

RECEIVED

COMMONWEALTH COURT OF PENNSYLVANIA
DOCKETING STATEMENT
PETITION FOR REVIEW

NOV 26 2018

OFFICE OF OPEN RECORDS

Counsel for Petitioner(s) must complete this form and file it with the Chief Clerk of the Commonwealth Court within 10 days of the date of the Notice of Docketing.

Failure to timely file a docketing statement, with required attachments and certificate of service, may result in dismissal of the petition for review.

Attach additional sheets if needed.

Case Caption: Pennsylvania Liquor Control Board v. Office of Open Records (David Perretta)

Commonwealth Court Docket No.: 1470 C.D. 2018

Required Attachments:

(1) Attach a copy of **all decisions and opinions, if any, and all pertinent orders in this case** (including, for example, the decision of the Workers Compensation Judge, or similar decision).

(2) Attach a **Statement of Issues** of no more than *two pages* in length, containing a summary sufficient to explain the case, (*See* Order of September 15, 1999, 29 Pa. Bull. 5064, 210 Pa. Code §69.501) and indicating the relief requested.

(3) Attach a **certificate of service** indicating service of the docketing statement, statement of issues, and all attachments to all other parties.

A. Appealability of Order

(1) Is the order appealed a final order? Yes No

(2) If not a final order, pursuant to what Rule of Appellate Procedure is this order being appealed, e.g., Pa. R.A.P. 311, 313, 341(c)? _____

Please explain: _____

B. Are there any related cases, including cross-appeals, pending in this court or any other federal or state court or agency? Yes No

If yes, please list below the court or agency, caption and docket number(s):

The PLCB also filed a petition for reconsideration with the Office of Open Records ("OOR") in this matter (OOR Docket No. 2018-1597). On November 13, 2018, the OOR granted reconsideration and gave Mr. Perretta 15 days to file a response in the nature of

an answer. A copy of the OOR's order granting reconsideration is attached. Notably, however, the 30-day deadline for filing a petition for review in this matter expired on November 5, 2018. As such, it is the PLCB's understanding that, based on Pa.R.A.P. 1701(b)(3) and Pa.R.A.P. 1512, the OOR no longer had jurisdiction to grant reconsideration on November 13, 2018.

C. Have there been any previous efforts to settle this matter? Yes No
If yes, please explain: _____

D. Are you aware of any conflict of interest that may exist with respect to any party, lawyer, or issue in this case that may suggest the need for recusal by any judge of this court?
 Yes No

If yes, please explain: However, in the interest of full disclosure, I, Jason M. Worley, served as a judicial law clerk to the Honorable Renée Cohn Jubelirer between 2007 and 2010. Given the passage of time, I don't believe this poses a conflict of interest requiring her recusal.

Signature Jason M. Worley Date 11/19/2013

Name (Printed) Jason M. Worley

Address 401 Northwest Office Building, Harrisburg, PA 17124-0001

Telephone No. 717-783-9454 Fax No. 717-787-8820

Counsel for (Name of Party) Pennsylvania Liquor Control Board

Rev. 2/2014

By Final Determination and Order dated October 5, 2018, the OOR granted Perretta's appeal. Thereafter, the PLCB timely petitioned this Honorable Court for review.¹

On appeal, the PLCB contends that the OOR erred in several respects. First, the OOR erred in concluding that the PLCB failed to establish that the requested record is exempt from public disclosure pursuant to section 708(b)(17) of the RTKL, 65 P.S. § 67.708(b)(17).² Second, the OOR erred in summarily dismissing the PLCB's reliance on the exemptions for "written criticisms of an employee" and "grievance material, including documents related to discrimination or sexual harassment" found in section 708(b)(7)(vi)-(vii) of the RTKL, 65 P.S. § 67.708(b)(7)(vi)-(vii). Third, the OOR erred in failing to address the procedural due process implications of its decision to require the public disclosure of information pertaining to an alleged third party without first giving the alleged third party an opportunity to participate and voice objections to the release of the requested record. Fourth, the OOR erred by failing to rule on or otherwise acknowledge the PLCB's

¹ The PLCB also timely submitted a Petition for Reconsideration with the OOR. On November 13, 2018, the OOR granted reconsideration and gave Perretta 15 days to file a response in the nature of an answer. A copy of the OOR's order granting reconsideration is attached. Notably, however, the 30-day deadline for filing a petition for review in this matter expired on November 5, 2018. As such, it is the PLCB's understanding that, based on Pa.R.A.P. 1701(b)(3) and Pa.R.A.P. 1512, the OOR no longer had jurisdiction to grant reconsideration on November 13, 2018.

