



# CITY OF BETHLEHEM

OFFICE OF THE CITY SOLICITOR

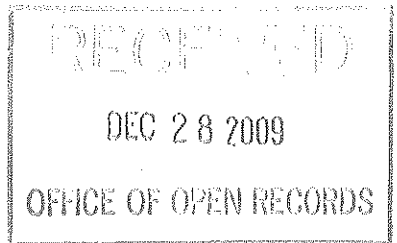
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Ms. Terry Mutchler  
Executive Director of the Office of Open Records  
400 North Street  
Harrisburg, Pa 17120

RE: Request for an Advisory Opinion  
Daily Calendars/Schedules for the Mayor

Dear Executive Director Mutchler:

The Solicitor's Office for the City of Bethlehem respectfully requests an Advisory Opinion from your office concerning the daily calendar and schedule of the Mayor of the City of Bethlehem. Consistent with the requirements listed on the website for the Office of Open Records please consider this request.

## Facts

The Mayor of the City of Bethlehem uses a computer based calendar and daily schedule generating program. On this schedule are family events and outings, meetings with various city officials, and personal engagements. With respect to the time period being sought, the Mayor and his secretaries were the only ones with access to his calendar. Other city departments and department personnel were not able to view or edit the Mayor's calendar.

Currently, the Mayor's schedule is kept by individuals who are not city employees and the schedule and daily calendar is not stored on city computers. The third party has not contracted to perform a governmental function on behalf of the City. They are employed by the Mayor at his own cost.

The City received a Right to Know request seeking the Mayor's daily schedule from January, 2008 to November 16, 2009. The City has not yet granted or denied this request. Additionally, since the calendar is presently kept by a third party, the City would like advice as to whether this would be subject to Right to Know requests in the future. There is no known pending litigation on these issues.

Questions of Law

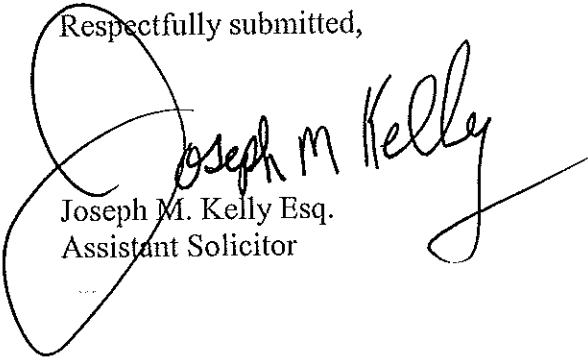
The questions of Law upon which the City seeks your advice are as follows:

- 1) Whether the Mayor's schedule, which is not accessible to other departments and personnel within the City, falls under the exception of 65 P.S. §67.708(b)(12) (Right to Know Law, notes and working papers exception).
- 2) Whether the Mayor's schedule, which is maintained by a third party, non City employee, is within agency possession pursuant to 65 P.S. §67.506(d). If it is within agency possession, does it fall under exception of 65 P.S. §67.708(b)(12).

This request for an opinion is relevant to the application of the Right to Know Law because of the uncertainty of "purely personal in use" as articulated in Shields v. City of Philadelphia, OOR Dkt. AP 2009-0787. Additionally, the definition of "agency possession" when the record is held and maintained by a third party, not funded by Government dollars or under the direct control of the government, is uncertain and the City needs to know if it can properly deny future requests based upon lack of possession or if it would have to determine if the documents fall under one of the exceptions in §708.

We have spoken to the requesting party and they have granted us a thirty (30) day extension. As such we would ask the OOR to respond to our request as quickly as possible so that we may respond to the requesting party in as timely a manner as possible. If you should have any questions or need for additional information please do not hesitate to contact me.

Respectfully submitted,

  
Joseph M. Kelly Esq.  
Assistant Solicitor



January 11, 2010

Joseph M. Kelly  
Assistant Solicitor  
City of Bethlehem  
Office of the City Solicitor  
10 East Church Street  
Bethlehem, PA 18018-6025

**Re: Advisory Opinion Request Regarding Mayor's Calendar**

Dear Mr. Kelly:

Thank you for writing to the Office of Open Records with your request for an Advisory Opinion pursuant to the Right-to-Know Law, 65 P.S. §§67.101, *et seq.*, ("RTKL").


You asked the OOR to advise whether the daily calendar and schedule of the Mayor of the City of Bethlehem are public records subject to disclosure, or whether they are exempt as notes and working paper exceptions under 65 P.S. § 67.708(b)(12). You also asked whether the individual who prepares these records, who is not a public employee, would be considered a third party contractor under 65 P.S. § 67.506(d).

Please be advised that the OOR has decided not to grant this request for an Advisory Opinion. We are declining to accept this request because the OOR has previously issued Final Determinations on this subject. *See, e.g. Shields v. City of Philadelphia*, OOR Dkt. AP 2009-0787.

We are not saying that the Mayor of Bethlehem's daily calendar and schedule may not be factually distinguishable. To the extent that after careful review, you believe that your client's materials are properly exempted from public disclosure, you have the option to develop your theories and deny the records, providing your legal and factual basis to the requester as required by the RTKL.

Thank you for your inquiry. We will reflect this response on the OOR website.

Respectfully,

  
Terry Mutchler  
Executive Director

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