



COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF THE GOVERNOR  
HARRISBURG

August 26, 2011

Via Email ([groverlaw@ix.netcom.com](mailto:groverlaw@ix.netcom.com))

Request No.: C2011-054

Neil A. Grover, Esquire  
2201 North Second Street  
Harrisburg, PA 17110

Dear Mr. Grover,

On June 15, 2011 the Office of the Governor ("Office") received your request for information pursuant to the Pennsylvania Right-To-Know Law, 65 P.S. §§ 67.101, *et seq.* (RTKL), attached. The Office notified you that it would require a thirty day extension for legal review and prepayment of estimated fees was also required, so that our final response is due to you by August 29, 2011, based upon the date of receipt of the estimated prepayment.

As explained below, while your request is denied as insufficiently specific and overly broad, the Office has narrowed the request and is providing you with records that it believes are responsive for the stated purpose of your request, which we understand as seeking to obtain:

- **records of Governor Corbett and his executive staff,**
- **that mention or reference the attendees, location, date or duration of meetings conducted in relation to (or that reference) Harrisburg's Act 47 status,**
- **which meetings were between the Governor and his executive staff and any other persons (including, but not limited to, the Department of Community and Economic Development and Act 47 Coordinators),**
- **from January 18, 2011 to the date of your request.**

In your request you stated, *inter alia*:

*This request seeks certain records of the Office of the Governor in relation to meetings of the Governor and/or any and all representatives, staff members, deputies or other agents thereof, with any person, including any official, representative, lobbyist, counsel, employee of agent of (1) the Department of Community and Economic Development (DCED); (2) the persons and entities contracted and/or appointed to serve as the Act 47 Coordinators for the City of Harrisburg; and/or (3) any other person.*

The request goes on to specify which “certain records” are being sought, regarding meetings of the Governor (and/or any and all representatives, staff members, deputies or other agents thereof) and any person (including those listed).

*Specifically, this request seeks any and all visitor logs, activity logs, security logs, meeting minutes, calendars, notes, letters, forms, reports, telephone messages, text messages and e-mails arising from and/or relating to each such meeting or conference, regardless of whether it was in-person, telephonic or by and through some other electronic, wire or digital device(s).*

Accordingly, the request seeks particular types of records arising from or relating to any meeting between the Governor (and/or any and all representatives, staff members, deputies or other agents thereof) and any person (including those listed).

The request then states what it “seeks to determine,” which is:

*any and all attendees of each and every meeting or conference, regardless of his or her degree of participation in any such meeting or conference, so long as the meeting or conference was regarding the application and/or the determination of the Secretary of DCED to confer distressed municipality status to the City of Harrisburg under Act 47.*

Therefore, this additional information indicates that the purpose of the request is to obtain information only with regard to meetings of the Governor (and/or any and all representatives, staff members, deputies or other agents thereof) and any person (including those listed) that relate to Harrisburg’s Act 47 status.

Finally, the request further states that it seeks to determine “the date, location and length of each such meeting” as well as the attendees and:

*to identify and confirm who communicated and/or met with the Governor or any staff member, agent or representative of the Governor regarding any aspect of the Act 47 Plan ... or other matters reviewed or considered in conjunction with the formation or finalization of the [Act 47 Plan].*

In considering RTKL requests, the Office attempts to determine what the requester is seeking, but is also forced to respond to the actual words of the request, as to what is sought. There have been situations where the Office of Open Records (OOR) has compelled agencies to produce records that were not envisioned by the agency as being within the scope of a request. The agency thought it knew what records were being requested and provided them but, on appeal, the failure to deny based on insufficient specificity was grounds for the agency being compelled to produce other records. *See, e.g., Schillinger v. Lackawanna*, OOR Dkt No. AP 2009- 1059 (Jan. 8, 2010).

As written, your request seeks records arising from or relating to any meeting between the Governor (and/or any and all representatives, staff members, deputies or other agents thereof)

and any person (including those listed). There is no time frame, no specified individuals and no subject matter. It is to *include* meetings with anyone from the DCED (which has approximately 400 employees) and Act 47 Coordinators, but it includes meetings with “any other person,” with no time limitation or subject matter in the request itself (although the explanation of the purpose of the request indicates that it relates to meetings regarding Act 47). But, the explanation (what the request “seeks to identify”) also includes identifying anyone who communicated with the Governor (or his staff, etc.) “regarding any aspect of the Act 47 Plan “or other matters reviewed or considered” regarding Act 47 – regardless of whether such communication related to any Act 47 meetings.

