
IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PENNSYLVANIA INTERSCHOLASTIC	:	
ATHLETIC ASSOCIATION, INC.,	:	
	:	Original Jurisdiction
Petitioner,	:	
v.	:	No. 661 MD 2020
	:	
COMMONWEALTH OF	:	
PENNSYLVANIA and PENNSYLVANIA	:	
OFFICE OF OPEN RECORDS,	:	
	:	
Respondents.	:	
	:	

NOTICE TO PLEAD

TO: Petitioner, Pennsylvania Interscholastic Athletic Association, Inc.

YOU ARE HEREBY NOTIFIED to file a written response to the enclosed Preliminary Objections within thirty (30) days of service or within such other period of time as the Court may direct, whichever is shorter, or a judgment may be entered against you.

Dated: January 20, 2021

Respectfully submitted,

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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ORDER

AND NOW, this ____ day of _____, 2021, upon consideration of the Commonwealth's Preliminary Objections to Petitioner's Petition for Review, and any response thereto, it is ORDERED that the preliminary objections are SUSTAINED. It is further ORDERED that the Petition for Review is hereby DISMISSED WITH PREJUDICE.

, J.

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**THE COMMONWEALTH’S PRELIMINARY OBJECTIONS
TO PETITIONER’S PETITION FOR REVIEW**

Respondent Commonwealth of Pennsylvania (“Commonwealth”), by counsel, files these Preliminary Objections to Petitioner’s Petition for Review pursuant to Pennsylvania Rule of Civil Procedure 1028, and in support thereof avers as follows:

BACKGROUND

1. This is a claim brought by the Pennsylvania Interscholastic Athletic Association, Inc. (“PIAA”) challenging its inclusion by the legislature as a “State-affiliated entity” in 65 P.S. § 67.102, making it subject to Pennsylvania’s Right to Know Law (“RTKL”).

2. PIAA is “a voluntary association of schools for the purpose of establishing uniform rules and eliminating abuses in the growing phenomenon of interscholastic athletics.” Petition for Review in the Nature of a Complaint for Declaratory and Injunctive Relief, attached as Exhibit A (“Pet.”), ¶ 8.

3. PIAA membership includes public schools. Pet. ¶ 10.

4. The “affairs of the PIAA constitute state action.” *Sch. Dist. of City of Harrisburg v. Pennsylvania Interscholastic Athletic Ass'n*, 453 Pa. 495, 309 A.2d 353, 357 (1973).

5. PIAA is a state actor because it “is funded by the payment of membership fees from public school moneys, and so ultimately by the Commonwealth’s taxpayers, and from the gate receipts of athletic events between public high schools.” *Sch. Dist. of City of Harrisburg*, 309 A.2d at 357.

6. All “Commonwealth agencies” are subject to the RTKL. 65 P.S. § 67.301.

7. The definition of “Commonwealth agency” includes a “State-affiliated entity,” which is defined as “a Commonwealth authority or Commonwealth entity” and includes, among numerous other entities, PIAA. 65 P.S. § 67.102.

PRELIMINARY OBJECTION ONE:
Lack of Capacity to Sue (Rule 1028(a)(5))
Standing

8. The Commonwealth incorporates the preceding paragraphs as if set forth at length.

9. To establish constitutional standing, a plaintiff must establish (a) an injury in fact, (b) a causal connection between this injury and the challenged conduct or law, and (c) that it is likely that a favorable decision will redress that injury. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

10. PIAA has alleged no injury in fact.

11. As a state actor funded by public monies, PIAA suffers no injury by allowing inspection of its public records under the RTKL.

12. Both the United States Constitution and Pennsylvania Constitution protect the rights of “person[s].” *See* U.S. Const. amend. XIV, § 1; Pa. Const. art. I, § 26.

13. As a state actor, PIAA is not a “person” with standing to sue under the United States Constitution or Pennsylvania Constitution.

WHEREFORE, Petitioner’s claims should be dismissed with prejudice.

PRELIMINARY OBJECTION TWO:
Demurrer (Rule 1028(a)(4)) as to Count I
Separation of Powers

14. The Commonwealth incorporates the preceding paragraphs as if set forth at length.

15. A party may file a preliminary objection in the form of a demurrer to any pleading on the grounds that it is legally insufficient. Pa. R. Civ. P. 1028(a)(4).

