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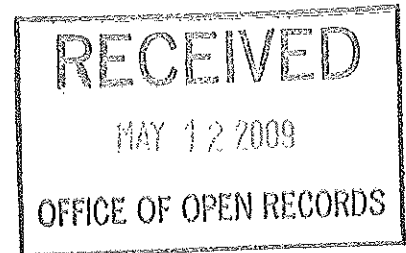
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Member of the Bars of the Supreme Court of the United States, The United States Court of Appeals for the Third Circuit, The United States District Court for the Western District of Pennsylvania, The Commonwealth of Pennsylvania, and The District of Columbia

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May 8, 2009

Executive Director  
Office of Open Records  
400 North Street  
Harrisburg, PA 17120



RE: Advisory Opinion

Dear Executive Director:

Pursuant to Section 1310(a)(2) (65 P.S. § 67.1310 (a)(2)) of Pennsylvania's Right-to-Know Law (RTKL) I request an Advisory Opinion on the following question:

IF AN ATTORNEY IS ALSO THE REQUESTER AND THE ATTORNEY REPRESENTS HIMSELF OR HERSELF IN A JUDICIAL REVIEW WOULD THE ATTORNEY / REQUESTER BE ENTITLED TO COLLECT COURT COSTS AND ATTORNEY'S FEES PURSUANT TO SECTION 1304 (65 P.S. § 67.1304) OR MUST THE ATTORNEY AND REQUESTER BE SEPARATE INDIVIDUALS FOR THIS SECTION TO APPLY (ASSUMING THE COURT FINDS THE NECESSARY ELEMENTS FOR SUCH AN AWARD ARE SATISFIED)?

This inquiry is relevant to the application and/or implementation of the RTKL as attorney's are often the sole watchdogs over certain agencies and / or often make requests for client's who wish to remain anonymous for fear of retaliation and as such attorney's need to know whether their pursuit of public records will be treated equally to others if the threat of attorney's fees is removed.

I am unaware of any pending litigation regarding this issue.

Please contact me at the above address.

This request does not arise from an actual RTKL request, although I have made RTKL requests before.

Sincerely,

  
Michael R. Hadley, Esq.



October 7, 2009

Michael R. Hadley, Esq.  
One Drake Drive  
Oil City, PA 16301

**Re: Advisory Opinion Request Regarding Attorneys Fees**

Dear Mr. Hadley:

Thank you for your letter dated May 8, 2009 asking for an Advisory Opinion pursuant to the Right-to-Know Law, 65 P.S. §§67.101, *et seq.*, (RTKL).

You asked the Office of Open Records (OOR) to advise whether courts costs and attorneys' fees could be awarded to a requester who is also an attorney and represents himself in a judicial review of an OOR Final Determination of a denial of a Right-to-Know request.

The OOR has decided not to grant this request. Whether to grant costs and fees is within a court's discretion under the RTKL. The OOR is without authority to make such a grant.

The relevant provision of the RTKL is as you correctly identify in your letter, Section 1304, Court costs and attorneys fees:

- (a) **Reversal of agency determination.** – If a court reverses the final determination of the appeals officer or grants access to a record after a request for access was deemed denied, the court may award reasonable attorneys fees and costs of litigation or an appropriate portion thereof to a requester if the court finds either of the following:
- (1) the agency receiving the original request willfully or with wanton disregard deprived the requesters of access to a public record subject to access or otherwise acted in bad faith under the provisions of this act; or
  - (2) the exemptions, exclusions or defenses asserted by the agency in its final

determination were not based on a reasonable interpretation of law.

- (b) **Sanctions for frivolous requests or appeals.** – The court may award reasonable attorneys fees and costs of litigation or an appropriate portion thereof to an agency or the requester if the court finds that the legal challenge under this chapter is frivolous.
- (c) **Other sanctions.** – Nothing in this act shall prohibit a court from imposing penalties and costs in accordance with the applicable rules of court.

In addition, Section 1305 of the RTKL provides that a court may impose a civil penalty of not more than \$1,500 if an agency denied access to a public record in bad faith, and that an agency or public official who does not promptly comply with a court order is subject to a civil penalty of not more than \$500 per day until the public records are provided.

It is clear that the RTKL reserves to the courts the ability to determine whether costs, fees and fines are levied. We know of no cases to date under the new RTKL that give us guidance on this issue.

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

Respectfully,



Corinna V. Wilson  
Chief Counsel