



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
HARRISBURG, PENNSYLVANIA
17120

Right-to-Know Law Office
Room 309, North Office Building
401 North Street
Harrisburg, PA 17120-0500
Fax: 717-214-9899

Mailing Date: March 10, 2014

Witold Walczak
313 Atwood Street
Pittsburgh, PA 15213

vwalczak@aclupa.org

RE: Right-to-Know Law Request No. 2014-048

Dear Mr. Walczak:

On February 12, 2014, the Department of State received your request for information pursuant to the Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101, et seq. (RTKL), wherein you requested the following: Memorandum of Understanding (MOU) and any other documents describing adoption, implementation, operation or enforcement of Interstate Voter Cross-check Program, and documents that describe, discuss, guide, regulate, etc., purging of voter records under the Interstate Voter Cross-check Program. On February 19, 2014, a letter indicating that the Department required a thirty day extension request was forwarded to you.

Your request is granted in part and denied in part.

- The records to which access is granted are attached. Please note that the "Instructions for County Election Officials" and the "2014 Participation Guide" are Kansas publications and the Department has not adopted these procedures. The documents were provided by Kansas as a reference and overview and implementation of the program in Kansas.
- Your request for documents regarding the "purging of voter records" is denied. The Department does not have any such records in its possession. Pursuant to the Office of Open Records Final Decision in *Jenkins vs. Pennsylvania Department of*

State, OOR Dkt. AP 2009-065, it should be noted that: "It is not a denial of access when an agency does not possess records and there is no legal obligation to obtain them (see, e.g. Section 67.506(d)(1))." Further, an agency is not required "to create 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.

- The Department has denied your request as to records that reflect the Department's pre-decisional, internal deliberations, because such records are exempt under RTKL Section 708(b)(10), and the deliberative process privilege under Pennsylvania common law. *Lavelle v. OGC*, 769 A.2d 449 (Pa. 2001). Section 708(b)(10)(i)(A) of the RTKL states that an agency can withhold records that reflect, "The internal, pre-decisional deliberations of an agency, its members, employees or officials or pre-decisional deliberations between agency members, employees or officials and members, employees or officials of another agency..., contemplated or proposed policy or course of action or any research, memos or other documents used in the pre decisional deliberations."
- The Department has denied your request for records to the extent that they are protected under the attorney-client privilege and the attorney-work product doctrine. The presumption that a record is public does not apply if the record is protected by a privilege. 65 P.S. §67.305(a)(2). Section 102 of the RTKL includes the attorney-client privilege and the attorney-work product doctrine in definition of "privilege."

The attorney-client privilege provides that counsel shall not be competent or permitted to testify to confidential communications made to him by his client, nor shall the client be compelled to disclose the same, unless this privilege is waived by the client. 42 Pa.C.S. §5928. In addition, the Pennsylvania Supreme Court has stated that the attorney-client privilege covers both confidential client to attorney communications and confidential attorney to client communications made for the purpose of obtaining or providing legal advice. See *Gillard v. AIG Insurance Co.*, 15 A. 3d 44, 59 (Pa. 2011).

Certain records are also protected under the attorney work-product doctrine. According to this doctrine, "mental impressions, conclusions or opinions respecting the value or merit of a claim or defense or respecting strategy or tactics, including those of a party's representative who is not the party's attorney" are protected from disclosure. *Lavelle v. OGC*, 769 A.2d 449 (Pa. 2001), citing Pa.R.C.P. 4003.3.

- The Department has denied your request to the extent that it seeks records regarding computer hardware, software and networks, including administrative or technical records, which, if disclosed, would be reasonably likely to jeopardize computer security is exempt from disclosure under §67.708(b)(4) (financial

records) of the RTKL. Certain records relating to the transfer of data between Pennsylvania and Kansas fall within this exception.

- The Department has denied your request to the extent that the records containing all or part of a social security number is exempt from disclosure under §67.708(b)(6)(i) of the RTKL (personal identification information). This information has been redacted from the responsive records.

You have a right to appeal this response in writing to Terry Mutchler, Executive Director, Office of Open Records (OOR), Commonwealth Keystone Building, 400 North Street, 4th Floor, Harrisburg, PA 17120. If you choose to file an appeal, you must do so within 15 business days of the mailing date of this response and send to the OOR:

- 1) this response,
- 2) your request,
- 3) the reason why you think the agency is incorrect in its response.

Also, the OOR has an appeal form available on the OOR website at: <https://www.dced.state.pa.us/public/oor/appealformgeneral.pdf>.

Respectfully,



Heidi L. Barry

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Enclosure