposes, where it contracted to undertake such operations with the Stadium Authority of Lackawanna County, an authority created per the Municipality Authorities Act of 1945. We concluded the operation of the stadium, including the selling of concessions, was, under those circumstances, a governmental function subject to the RTKL's open-records mandate notwithstanding that it was undertaken by a private corporation. *See SWB Yankees*, 45 A.3d at 1042.

The holding in *SWB Yankees* is not directly on point here because there is no single governmental agency with which PIAA contracts to perform a function the agency would otherwise perform for itself. But *SWB Yankees* stands for the dual observations that as far as the RTKL is concerned, private companies can sometimes possess public records subject to disclosure if those records relate to a governmental purpose being performed by the private company, and the RTKL understands governmental functions broadly enough to subsume activities that in other contexts would be thought of as private-sector concerns. *See id*. at 1041 & n.14 (observing the operation of liquor stores and the lottery are government functions in this state due to legislation placing such activities in the hands of public agencies). *See generally Dental Benefit Providers. v. Eisman*, 124 A.3d 1214, 1223 (Pa. 2015) (recognizing the RTKL is remedial legislation whose terms are to be construed broadly).[17]

[17] *Cf. Mohn v. Bucks Cty. Republican Comm.*, 259 A.3d 449, 455 (Pa. 2021) (acknowledging political parties can at times perform statutorily-imposed public functions and their conduct can thereby constitute state action) (quoting *Bentam v. Seventh Ward Democratic Exec. Comm.*, 218 A.2d 261, 266 (Pa. 1966)); *Evans v. Newton*, 382 U.S. 296, 299 (1966) ("Conduct that is formally 'private' may become so entwined with governmental policies or so impregnated with a governmental character as to become subject to the constitutional limitations placed upon state action."); *Rendell-Baker v. Kohn*, 457 U.S. 830, 838 n.6 (1982) (discussing when the acts of a private party can be fairly attributable to the state on the grounds the party acted in concert with state actors).

These concepts are also reflected in the definition of a Commonwealth entity primarily via the General Assembly's decision to include PIAA within the definition, as well as community colleges – which were added after this Court held that they do not perform an essential government function. *See Cmty. Coll. of Phila. v. Brown*, 674 A.2d 670, 671-72 (Pa. 1996). As explained in Part IV(B), we do not suggest PIAA's inclusion in the enumerated list of state-affiliated entities can, consistent with Article III, Section 32, make PIAA a state-affiliated entity *ipso facto*. Such inclusion does, however, provide evidence of legislative intent more broadly. It suggests the General Assembly did not mean the phrase "Commonwealth entity" to be strictly limited to official government agencies. Rather, the Assembly intended the phrase to include organizations that perform some role associated with statewide governance broadly understood – *i.e.*, as contrasted with an "essential" government function. Again, that determination is confirmed by the inclusion of both PIAA and community colleges in the list.

Here, despite the existence in Pennsylvania of other athletic organizations with a more limited scope in terms of subject matter or geography, *see supra* note 12, PIAA is the "de facto state-wide regulator of high school athletics." Brief for Appellee at 14. Its membership consists of over 1,400 schools, including, by PIAA's own description, "almost all of the public junior high/middle and senior high schools, some of the Charter and Private junior high/middle Schools, and many of the Charter and Private senior high Schools in the Commonwealth of Pennsylvania." https://www.piaa.org/about/story.aspx (last viewed Jan. __, 2024). The interscholastic competitions held pursuant to PIAA's governance involve the participation of more than 350,000 school students in Pennsylvania. *See id*. PIAA provides uniform standards for all interscholastic levels of competition, and it governs virtually all aspects of interscholastic middle- and high-school sports in Pennsylvania. It sets eligibility rules and makes eligibility decisions based on a

student's age, amateur status, attendance, parental consent, pre-participation physical evaluation, transfers and residence, the period of participation (semesters and seasons), and academic performance. *See* https://www.piaa.org/about/governance.aspx (last viewed Jan. __, 2024). PIAA is also responsible for the rules of the sports involved, it provides officials (referees) for the competitions, and it acts as the governing board for the examination of persons seeking to become an official. The Commonwealth Court thus appropriately concluded that PIAA exercises "statewide control over high school athletics." *Campbell*, 268 A.3d at 513.

