



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

MICHELLE A. HENRY
ATTORNEY GENERAL

September 21, 2023

15th Floor, Strawberry Square
Harrisburg, PA 17120
(717) 783-1111

E-mail: foia@aflegal.org

Attn: Michael Ding
America First Legal Foundation
611 Pennsylvania Avenue SE, #231
Washington, DC 20003

RE: Right to Know Request
2023-175

Dear Mr. Ding:

This letter acknowledges receipt by the Office of Attorney General of your written request for records under the Pennsylvania Right-to-Know Law (65 P.S. § 67.101 *et seq.*) (“RTKL”). The Right to Know Office received your request on August 15, 2023. On August 22, 2023, you were notified that a legal review was necessary to determine whether the records requested are subject to access under the RTKL and that additional time was required to perform this review. As provided in the RTKL, the Office of Attorney General (“OAG”) required up to an additional 30 calendar days, or until September 21, 2023, in which to provide a final response to your request. The review has now been completed, and this letter serves as our final response.

The “identified records” are those stated in your August 15, 2023 request, as modified by any subsequent communications. Specifically, your request indicates that you are seeking the following information, for the period of March 31, 2020 to March 31, 2021:

Relevant custodians include:

- Then-Attorney General Joshua D. Shapiro
- Michelle A. Henry
- Jennifer Selber
- Carson B. Morris
- Joe Radosevich
- Ken Topping
- David Wade

- Mike Vereb
1. All records related to the March 24, 2021 letter.
 2. All records of communications between the custodians listed above and the Center for Countering Digital Hate or Imran Ahmed, including any email address ending in the domain name “@counterhate.com.”

A full and complete search pursuant to the requirements of the RTKL has been conducted. It has been determined that your request is granted in part, to the extent that records exist, cannot be granted in part and is respectfully denied in part, as more fully explained below.

REQUEST PART #1 - GRANTED IN PART AND DENIED IN PART

Granted In Part

Part #1 of your request has been reviewed and is granted in part, to the extent that records exist and are disclosable under the RTKL. Available for access are records identified as responsive to this portion of your request. Limited portions of the identified records have been redacted. *See the below “FEES” paragraph.*

Denied In Part

Personal Information

Certain of the records have been redacted in part pursuant to section 708 of the RTKL, which precludes the release of the following personal identification information: “all or part of a person’s...personal email address and phone numbers...” 65 P.S. § § 67.708(b)(6)(i)(A). In this instance, personal email addresses and personal phone numbers have been withheld.

Denied In Part

Additionally, certain of the identified records have been withheld in their entirety, under the below provisions of the RTKL.

Predecisional Deliberations

Records utilized to make a decision, recommendation or to form an opinion on legal or policy matters are precluded from disclosure as “a record that reflects the internal, predecisional deliberations of an agency, its members, employees or officials or predecisional deliberations between agency members, employees or officials and members, employees or officials of another agency, including predecisional deliberations relating to a budget recommendation, legislative proposal, legislative amendment, contemplated or proposed policy or course of action or any research, memos or other documents used in the predecisional deliberations.” 65 P.S.

§67.708(b)(10)(i)(A). *Kaplin v. Lower Merion Township*, 19 A.3d 1209 (Pa. Cmwlth. 2011), petition for allowance of appeal denied, 612 Pa. 693, 29 A.3d 798 (Pa. 2011). To prove this exception, the OAG is required to show that: “(1) the information is internal to the agency; (2) the information is deliberative in character; and (3) the information is prior to a related decision, and thus ‘predecisional’.” *Carey v. Department of Corrections*, 61 A.3d 367, 379 (Pa. Cmwlth 2013). In this case, there are limited electronic communications in which employees from the OAG discussed proposed courses of action to be taken regarding the March 24, 2021 letter. All such communications were predecisional, meaning they occurred before the conclusion of the course of action. As such, these records are entirely exempt from disclosure under the RTKL in accordance with 65 P.S. § 67.708(b)(10)(i)(A).

