

February 23, 2023

Joan London  
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RE: Advisory Opinion on West Reading Community Revitalization Foundation (WRCRF)

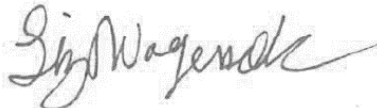
Dear Attorney London:

The Office of Open Records (“OOR”) received your request for an advisory opinion on February 14, 2023. 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 respectfully **DENIED**.

The request for an advisory opinion explains that one is sought due to WRCRF’s receipt of some public funds. However, the request stresses that WRCRF is a nonprofit organization, receives most of its funding from private sources, does not perform a governmental function, and is not controlled by government. Taking those statements as true, there does not appear to be a need for an advisory opinion, as caselaw is clear enough to provide answers as to whether WRCRF is an agency. *See, e.g., Pysher v. Clinton Twp. Volunteer Fire Co.*, 209 A.3d 1116 (Pa. Commw. Ct. 2019); *Appeal of Hadley*, 83 A.3d 1101 (Pa. Commw. Ct. 2014). Further, the mere receipt of public money does not transform a nonprofit corporation into an agency. *Mooney v. Temple Univ. of the Commonwealth Sys. of Higher Educ. Bd. of Trustees*, 292 A.2d 395, 399 (Pa. 1972)

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

Respectfully,



Liz Wagenseller  
Executive Director



February 14, 2023

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VIA E-MAIL: [openrecords@pa.gov](mailto:openrecords@pa.gov)  
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Harrisburg, PA 17101-2234

Re: West Reading Community  
Revitalization Foundation  
Request for Advisory Opinion  
Our File No. 206955-1

Dear Ms. Wagenseller:

This law firm represents the West Reading Community Revitalization Foundation (WRCRF), 20 North Sixth Avenue, 2<sup>nd</sup> Floor, West Reading, PA 19611. WRCRF is a nonprofit community-based organization with 501(c)(3) tax exempt status. Its mission is to promote historic continuity, a sense of community and economic rejuvenation of property and commerce of the Borough of West Reading. The Board is comprised of Borough residents and business owners, with one dedicated seat for the Borough Manager. Although WRCRF receives a contribution from the Borough, it is a private foundation and solicits from private individuals and entities, and receives most of its funds from private sources.

WRCRF is seeking an Advisory Opinion from the Office of Open Records on whether it is subject to the Right-to-Know Law because of receipt of public funds. Please issue the Advisory Opinion to my attention. WRCRF has received multiple requests for information under the Right-to-Know Law. Although WRCRF has in the past responded to such requests, the Board, based on information from respected sources on public-private partnerships and private economic development foundations, had reason to question whether there is such an obligation. While WRCRF has no concerns about making its finances and decision making process transparent, the requests are now sufficiently frequent and extensive as to interfere with its performance of its core mission. Specifically, we have learned that test used by the courts, and by OOR, to make this determination is not only receipt of some public funding, but also how closely tied the nonprofit is to the governing body or agency, and whether it carries out a governmental function. In this case, there is no governmental function performed, and WRCRF is not

a creature of Borough Council or other governmental agency. In the case of *In the Matter of Belmont Shopping Plaza v. Pocono Mountains Economic Development Corporation*, No. AP 2017-0150 (Pa.OOR, February 24, 2017), OOR cited to a Commonwealth Court case, *Philadelphia Industrial Development Corporation v. Ali*, No. 528 C.D. 2010, 2011 Pa.Commw. Unpub. LEXIS 317 (Pa.Commw. 2011), and found that in certain cases, a nonprofit economic development corporation which received some public funding was not a “local agency” subject to the RTKL as follows:

PIDC was not created by a political subdivision pursuant to a specific statutory power; PIDC is not a division of a political subdivision or a 4 political subdivision itself; PIDC's members are not appointed exclusively by the governing body of a political subdivision; PIDC does not require a delegation of authority from a political subdivision to promote economic development; and PIDC cannot be disbanded by a political subdivision. More to the point, PIDC is not a governmental entity at all. Accordingly, PIDC is not a “local agency” subject to the open records requirements of the RTKL.

Similarly, WRCRF is a private foundation, and its Board is not appointed by the Borough Council or other government agency. It is a business development and economic development organization, and its authority has not been delegated by Borough Council or any other body. WRCRF has no governmental authority or police powers. WRCRF, therefore, is requesting an Advisory Opinion as to whether it is a public agency to which the RTKL (and Sunshine Law, based on in pari materia reading) apply, or a private entity not obligated to comply with these statutes. Although there are requests pending, to date, we do not believe that there are any appeals pending in OOR against WRCRF. There are no matters pending in any court related to the requests to WRCRF.

Please let me know if there are any documents that you would need to review, or further information necessary in order for an advisory opinion to be issued.

Thank you for your assistance in this matter.

Very truly yours,

KOZLOFF STOUDT  
Professional Corporation

*Joan E. London*

Joan E. London

/JEL

cc: Dr. Mark Dougherty (via e-mail: [sndwedge55@gmail.com](mailto:sndwedge55@gmail.com))  
Mark Ratcliffe (via e-mail: [mark@visitwestreading.org](mailto:mark@visitwestreading.org))