16. In Count I, Petitioner seeks a judicial declaration that the legislature's decision to specifically include PIAA in Section 102 is "wholly inconsistent with, and contrary to" the legislature's definition of "Commonwealth authority." Pet. ¶ 40; *see also id.* ¶¶ 15-16.

17. Petitioner asks this Court to declare that the legislature's decision to include PIAA in Section 102 is "improper." Pet. ¶ 80.

18. The separation of powers doctrine, which is "inherent in the Pennsylvania Constitution," prevents the judiciary "from exercising, infringing upon, or usurping" the powers of the legislature. *Renner v. Court of Common Pleas of Lehigh Cty.*, 234 A.3d 411, 419 (Pa. 2020).

19. It is not the role of the judiciary to determine whether legislative actions are consistent or proper, if they are otherwise constitutional and within the legislature's power.

20. Under the separation of powers doctrine, this Court cannot and should not declare that the legislature should not have included PIAA within its definition of “State-affiliated entity” in the RTKL.

WHEREFORE, Count I should be dismissed with prejudice.

PRELIMINARY OBJECTION THREE:
Demurrer (Rule 1028(a)(4)) as to Count I
Failure to State a Claim

21. The Commonwealth incorporates the preceding paragraphs as if set forth at length.

22. “[W]here there is a conflict between two provisions of a statute, one of which is specific and the other merely general, the specific provisions thereof will control unless it is clear that the legislature intended otherwise, or some other canon of statutory construction compels a contrary conclusion.” *In re Waits' Estate*, 336 Pa. 151, 7 A.2d 329, 330 (1939).

23. Whether or not PIAA meets the general definition of “Commonwealth authority,” the legislature specifically included PIAA within the definition of “State-affiliated entity.”

24. The more specific inclusion of PIAA within the definition of “State-affiliated entity” controls over any other interpretation of the RTKL that may be to the contrary.

25. There is no legal basis for concluding that the RTKL does not or should not apply to PIAA.

WHEREFORE, Count I should be dismissed with prejudice.

PRELIMINARY OBJECTION FOUR:
Demurrer (Rule 1028(a)(4)) as to Count II
Failure to State a Claim

26. The Commonwealth incorporates the preceding paragraphs as if set forth at length.

27. In restricting special legislation, the Pennsylvania Constitution precludes any act of the legislature that, among other things, “[r]egulat[es] the affairs of counties, cities, townships, wards, boroughs or school districts.” Pa. Const. art. III, § 32.

28. The purpose of the bar on special legislation is “to prevent the General Assembly from creating classifications in order to grant privileges to one person, one company or one county.” *Wings Field Pres. Associates, L.P. v. Com., Dep’t of Transp.*, 776 A.2d 311, 316 (Pa. Cmwlth. 2001).

29. This provision does not “divest the General Assembly of its general authority either to identify classes of persons and the different needs of a class, or to provide for differential treatment of persons with different needs.” *Robinson Twp., Washington Cty. v. Com.*, 623 Pa. 564, 83 A.3d 901, 987 (2013).

30. PIAA is not a county, city, township, ward, borough, or school district, and thus the bar on special legislation does not apply to it.

31. Even if the bar on special legislation applied to it, the PIAA is not similarly situated to other interscholastic associations or to other private corporations.

32. It was rational for the legislature to include PIAA within the RTKL.

33. The bar on special legislation does not preclude the legislature from including PIAA within its definition of “State-affiliated entity” in the RTKL.

WHEREFORE, Count II should be dismissed with prejudice.

PRELIMINARY OBJECTION FIVE:
Demurrer (Rule 1028(a)(4)) as to Count III
Failure to State a Claim

34. The Commonwealth incorporates the preceding paragraphs as if set forth at length.

35. The Equal Protection Clauses of the United States Constitution and Pennsylvania Constitution are analyzed under identical standards. *Fouse v. Saratoga Partners, L.P.*, 204 A.3d 1028, 1033 n.9 (Pa. Cmwlth. 2019).