REQUEST PART #2-NO RECORDS

No Records

A full and complete search pursuant to the requirements of the RTKL has been conducted, based upon the parameters of your request as set forth above, and it has been determined that the requested information— [a]ll records of communications between the custodians listed above and the Center for Countering Digital Hate or Imran Ahmed, including any email address ending in the domain name “@counterhate.com.”— does not exist as a record of this agency and we are not required to create a record that does not exist. 65 P.S. §67.705. *Moore v. Office of Open Records*, 992 A.2d 907 (Pa. Cmwlth. 2010). It should be noted that it is not a denial of access when an agency does not have possession, custody or control of a record and there is no legal obligation to obtain such record. 65 P.S. §67.506(d)(1). However, if you choose to interpret this letter as a denial, you may file an appeal as indicated below

FEES

Available for access are electronic copies of the above-mentioned records, which were provided to this office in that format. The identified records will be provided to you via CD, thumb drive or e-mail, whichever you choose:

For a CD, payment in the amount of \$1.00 copying fees (1 CD @ \$1.00 a piece = \$1.00) plus the cost of mailing via U.S. Mail (\$1.50) is required.

For a thumb drive, payment in the amount of \$7.97 copying fees (1 thumb drive @ \$7.97 a piece = \$7.97) plus the cost of mailing via U.S. Mail (\$1.50) is required.

Because the RTKL specifies that “all applicable fees shall be paid in order to receive access to the record requested,” the law contemplates that a requester shall pay before actually receiving the records, whether for inspection or duplication. 65 P.S. § 67.901. Therefore, either **\$2.50** for a CD or **\$9.47** for a thumb drive, payable to the Commonwealth of Pennsylvania should be sent to the following address:

OFFICE OF ATTORNEY GENERAL

LEGAL REVIEW SECTION
15TH FLOOR STRAWBERRY SQUARE
HARRISBURG, PA 17120
Re: Right to Know (2023-175)

After payment for copying and mailing fees is received, we will send the aforementioned records to you via U.S. Mail.

If you choose to receive the records by e-mail transmission, we will send the responsive documents to your designated e-mail address, at no cost, once we have completed any necessary redactions. We are currently processing several RTKL record productions; however, we will make every effort to dispense your records as soon as possible.

To request your responsive records via e-mail, send your name, RTKL request number and e-mail address to: rtkl@attorneygeneral.gov.

CONCLUSION

For the above reasons, your request has been granted in part, cannot be granted in part and is respectfully denied in part. We trust that this response addresses the intent of your request.

RIGHT TO APPEAL

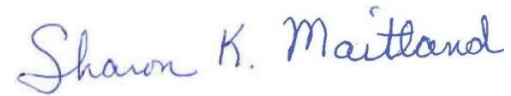
BY PROVIDING THIS RESPONSE, THE OFFICE OF ATTORNEY GENERAL HAS SATISFIED ITS OBLIGATION TO RESPOND TO YOUR REQUEST. SHOULD YOU WISH TO CHALLENGE THIS RESPONSE UNDER THE RTKL, YOU MUST FILE AN APPEAL WITH THE RIGHT TO KNOW APPEALS OFFICER OF THE PENNSYLVANIA OFFICE OF ATTORNEY GENERAL, WITHIN FIFTEEN (15) BUSINESS DAYS OF THE MAILING DATE OF THIS LETTER. YOUR APPEAL MUST INCLUDE A COPY OF YOUR ORIGINAL REQUEST AND THIS AGENCY'S RESPONSE, STATE THE GROUNDS UPON WHICH YOU CLAIM YOUR REQUEST SHOULD NOT HAVE BEEN DENIED AND ADDRESS ALL REASONS STATED BY THIS AGENCY FOR ITS DENIAL OF YOUR REQUEST. FAILURE TO FOLLOW THESE INSTRUCTIONS MAY RESULT IN DISMISSAL OF YOUR APPEAL. YOUR APPEAL MUST BE SENT TO THE FOLLOWING:

OFFICE OF ATTORNEY GENERAL
CIVIL LITIGATION SECTION
15TH FLOOR STRAWBERRY SQUARE
HARRISBURG, PA 17120

Please note that this response is being sent from an unmonitored e-mail address. Do not reply to this e-mail.

September 21, 2023

Sincerely,



Sharon K. Maitland
Deputy Attorney General
Right to Know Officer

SKM:mae
2023-175