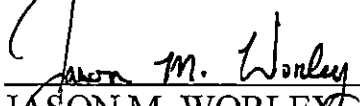
² The PLCB had argued before the OOR that it was not required to show that a complaint was in fact received and investigated under the facts of this case (where the request specifically names an individual) because doing so would require it to publicly disclose or confirm the identity of the alleged complainant, which is otherwise protected by the exemption being asserted.

response to the OOR's request to supplement the record. Finally, the OOR erred when it concluded that Perretta's appeal was perfected in a timely manner.

WHEREFORE, the PLCB respectfully requests that this Honorable Court reverse the OOR's Final Determination and Order and/or grant such other relief as this Court deems just and proper under the circumstances.

Respectfully submitted,

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Dated: November 19, 2018

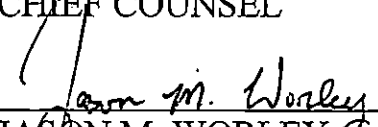
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Service by Hand Delivery

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Respectfully submitted,

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Attorneys for the Petitioner

Dated: November 19, 2018

On August 15, 2018, the Board denied the Request, arguing that the requested record is exempt from disclosure because it relates to a noncriminal investigation, 65 P.S. § 67.708(b)(17)(i), and contains written criticisms of an employee, 65 P.S. § 67.708(b)(7)(vi).

On September 6, 2018, the Requester appealed to the OOR, challenging the denial and stating grounds for disclosure. The OOR invited both parties to supplement the record and directed the Board to notify any third parties of their ability to participate in this appeal. *See* 65 P.S. § 67.1101(c).

On September 18, 2018, the Board submitted a position statement reiterating its grounds for denial and also arguing that the Requester is improperly attempting to amend the Request on appeal.¹ In support of its position, the Board submitted the affidavits, made under penalty of perjury, of Jennifer Haas, Director of the Board's Department of Human Resources, and M. Kathryn Blatt, a Human Resource Analyst 3 with the Department's Equal Opportunity Office. The Requester did not submit anything additional on appeal.

LEGAL ANALYSIS

"The objective of the Right to Know Law ... is to empower citizens by affording them access to information concerning the activities of their government." *SWB Yankees L.L.C. v. Wintermantel*, 45 A.3d 1029, 1041 (Pa. 2012). Further, this important open-government law is "designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials and make public officials accountable for their

¹ The Board also argues that the appeal is deficient because the Request included with the appeal was not a copy of the actual Request that was submitted to the Board on August 8, 2018. However, the Board provided a copy of the actual Request with its submission; therefore, the OOR has a copy of the correct Request language for purposes of review on appeal. Accordingly, the record on appeal is sufficient. *See* 65 P.S. § 67.1102(b)(3) ("In the absence of a regulation, policy or procedure governing appeals under this chapter, the appeals officer shall rule on procedural matters on the basis of justice, fairness and the expeditious resolution of the dispute").

actions.” *Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), *aff’d* 75 A.3d 453 (Pa. 2013).

The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. § 67.503(a). An appeals officer is required “to review all information filed relating to the request” and may consider testimony, evidence and documents that are reasonably probative and relevant to the matter at issue. 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. The law also states that an appeals officer may admit into evidence testimony, evidence and documents that the appeals officer believes to be reasonably probative and relevant to an issue in dispute. *Id.* The decision to hold a hearing is discretionary and non-appealable. *Id.*; *Giurintano v. Pa. Dep’t of Gen. Servs.*, 20 A.3d 613, 617 (Pa. Commw. Ct. 2011). Here, the parties did not request a hearing; however, the OOR has the requisite information and evidence before it to properly adjudicate the matter.

