

# Commonwealth Court Addresses Enormous Right-to-Know Requests

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On July 6, 2016, the Commonwealth Court of Pennsylvania issued a decision directly addressing the scope of a public entity's obligations when responding to requests for records under Pennsylvania's Right-to-Know Law that result in a "sizeable volume" and "enormous number" of responsive records.

In [Pennsylvania State System of Higher Education, Office of the Chancellor, et al. v. Association of State College and University Faculties](#), two Requesters submitted public records requests under Pennsylvania's Right-to-Know Law, 65 P.S. 67.101 *et seq.* (the "RTKL") to each of the fourteen Universities within the State System of Higher Education (collectively the "Universities"). The requests generally sought correspondence between high-ranking officials discussing certain financial reports, related training documents for new hires, and all written instructions given to current or former employees relating to the completion of those financial reports.

In complying with their legal obligation to identify and collect all responsive records, the Universities identified in excess of seventy-four (74) gigabytes of electronic documents. An affiant for the Universities attested that a twenty-five (25) gigabyte portion of the responsive records was estimated to contain 1.87 million pages of information.

Counsel for the Universities and the State System attempted to work collaboratively with the Requesters. They secured software to assist in the review of records and they asked that the Requesters provide search terms to help narrow the search results.

The Universities initially invoked the statutorily-permitted 30-day extension of the deadline to respond to the request. They also asked the Requesters for multiple additional 30-day extensions of the statutory deadline in order to allow the Universities to fully respond to the requests. The Requesters granted the Universities one additional 30-day extension, but denied the Universities' request for a second additional 30-day extension. Since the Universities failed to provide the requested information before the applicable deadline, all of the requests were deemed denied.

On appeal to the Office of Open Records (the "OOR"), the Universities argued that the requests were insufficiently specific under Section 703 of the RTKL. OOR disagreed with the Universities and ordered production of the responsive records. OOR also determined that the Universities failed to meet their burden on appeal of proving that any RTKL exemptions applied to the responsive records.

On appeal to the Commonwealth Court, the Universities argued, in part, that OOR erred as a matter of law by determining that the Universities failed to meet their burden of proving the application of any RTKL exemptions when the Universities did not have the opportunity to review the requested records to fully and completely assess the

application of those exemptions. The Universities contended that they were "incapable of reasonably discerning whether any exemptions applied to this matter because it neither had the time nor resources to fully review the sizable volume of records produced by Requesters' requests in the time-period [they] were given to do so."

The Commonwealth Court reasoned that "just because a request is large does not mean that an agency should be foreclosed from carrying out its statutory duty to determine whether exemptions apply when it is incapable of reviewing the requested documents within the time-period it is given." The Court noted that not allowing public entities the time necessary to process large requests for records would "undermine the specific legislative intent that every record be reviewed so that free and open discussions can take place within government when a decision is being deliberated, and that agencies should be afforded a sufficient opportunity to conduct investigations to protect the Commonwealth's security interests and the public's privacy rights."

The Commonwealth Court's decision establishes a framework of analysis under which public entities can seek an extension of the statutory deadline for responding to open records requests. Any public entity asserting that an extension is necessary must provide OOR:

- A valid estimate of the number of documents being requested;
- An estimate of the length of time that the people charged with reviewing the request require to conduct this review; and
- If the request involves documents in electronic format, the agency must explain any difficulties it faces when attempting to deliver the documents in that format.

Once a public entity provides this information, OOR can "grant any additional time warranted so that the agency can reasonably discern whether any exemptions apply."

Public entities throughout the Commonwealth are experiencing significant increases in the number of RTKL requests and appeals to OOR. Additionally, requesters are more frequently seeking voluminous electronic records, including email correspondence of public officials and employees.

While the Court's decision does not change the obligation to respond to right-to-know requests that result in vast quantities of responsive records, it provides public entities a "relief valve" to request an extension of time for proper processing of such requests.

As of the date of this Alert, OOR has indicated that it "will analyze the [Commonwealth Court's] decision and apply it to [OOR's] current appeal process and procedure on a case-by-case basis."

Should you have any questions about this decision, or if we can assist you in complying with the RTKL when processing an "enormous" records request, please do not hesitate to contact us. Barley Snyder is committed to effectively and efficiently assisting its public school district and other public entity clients in complying with their obligations under the RTKL. Through the use of specialized software and processing procedures, we regularly assist clients in reviewing large volumes of electronic records.