

Craig Staudenmaier Esq

IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA
CIVIL DIVISION

REDEVELOPMENT AUTHORITY OF
THE COUNTY OF WASHINGTON,

Appellant,

Vs.

HONORABLE BUD COOK,

Appellee.

ENTRY OF OPINION, ORDER, DECREE,

ABJUDICATION OR JUDGMENT FILED: 11-19-2020

MAILED: 11-19-2020

TO: C. Staudenmaier

No.: 2020-2037

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The matter comes before the Court on a statutory appeal filed by the Redevelopment Authority of the County of Washington (RACW) to the FINAL DETERMINATION issued by the Pennsylvania Office of Open Records (ORR) which ordered the RACW to provide copies of the records requested by the Honorable Bud Cook. The Court heard this case based on the certified record submitted by the ORR on May 27, 2020 consisting of over 400 pages and as supplemented by the RACW with the submission of affidavits of Kathryn Cutrara and Janelle Yamber. Briefs were submitted and argument was held on September 29, 2020.

FINDINGS OF FACT

1. The Honorable Bud Cook, a Pennsylvania State Representative, requested copies of records of the RACW on December 20, 2019 pursuant to the Pennsylvania Right to Know Law (RTKL), 65 P.S. §67.101 et seq.
2. RACW is a local agency subject to the RTKL.
3. RACW oversees projects funded under the Local Share Account (LSA); the LSA funds are

public monies received from gaming operations earmarked for local economic development and other projects.

4. Rep. Cook's request on December 20, 2019 asked for:
 - Contracts between RACW and LSA grant recipients from 2008 to the present.
 - Contracts and invoices between LSA grant recipients and vendors used in the completion of the LSA projects from 2008 to the present and
 - Correspondence to or from RACW and LSA project grant recipients and/or vendors from 2008 to the present.
5. Rep. Cook made an earlier request under the RTKL on June 25, 2019 requesting records of LSA grants awarded by the RACW to the Washington County Chamber of Commerce and the Washington County Tourism Promotion Agency and related correspondence.
6. RACW provided copies of those records to Mr. Cook.
7. Rep. Cook made an earlier request on October 14, 2019 requesting records of LSA grants awarded by RACW for the site visits and spec building and related correspondence.
8. RACW provided the requested documents to Mr. Cook.
9. Rep. Cook made a RTK request on November 18, 2019 for all audits of the LSA program from 2008 to 2019.
10. RACW provided the requested documents to Rep. Cook.
11. In February, 2017, shortly after Mr. Cook was elected to the General Assembly, the RACW provided Representative Cook's office with information about LSA funded projects.
12. 433 projects have been funded by the LSA through RACW since 2008.
13. The records for those projects are maintained by RACW; the records are located in two

separate places and are voluminous.

14. After receiving Rep. Cook's request of December 20, 2019, Janelle Yamber, the Open Records Officer of the RACW, responded via email denying his request pursuant to Section 506; Ms. Yamber offered to provide a record "relating to a specific project" and offered an appointment "to view records pertaining to the LSA program at the office of RACW."
15. Rep. Cook appealed the decision of RACW to the ORR on January 3, 2020.
16. On February 26, 2020, the ORR granted the appeal and found that the RACW was required to provide the records requested by Rep. Cook within thirty (30) days.

DISCUSSION

The Pennsylvania Right to Know Law (65 P.S. §67.101 et seq) was amended in 2008, effective January 1, 2009 and expanded the definition of public record and significantly broadened the scope of the law. Bowling v. Office of Open Records, 75 A.3d 453, 621 Pa. 133 (2013). 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). The RTKL requires that the records of a public agency "shall be accessible for inspection and duplication in accordance with this act." §701. Under §302, the RACW qualifies as a public agency. Records of a public agency are presumed to be public unless the records are exempt or are protected by privilege or judicial order. §305.