The Board is a Commonwealth agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.301. Records in possession of a Commonwealth agency are presumed public unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. Upon receipt of a request, an agency is required to assess whether a record requested is within its possession, custody or control and respond within five business days. 65 P.S. § 67.901. An agency bears the burden of proving the applicability of any cited exemptions. *See* 65 P.S. § 67.708(b).

Section 708 of the RTKL places the burden of proof on the public body to demonstrate that a record is exempt. In pertinent part, Section 708(a) states: “(1) The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the

evidence.” 65 P.S. § 67.708(a)(1). Preponderance of the evidence has been defined as “such proof as leads the fact-finder ... to find that the existence of a contested fact is more probable than its nonexistence.” *Pa. State Troopers Ass’n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Pa. Dep’t of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

1. The Requester’s identity is irrelevant

The Requester argues that he is entitled to access the requested record because the complaint is about him. However, the RTKL must be construed without regard to the identity of the requester. *See Slaby v. Northumberland County*, OOR Dkt. AP 2011-0331, 2011 PA O.O.R.D. LEXIS 257. The reason for requesting a record is not relevant to determining a record’s public status. *Advancement Project v. Pa. Dep’t of Transp.*, 60 A.3d 891 (Pa. Commw. Ct. 2013). Therefore, the Requester’s identity is not relevant to the issue of whether the requested records are subject to public disclosure.

2. The Request may not be modified on appeal

The Board asserts that the document included with the Requester’s appeal that reads “I’m requesting documents from 4/1/15-6/3/15” is not the Request received by the Board. The Board argues that the Requester is improperly attempting to amend the Request on appeal.

The Board attached a copy of the Request it received, to which it assigned the tracking number RTKL 18-92. The Request provided by the Board states, in pertinent part, “... (a liquor store employee) filed a complaint with the PLCB..., me and my lawyer are requesting a copy of the complaint.” The tracking number RTKL 18-92 listed on the Request provided by the Board matches the tracking number indicated on the Board’s August 15, 2018 final response. Review of the purported copy of the Request provided by the Requester with the appeal does not correlate

with any of the time stamps or tracking numbers found on the Board's copy or final response. In addition, the Requester does not dispute that the copy submitted by the Board is the correct Request. A requester may not modify, explain or expand upon a request on appeal. *See Michak v. Dep't of Pub. Welfare*, 56 A.3d 925 (Pa. Commw. Ct. 2012) (“[W]here a requestor requests a specific type of record, ... the requestor may not, on appeal, argue that an agency must instead disclose different records in response to the request”); *Pa. State Police v. Office of Open Records*, 995 A.2d 515, 516 (Pa. Commw. Ct. 2010). Therefore, the OOR's review on appeal is confined to the copy of the Request with the tracking number RTKL 18-92 that was provided by the Board. *See, e.g., Brown v. Pa. Turnpike Comm'n*, OOR Dkt. AP 2011-1287, 2011 PA O.O.R.D. LEXIS 998.

3. The Board has not proven that the responsive record relates to a noncriminal investigation

The Board argues the requested complaint relates to a noncriminal investigation conducted pursuant to its authority under the Liquor Code;² therefore, the complaint is exempt from disclosure. Section 708(b)(17) of the RTKL exempts from disclosure “[a] record of an agency relating to a noncriminal investigation, including ... complaints submitted to an agency.” 65 P.S. § 67.708(b)(17)(i). To successfully assert the noncriminal investigative records exemption, the agency must demonstrate that “a systematic or searching inquiry, a detailed examination, or an official probe” was conducted regarding a noncriminal matter. *Pa. Dep't of Health v. Office of Open Records*, 4 A.3d 803, 810-11 (Pa. Commw. Ct. 2010). Further, the inquiry, examination or probe must be “conducted as part of an agency's official duties.” *Id.* at 814. An official probe only applies to noncriminal investigations conducted by agencies acting within their legislatively granted fact-finding and investigative powers. *Johnson v. Pa. Convention Center Auth.*, 49 A.3d

² Act of April 12, 1951, P.L. 90, as amended, 47 P.S. §§ 1-101 - 10-1001.