Section 703 of the RTKL requires a request to be sufficiently specific to enable the agency to identify which records are being requested. You discuss what you seek to determine through the request, but the request itself is insufficiently specific and overly broad and is therefore denied, as written.

In determining whether a request for records of communications is sufficiently specific, the OOR has determined that the totality of the circumstances have to be considered. *Id.* Generally, there needs to be a time frame; a subject matter and a limited group of senders and recipients. As noted by the OOR in *Martin v. PUC*, OOR AP Dkt # 2010-0385, “[a] number of facts may be considered such as time restrictions, subject matter, date restrictions, parties involved, types of records, etc. However, there is no formula or combination thereof that can be identified to meet specificity requirements.”

As written, your request would cover any meeting of the Governor or any of his staff, or “representatives” or lobbyists, with anyone at any time (this could be Governor Corbett or any other Governor, as “Corbett” is not referenced), on any subject. Further, it is also not possible for the Office to determine who communicated with the Governor (this Governor or the previous Governor) or any of his staff regarding “any aspect” of Act 47 “or other matters reviewed or considered” regarding Act 47, as this is not sufficiently specific for the Office to be able to determine which records are sought.

The OOR has held that the RTKL does not require an agency to narrow an insufficiently specific request in order to answer it. *Delson v. Dauphin County*, OOR AP Dkt # 2010-1174. Nonetheless, we are providing records that we believe are responsive, as we have interpreted your request in a more limited fashion (not to include meetings with anyone for any purpose at any time, for example), in order to allow us to provide you with public records that may fall within the overbroad request.

**We have conducted a search of:**

- 1) records (as defined in the RTKL, Section 102, which includes the definition of types of records that you specify in your request);**
- 2) of Governor Corbett and the executive staff of the Office of the Governor (as identified on the website of the Office of the Governor at: [http://www.governor.state.pa.us/portal/server.pt/community/executive\\_staff/2994](http://www.governor.state.pa.us/portal/server.pt/community/executive_staff/2994));**
- 3) from January 18, 2011 to the date of receipt of your request (June 15, 2011);**

- 4) that mention or reference the attendees, location, date or duration of meetings conducted in relation to (or that reference) Harrisburg's Act 47 status;
- 5) which meetings were between the Governor and his executive staff and any other persons (including, but not limited to, the Department of Community and Economic Development and Act 47 Coordinators).

While we identified individuals from DCED who would have been involved in such meetings, as well as the Act 47 Coordinator, these were not added to the search terms, since all records involving meetings related to Act 47 were sought, regardless of the participants. Therefore, adding those names would be an undue limitation.

The Office is unaware of other "agents" or "lobbyists" of the Governor who would have been involved in Act 47 meetings, and believes that including all of the Office's executive staff would be the appropriate group that would have been involved in meetings regarding Act 47, as "representatives, staff members" and "deputies" of the Governor.

We believe that this search and the records that are being produced are responsive to the information that you were seeking in your request, although we have formally denied it as insufficiently specific, so as to avoid some other construction of the request that would compel us to produce other records that we would not have considered responsive.

However, your request is also denied insofar as it includes records or information (where redacted) that reflect internal predecisional deliberations within or among agencies, pursuant to 65 P.S. 67 §708(b)(10), notes or working papers, pursuant to 65 P.S. § 67.708(b)(12), attorney-client privilege or attorney work product, 65 P.S. § 67.102.

In our production, where responsive information was part of an otherwise exempt record, as noted above, redactions have been made, so that you have been provided with the responsive information. No records were withheld in their entirety that were responsive to the request, as defined above. Further, there were a very large number of duplicate copies and where there were multiple e-mail strings, for example, we have provided you with just one, with the same responsive information that would have been in others.

Pursuant to the fee provisions established by the OOR, the total amount due is \$17.55, which includes duplication fees of \$14.75 (39 pages total and 20 pages of redactions) and actual mailing costs of \$2.80. We had previously assessed an estimated fee that was prepaid, in the amount of \$130, for approximately 500 pages of material that had to be reviewed in response to your request. Accordingly, within the next 14 days, we will be sending you a check for \$112.45.

However, 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, 4<sup>th</sup> Floor, Harrisburg, Pennsylvania 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; and 3) the reason why you think the agency is wrong in its reasons

for saying that the record is not public (a statement that addresses any ground stated by the agency for the denial). If the agency gave several reasons why the record is not public, state which ones you think were wrong.

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

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael R. Downing", with a large, stylized flourish at the end.

Michael R. Downing  
Agency Open Records Officer  
508E Main Capitol Building  
Harrisburg, PA 17120  
717-787-2500