Still, PIAA highlights that it is not a creature of statute, unlike the other named entities in the definition of state-affiliated entity.[18] And PIAA argues forcefully that it does not receive any tax money:

> All of this [PIAA's activities] is accomplished without any federal or state funds. PIAA's principle [sic] source of revenue is the sale of tickets to its

[18] *See* 24 P.S. § 5101 (creating the Pennsylvania Higher Education Assistance Agency as a body corporate and politic); 4 Pa.C.S. § 1201 (creating the Pennsylvania Gaming Control Board as a body corporate and politic); 34 Pa.C.S. § 301 (creating the Pennsylvania Game Commission); 30 Pa.C.S. § 301 (continuing the Pennsylvania Fish and Boat Commission as an independent administrative commission); 35 P.S. § 1680.201 (creating the Pennsylvania Housing Finance agency as a "public corporation and government instrumentality"); 53 P.S. § 881.103 (creating the Pennsylvania Municipal Retirement Board); 24 P.S. § 20-2002-A (establishing the State System of Higher Education as a body corporate and politic); 36 P.S. § 652d (creating the Pennsylvania Turnpike Commission); 66 Pa.C.S. § 301 (continuing the Public Utilities Commission, as established by the Public Utility Law of 1937, as an independent administrative commission); 35 P.S. § 751.4 (establishing the Pennsylvania Infrastructure Investment Authority as a body corporate and public); 24 P.S. § 791.3 (creating the State Public School Building Authority as a public corporation and government instrumentality); 24 P.S. § 5504 (creating the Pennsylvania Higher Educational Facilities Authority as a public corporation and public instrumentality).

These other members of the enumerated list are not before this Court. As such, we offer no opinion as to how our analysis does or does not apply to them.

> Inter-District Championship Contests. Operating these Inter-District Championship Contests is also PIAA's largest expense. Junior high/middle schools pay annual dues of $250; senior high schools pay annual dues ranging from a low of $475 to a high of $625, based on school size. Those dues constitute approximately 10% of PIAA's gross revenue, and are paid by many of the schools from their athletic budgets, which come from ticket sales to their own Regular Season Contests. *Gate receipts enable PIAA to operate without taxpayer financing*.

https://www.piaa.org/about/story.aspx (emphasis added) (last viewed Jan. __, 2024).[19]

We accept *arguendo* that PIAA does not receive tax money, and hence, we find the Commonwealth Court's somewhat cryptic reference to "the connection between the funds [PIAA] receives from its members and the Commonwealth's taxpayers," *Campbell*, 268 A.3d at 513, to be of little relevance. Further, we agree with PIAA that the mere receipt of public funds does not itself convert the recipient into an agency of the government providing those funds. *See* Brief for Appellant at 27 n.12 (citing *Mooney v. Trustees of Temple Univ.*, 292 A.2d 395, 399 (Pa. 1972) (indicating Temple University's receipt of state and federal funds did not convert it into a state or federal agency)); *cf. Venango County's Tourism Promotion Agency*, 83 A.3d at 1109 (explaining a tourism agency was not made a "local agency" under the RTKL by receiving a small proportion of its funding from a local hotel room tax).[20]

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[19] The parties appear to agree on the validity of these assertions as they both rely on this passage from PIAA's website, albeit Campbell omits the first sentence. *See* Brief for Appellant at 33 n.15; Brief for Appellee at 9.

[20] Once the proceeds of ticket sales are placed in a public school's athletic budget, they become public funds even though they were not derived from taxes. *See* BLACK'S LAW DICTIONARY 1229 (6th ed. 1990) (defining public funds to include moneys belonging to any governmental department in the hands of public officials); 63C AM. JUR. 2d *Public Funds* § 1 (same and adding that "[t]he fact the government has taken possession of moneys pursuant to law is sufficient to constitute them government funds, even though they are held for a special purpose"). It follows that where the school in question is a public school, public funds are used to pay annual dues to PIAA, notwithstanding that such funds are not, as PIAA points out on its website, federal or state monies.

Here, though, due to the underlying legislative intent to ensure openness and accountability in government, our focus is on real-world effects. It is on the role PIAA plays in the arena of middle-school and high-school sports, and whether that role fulfills what is in essence a governmental function.

In this latter respect, it is noteworthy that the education of Pennsylvania's grade-school students, while shared with private institutions, is a function of the government as reflected in our state Charter's mandate that the General Assembly provide for a "thorough and efficient system of public education to serve the needs of the Commonwealth." PA. CONST. art. III, § 14; *see William Penn Sch. Dist. v. Pa. Dep't of Educ.*, 170 A.3d 414 (Pa. 2017). Participation in interscholastic athletics is widely recognized as an integral part of the education and development of young adults. *See Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n*, 531 U.S. 288, 299 (2001) ("Interscholastic athletics obviously play an integral part in the public education of Tennessee, where nearly every public high school spends money on competitions among schools."); *see also Avila v. Citrus Cmty. Coll. Dist.*, 131 P.3d 383, 390 (Cal. 2006); *Yanero v. Davis*, 65 S.W.3d 510, 527 (Ky. 2001) (explaining that some "jurisdictions agree that interscholastic athletics are an integral part of secondary education and, thus, a governmental function," and citing cases); *accord Duffley v. N.H. Interscholastic Athletic Ass'n*, 446 A.2d 462, 467 (N.H. 1982); *Hebert v. Ventetuolo*, 480 A.2d 403, 407 (R.I. 1984). And through the Public School Code of 1949,[21] which sets forth "a comprehensive system to meet the educational needs of the citizens of this Commonwealth," *PLRB v. State Coll. Area Sch. Dist.*, 337 A.2d 262, 268-69 (Pa. 1975), the General Assembly has given to school boards the authority to develop rules and regulations concerning school-based athletics, and to schools the ability to affiliate with organizations whose activities