920 (Pa. Commw. Ct. 2012); *see also Pa. Dep't of Pub. Welf. v. Chawaga*, 91 A.3d 257 (Pa. Commw. Ct. 2014).

In its position statement, the Board explains that, because the Requester does not specify the subject matter of the complaint he is seeking, it used several recent requests made by the Requester, which also sought records relating to a complaint filed against him in May 2015 and one of which referenced to a harassment complaint, as guidance to respond to the Request. The Board argues that such a complaint filed against the Requester would be investigated under its authority found in the Liquor Code “[t]o appoint, fix the compensation and define the powers and duties’ of its employees subject to the Administrative Code of 1929, 71 P.S. §§ 51, *et seq.* and the Civil Service Act, 71 P.S. §§ 741.1, *et seq.*” *See* 47 P.S. § 2-207(f). The Board further asserts that it is authorized to “do all such things and perform all such acts as are deemed necessary or advisable for the purpose of carrying into effect the provisions of [the Liquor Code] and the regulations made thereunder.” 47 P. S. § 2-207(h). The Board also relies on Commonwealth Management Directive 410.10 for its authority to conduct noncriminal investigations.

In support of the Board’s position, Ms. Haas attests, as follows:

3. When complaints are made by or about [Board] employees, such complaints are investigated by either the Labor Relations Division or the Equal Opportunity Office, depending on the specific nature of the complaints.
4. Complaints involving allegations of discrimination or sexual harassment are investigated by the Equal Opportunity Office in accordance with Commonwealth Management Directive 410.10 (Amended) and as required by, among other provisions of law, 42 U.S.C. §§ 2000e *et seq.* and 43 P.S. § 951 *et seq.*
5. Complaints involving all other allegations of misconduct or wrong[doing] by [Board] employees are investigated by the Labor Relations Division.
6. Any complaints that are received by either the Labor Relations Division or the Equal Employment Opportunity Office are thoroughly investigated and, if evidence supports the allegations, appropriate disciplinary or other corrective action is taken.

7. If disciplinary action is warranted in any given case investigated by the Equal Employment Opportunity Office, the matter would be referred to the Labor Relations Division for further actions.

Ms. Haas further attests that she oversees, among other offices, the Labor Relations Division and the Equal Employment Opportunity Office. In further support of the Board's position, Ms. Blatt, who works for that Office, attests, as follows:

2. In my current position, I am responsible for administering the [Board's] equal opportunity and disability services functions. To that end, I ... investigate discrimination and sexual harassment complaints....

3. When my office receives complaints involving allegations of discrimination or sexual harassment, such complaints are investigated by the Equal Opportunity Office in accordance with Commonwealth Management Directive 410.10 (Amended) and as required by, among other provisions of law, 42 U.S.C. §§ 2000e *et seq.* and 43 P.S. § 951, *et seq.*

4. Commonwealth Directive 410.10 (Amended) outlines the steps that must be taken by my office in investigating complaints of discrimination or sexual harassment and specifies that the investigative file must include the following: complaint; investigative log/chronology of events; acknowledgment of complaint; investigative plan; correspondence; witness and interview statements; and all documents/documentary evidence related to the investigation.

5. Any documents that are maintained as part of the investigative file, including the complaint itself, are used solely for the purposes of conducting the investigation and are otherwise treated as sensitive and confidential. This is done, among other reasons, to encourage cooperation with investigations and prevent against possible retaliation.

6. Any complaints that are received by my office are thoroughly investigated and, if the evidence supports the allegations, appropriate disciplinary or other corrective action is taken....

Under the RTKL, a sworn affidavit or statement made under the penalty of perjury may serve as sufficient evidentiary support. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). Accordingly, the Board has established that under the Liquor Code and Commonwealth

Management Directive 410.10, it has the legislatively granted authority to investigate complaints lodged against its employees.

While it is undisputed that the Board has the authority to conduct certain noncriminal investigations and that the agency has a process in place to conduct an “official probe,” *see Chawaga, supra*, the Board must also establish that an investigation of the complaint took place in order to prove that the complaint is exempt under Section 708(b)(17).

