

October 20, 2022

J. Chadwick Schnee
Solicitor for Exeter Township
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RE: Advisory Opinion on Ethics Act

Dear Attorney Schnee:

The Office of Open Records (“OOR”) received your request for an advisory opinion on September 29, 2022. The OOR may issue advisory opinions pursuant to Section 1310 of the Right-to-Know Law (“RTKL”), 65 P.S. § 67.1310(a)(2). Your request for an advisory opinion is hereby **GRANTED**.

Your advisory opinion request seeks an answer to the following question:

When a request seeking a [statement of financial interests (“SOFI”)] up to a year old is made, can an agency respond to the request in accordance with the timeline provided under the RTKL or must an agency, instead, provide for immediate access to such public records, regardless of staffing availability?

In other words, you seek to determine, with respect to SOFIs up to a year old, whether those records must be provided immediately, within two business days, or whether the RTKL’s timeframes apply. The Ethics Act provides that SOFIs “shall be made available for public inspection and copying during regular office hours.” 65 Pa.C.S. § 1104(e). The regulations accompanying the Ethics Act add:

(b) A governmental body required to maintain [SOFIs] shall make them available for public inspection and copying during regular business hours.

(c) Statements of Financial Interests more than 1 year old will be made available for public inspection and copying within 2 working days after the request has been made for the Statements. The Statements will be kept on file for 5 years.

51 Pa. Code § 19.4.

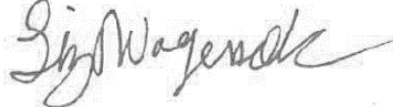
It is the OOR’s opinion that there is no authority mandating *immediate* access to SOFIs under a year old, like the access granted by 51 Pa. Code § 19.4(c). Indeed, the RTKL includes a similar provision to the Ethics Act: “Public records ... shall be available for access during the regular business hours of an agency.” 65 P.S. § 67.701(a). While the RTKL’s access provisions yield to another statute or regulation, 65 P.S. § 67.3101.1, in this case, neither the Ethics Act nor its regulations grant any greater right to expediency than the RTKL.

The RTKL and the Ethics Act can be read *in pari materia*, as the Ethics Act does not establish an exclusive procedure for obtaining SOFIs, and the RTKL sets forth a procedure for obtaining access to public records, as well as relief and remedies. Written requests made under the RTKL are otherwise subject to the timeframes for an agency response set forth in the RTKL, specifically those found in Sections 901 and 902. 65 P.S. §§ 67.901, 902. While a requester may verbally request more immediate access during business hours, and an agency is not prohibited from granting that immediate access, that requester would not be able to seek any remedies under the RTKL if the agency were to decline such a request. 65 P.S. § 67.702.

To conclude, written requests for SOFIs under a year old are governed by the RTKL's timeframes and an agency may respond to such requests accordingly. However, agencies should strive to provide access as promptly as possible, keeping in mind that SOFIs are explicitly public records under the Ethics Act.

This Advisory Opinion will be posted on the OOR's website at <https://www.openrecords.pa.gov/RTKL/AdvisoryOpinions.cfm>.

Respectfully,

A handwritten signature in black ink, appearing to read "Liz Wagenseller", written in a cursive style.

Liz Wagenseller
Executive Director