In its appeal, the RACW first asserts that its response to Rep. Cook complied with the RTKL as it allowed access to the records; Rep. Cook was invited to view the records and was not denied access. That narrow view does not comport with either the letter or the spirit of the RTKL. The Act

requires access for inspection and duplication. Simply, a public entity must provide inspection and it must provide duplication, as determined by the requester. Here, the requester asked for copies of documents, not to view them. The RTKL provides for public entities to charge for duplication and postage. §1307. It is cogently clear that the word duplication requires the public agency to provide paper (or electronic) copies of the requested documents. The Court finds that simply allowing Rep. Cook to come to their office and look through 17 drawers of cabinet files is not what the RTKL requires or intends.

The next argument asserted by RACW concerns the request itself. RACW is asserting that the request was duplicative, that it was unduly burdensome in its scope and would require unusual and unfair amount of time and resources to comply. The request of Rep. Cook does contain some duplication of his previous formal RTK requests. He is asking for records of 433 projects; he previously received records for the project called the Alta Vista Building and LSA funded projects with Washington County Chamber of Commerce, which appears to be one project each year from 2012 through 2018. Those previous requests for a few specific projects do not obviate his right to obtain additional public documents. Further, the records provided to Rep. Cook in 2017 appear to be lists and summaries of LSA projects. If any of the documents requested by Rep. Cook in this case has been provided, RACW need not provide them again, but should note the project documents provided previously. The Court finds RACW's argument that the request is duplicative without merit.

The burdensome nature of a RTK request is a real and costly one. But it is a burden worth bearing to provide open and transparent government. No doubt providing copies of 433 project contracts, invoices and correspondence will involve thousands of pages. The fact that a request is

burdensome will not of itself deem the request unwarranted. Office of the District Attorney of Philadelphia v. Bagwell, 155 A.3d 1119 (Cmwlth. Ct. 2017). This Court notes that with the recent pandemic, little or no economic development projects were occurring and building projects were on hold; this slow down in almost all activities provided an ideal time for RACW to comply with the request. The RACW does not claim the records are exempt, only that the request is burdensome. The cited cases by the RACW in support of their position on this are inapplicable as they predate the 2008 amendments. The Court finds that the burden of the request is not unreasonable, even though it involves thousands of pages.¹

Lastly, RACW requests that Representative Cook pay for the duplication costs prior to his receipt of the record and pay for labor costs. The law does not require payment from the requester prior to the receipt of the documents. RAWC does not posit a reason for this unusual request. The RTKL provides that an agency may charge a reasonable duplication fee. §1307. The duplication fee incorporates the material and labor costs.

CONCLUSIONS OF LAW

1. RACW is a public agency and must comply with the Right to Know Law.
2. The records requested by Rep. Cook are public records under the RTKL.
3. The RTKL requires a public agency to make copies of requested public documents.
4. The request by Rep. Cook was not duplicative of his previous requests, except for the records of a few projects, being Alta Vista Building and those with Washington County Chamber of Commerce.

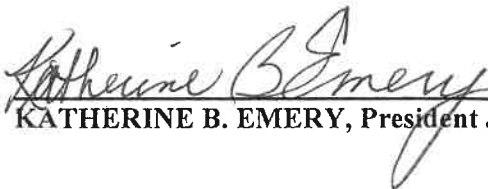
¹ The Court encourages the parties to meet and consider providing the last five (5) years first and provide the remainder only if Rep. Cook deems it necessary.

5. The request by Rep. Cook, while burdensome and voluminous, is not unreasonably and unduly burdensome.
6. RACW failed to establish that the records should not be produced.
7. The request by RACW to require Rep. Cook to pay for the records before the same is provided is not appropriate.
8. The request by RACW to require Rep. Cook to pay for the records before the same is provided is not appropriate under the RTKL.
9. Rep. Cook shall be billed at the per page rate established by the RACW.

ORDER

AND NOW, this 19th day of November, 2020, it is hereby ORDERED and DECREED that the Determination issued by the Office of Open Records on February 26, 2020 is AFFIRMED and the appeal is DENIED.

BY THE COURT:

 P.J.
KATHERINE B. EMERY, President Judge