As noted by the Board, the Commonwealth Court held in *Stein v. Plymouth Township* that “the names of individuals who [file a] complaint that [prompt an] investigation” are exempt from disclosure under Section 708(b)(17) of the RTKL and that “all complaints are exempt from disclosure whether they caused [an] investigation to commence in whole or in part or not at all,” 994 A.2d 1179, 1182 (Pa. Commw. Ct. 2010). However, the Court later clarified *Stein*, noting that an agency must prove that it conducted a noncriminal investigation for a complaint to be exempt under Section 708(b)(17). *See Black v. Pa. State Police*, 676 C.D. 2016, 2016 Pa. Commw. Unpub. LEXIS 809 (Pa. Commw. Ct. 2016);³ *see also Brown v. Pa. Office of Inspector Gen.*, 730 C.D. 2016, 2017 Pa. Commw. LEXIS 868 (Pa. Commw. Ct. 2017).

In support of its position, the Board relies on *Stein* to argue that complaints are exempt from disclosure whether or not an investigation was commenced.⁴ However, as stated above, the

³ An unpublished opinion of the Commonwealth Court may be cited for its persuasive value. 210 Pa. Code § 69.414.

⁴ Notably, in its position statement, the Board indicates that it is inferring from prior requests submitted by the Requester that the instant Request seeks a complaint alleging discrimination or sexual harassment against him. However, the Board then expressly states that it “neither acknowledges nor denies the existence of any records responsive to [the Request]” so as not to “defeat the purpose of the exemption.” The Board then asserts, “assuming for the sake of argument that a discrimination or sexual harassment complaint was filed ... that complaint would have been investigated....” The practice of responding to a records request in the hypothetical to avoid acknowledging the existence of records has been referred to as a “Glomar response,” and was first recognized by the federal government in *Phillippi v. Central Intelligence Agency*, 546 F.2d 1009 (D.C. Cir. 1976). While a Glomar response has been adopted at the federal level in limited circumstances relating to national security, *see, e.g., Daily Orange Corp. v. Central Intelligence Agency*, 532 F.Supp. 122 (S.D.N.Y. 1982), *Gardels v. Central Intelligence Agency*, 510 F.Supp. 1997 (D.D.C. 1981), it has never been recognized by the courts of this Commonwealth or the OOR. *See Nunez v. State College Police Department*, OOR Dkt. AP 2015-1717, 2015 PA O.O.R.D. LEXIS 1403; *Callahan v. Pa. Dep’t*

Commonwealth Court refined the holding in *Stein* by stating: “[T]o establish the applicability of any of the enumerated exemptions, under Section 708(b)(17), the agency must demonstrate that the records sought relate to a noncriminal investigation.” *Black*, 2016 Pa. Commw. Unpub. LEXIS 809, *11, n.16 (citing *Lackawanna County Government Study Comm’n v. Scranton Times*, 123 A.3d 881, 2015 Pa. Commw. Unpub. LEXIS 858 (Pa. Commw. Ct. 2015)). In *Black*, the requester sought complaints lodged against a State Trooper. The PSP denied the request arguing, among other things, that the complaints were exempt records that relate to a noncriminal investigation under Section 708(b)(17)(i) of the RTKL. 65 P.S. § 67.708(b)(17)(i). The Commonwealth Court found that the PSP demonstrated through a sworn verification that it possessed the legislatively granted authority to conduct noncriminal investigations of complaints made against a Trooper. In addition, the sworn verification presented by PSP also established that “[e]ach of the six complaints was investigated by PSP Internal Affairs Division which is the department entity that investigates complaints....” *Id.* at *6 (emphasis added).

The Board also cites to two OOR Final Determinations, *Smith v. Slippery Rock University*, OOR Dkt. AP 2017-2122, 2018 PA O.O.R.D. LEXIS 38, and *Fishbein v. Pa. Turnpike Comm’n*, OOR Dkt. AP 2017-0358, 2017 PA. O.O.R.D. LEXIS 385, to argue that investigations conducted into complaints or allegations of discrimination and sexual harassment by employees are exempt under the noncriminal investigation exemption found at 65 P.S. § 67.708(b)(17). However, once again, a review of *Smith* and *Fishbein* shows that the agencies in those matters demonstrated, by way of sworn evidence, that a complaint was identified, and an investigation took place following the agency’s receipt of the complaint.

of Insurance, OOR Dkt. AP 2015-0509, 2015 PA O.O.R.D. LEXIS 692; *Goodman v. Pa. Sec. Comm’n*, OOR Dkt. AP 2009-0487, 2009 PA O.O.R.D. LEXIS 218.