[21] Act of Mar. 10, 1949, P.L. 30, No. 14 (as amended 24 P.S. §§ 1-101 – 27-2702).

are related thereto. *See* 24 P.S. § 5-511(a), (b). PIAA's member schools have done so by affiliating with PIAA and have thereby delegated to PIAA much of their legislatively-granted rulemaking authority over, and governance of, interscholastic sports. This, combined with PIAA's comprehensive governance over interscholastic sports, as summarized above, and the statewide reach of that governance, weighs in favor of finding it to be a Commonwealth entity for RTKL purposes. *See* Concurring Op. at 6-8 (further describing the reach of PIAA's statewide superintendency of interscholastic athletics).

The composition of PIAA's governing board also supports this conclusion. According to PIAA, its board includes representatives of the member high schools, middle schools, and junior high schools, as well as the Pennsylvania School Boards Association, the Pennsylvania Association of School Administrators, the Pennsylvania Principals Association, the Pennsylvania State Athletic Directors Association, the Pennsylvania Coaches' Association, and the Pennsylvania Department of Education. *See* https://www.piaa.org/about/story.aspx (last viewed Jan. __, 2024).[22] Faced with similar facts, the United States Supreme Court observed that public school officials act within the scope of their duties when representing their institutions in an interscholastic athletic association. *See Brentwood Acad.*, 531 U.S. at 299. The Court explained that, by thus assigning to school officials the job of adopting and enforcing the rules that "make the system [of interscholastic competition] work," the member schools

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[22] Other board members include

> one female and one male PIAA-registered sports' official, the chairpersons of the Girls' Athletics and Private Schools' Steering Committees, and one female and one male representative from the Parents' Advisory Committee. With the sometime exception of the officials' and parents' representatives, members of the Board of Directors are experienced professional educators who have background and experience in dealing with high school athletics.

Id.

> can sensibly be seen as exercising their own authority to meet their own responsibilities. . . . A small portion of the Association's revenue comes from membership dues paid by the schools, and the principal part from gate receipts at tournaments among the member schools. Unlike mere public buyers of contract services, whose payments for services rendered do not convert the service providers into public actors, the schools here obtain membership in the service organization and give up sources of their own income to their collective association. *The Association thus exercises the authority of the predominantly public schools to charge for admission to their games; the Association does not receive this money from the schools, but enjoys the schools' moneymaking capacity as its own*.

Id. (emphasis added, citation omitted).

In *Brentwood Academy*, the Supreme Court held that an otherwise private interscholastic athletic association's regulatory enforcement constituted state action for Fourteenth Amendment purposes. We acknowledge PIAA's thoughtful explanation that the question of whether a private party engages in state action for purposes of the Fourteenth Amendment or Section 1983 of the Civil Rights Act of 1871 is the subject of a distinct body of case law unrelated to whether that party is in fact an arm of the state. *See* Brief for Appellant at 22-30. Therefore, *Brentwood Academy*'s holding is not controlling as to the question before us. But the Supreme Court's observations are informative in that they bring into focus PIAA's substantial statewide control and expenditure of funds in connection with a matter of Commonwealth governance. PIAA plays a vital role in managing an important aspect of the education of middle- and high-school students in Pennsylvania, and it does so through the use of powers derivative of those attendant to school officials acting in an official capacity as authorized under the Public School Code. PIAA fulfills that role ultimately through a board of directors largely consisting of school officials acting in their official capacities. Given this state of affairs, we ultimately conclude PIAA falls within the scope of the phrase "Commonwealth entity." And because PIAA is a Commonwealth entity, it comprises a "state-affiliated entity" under

the first part of the RTKL's definition of that term without reference to the enumerated list of examples. PIAA's records are therefore public records to the extent they are not exempt from disclosure under Section 708 or protected by a privilege. *See* 65 P.S. § 67.102 (definition of "Public record").

V. Conclusion

Accordingly, the judgment of the Commonwealth Court is affirmed.

Chief Justice Todd and Justices Dougherty and Wecht join the opinion.

Justice Wecht files a concurring opinion.

Justice Donohue files a dissenting opinion.

Justice Brobson did not participate in the consideration or decision of this matter.