Here, the Board neither acknowledges nor denies the existence of the complaint. Further, a review of the evidence presented in this matter reveals that, unlike the verification presented in *Black* and the sworn statements presented in *Smith* and *Fishbein*, the Board failed to demonstrate that an investigation was actually conducted with respect to the complaint the Requester seeks.⁵ As a result, the Board has not proven that the requested complaint, if it actually exists, relates to a noncriminal investigation and is, therefore, exempt under Section 708(b)(17) of the RTKL.

4. The Board has not demonstrated that the requested complaint contains material exempt under Section 708(b)(7)

The Board also argues that the complaint, by its very nature, would constitute a “written criticism of an employee,” which is exempt under Section 708(b)(7)(vi) of the RTKL, and further, to the extent that the requested record constitutes a complaint involving discrimination or sexual harassment, could also be exempt “grievance material” under Section 708(b)(7)(vii). *See* 65 P.S. §§ 67.708(b)(7)(vi)-(vii). However, other than quoting the statutory language of the referenced provisions, the Board does not provide any other legal authority or factual support for its position that the requested complaint is exempt under Section 708(b)(7). Neither of the Board’s affidavits address the Section 708(b)(7) exemptions and the Board’s position statement addresses the argument in a conclusory manner, while at the same time neither confirming nor denying that the complaint even exists. Merely parroting the language of the exemption, without providing any factual evidentiary foundation is not adequate to meet an agency’s burden of proof. *See Scolforo v. Office of the Governor*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013) (“[A] generic determination or conclusory statements are not sufficient to justify the exemption of public records”). Here, the

⁵ On September 27, 2018, the OOR requested that the Board further develop the record with a supplemental submission addressing whether an investigation was conducted in response to the alleged complaint. The Board’s supplemental submission was due by October 2, 2018; however, the Board did not make an additional submission.

Board has not sustained its burden of proof to support the application of Section 708(b)(7)(vi) or (vii) of the RTKL to withhold the requested complaint. *See* 65 P.S. 67.708(a)(1).

CONCLUSION

For the foregoing reasons, the Requester's appeal is **granted**, and the Board is required to provide a copy of the requested complaint to the Requester within thirty days. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to the Commonwealth Court. 65 P.S. § 67.1301(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond as per Section 1303 of the RTKL. However, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.⁶ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: October 5, 2018

/s/ Kelly C. Isenberg

APPEALS OFFICER
KELLY C. ISENBERG, ESQ.

Sent to: Robert Perretta (via email only);
Jason Worley, Esq. (via email only);
David Brooker, AORO (via email only)

⁶ *See Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).



pennsylvania
OFFICE OF OPEN RECORDS

November 13, 2018

Jason M. Worley, Agency Open Records Officer
Pennsylvania Liquor Control Board
Office of Chief Counsel
401 Northwest Office Building
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jasworley@pa.gov

Re: Petition for Reconsideration
OOR Dkt. AP 2018-1597
Perretta v. Pennsylvania Liquor Control Board

Dear Mr. Worley:

The Office of Open Records ("OOR") is in receipt of your petition for reconsideration filed to the above-referenced docket number. Based on a review of the file, we hereby grant your Petition.

We note here that in the absence of applicable OOR regulations regarding petitions for reconsideration, this office will follow the procedures set forth in Pennsylvania General Rules of Administrative Practice and Procedure, 1 Pa. Code Section 35.241.

The Requester, Mr. Perretta, may file a response in the nature of an answer within 15 days of the issuance of this order granting reconsideration or by November 28, 2018.

Respectfully,

/s/ Charles Rees Brown

Charles Rees Brown
Chief Counsel

cc: Kelly Isenberg, Esq.
David Perretta