36. “A statute duly enacted by the General Assembly is presumed valid.” *W. Mifflin Area Sch. Dist. v. Zahorchak*, 607 Pa. 153, 4 A.3d 1042, 1048 (2010).

37. Where a plaintiff is not a member of a protected class, it can proceed on a “class of one” equal protection theory. Under a “class of one” theory of equal

protection, “a plaintiff must allege that (1) the defendant treated him differently from others similarly situated, (2) the defendant did so intentionally, and (3) there was no rational basis for the difference in treatment.” *Hill v. Borough of Kutztown*, 455 F.3d 225, 239 (3d Cir. 2006).

38. PIAA is not similarly situated to other interscholastic associations or to other private corporations.

39. It was rational for the legislature to include PIAA within the RTKL.

40. Equal protection under federal or state law does not preclude the legislature from including PIAA within its definition of “State-affiliated entity” in the RTKL.

WHEREFORE, Count III should be dismissed with prejudice.

Dated: January 20, 2021

Respectfully submitted,

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Senior Deputy Attorney General

KAREN M. ROMANO
Chief Deputy Attorney General
Civil Litigation Section

Counsel for Respondent

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	:	

CERTIFICATION PURSUANT TO Pa. R.A.P. 127

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Dated: January 20, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this day the foregoing Entry of Appearance is being served upon the persons and in the manner indicated below, which service satisfies the requirements of Pa. R.A.P. 121:

Electronic Service via PACFile:

Alan R. Boynton, Jr., Esq.
Logan Hetherington, Esq.
Austin David Hughey, Esq.
MCNEES WALLACE & NURICK LLC
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Harrisburg, PA 17108-1166

Counsel for Petitioner Pennsylvania Interscholastic Athletic Ass'n

Exhibit A

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PENNSYLVANIA INTERSCHOLASTIC :
ATHLETIC ASSOCIATION, INC., :

Petitioner, :

v. :

COMMONWEALTH OF :
PENNSYLVANIA and PENNSYLVANIA :
OFFICE OF OPEN RECORDS, :

Respondents :

NOTICE

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Petitioner. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

MIDPENN LEGAL SERVICES
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DAUPHIN COUNTY BAR ASSOCIATION
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Harrisburg, PA 17101
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A V I S O

USTED HA SIDO DEMANDADO/A EN CORTE. Si usted desea defenderse de las demandas que se presentan más adelante en las siguientes páginas, debe tomar acción dentro de los próximos veinte (20) días después de la notificación de esta Demanda y Aviso radicando personalmente o por medio de un abogado una comparecencia escrita y radicando en la Corte por escrito sus defensas de, y objeciones a, las demandas presentadas aquí en contra suya. Se le advierte de que si usted falla de tomar acción como se describe anteriormente, el caso puede proceder sin usted y un fallo por cualquier suma de dinero reclamada en la demanda o cualquier otra reclamación o remedio solicitado por el demandante puede ser dictado en contra suya por la Corte sin más aviso adicional. Usted puede perder dinero o propiedad u otros derechos importantes para usted.

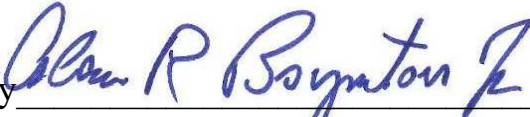
USTED DEBE LLEVAR ESTE DOCUMENTO A SU ABOGADO INMEDIATAMENTE. SI USTED NO TIENE UN ABOGADO, LLAME O VAYA A LA SIGUIENTE OFICINA. ESTA OFICINA PUEDE PROVEERLE INFORMACION A CERCA DE COMO CONSEGUIR UN ABOGADO.

SI USTED NO PUEDE PAGAR POR LOS SERVICIOS DE UN ABOGADO, ES POSIBLE QUE ESTA OFICINA LE PUEDA PROVEER INFORMACION SOBRE AGENCIAS QUE OFREZCAN SERVICIOS LEGALES SIN CARGO O BAJO COSTO A PERSONAS QUE CUALIFICAN.

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Dated: December 18, 2020

*Attorneys for Petitioner Pennsylvania
Interscholastic Athletic Association*

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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 :
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**PETITION FOR REVIEW IN THE NATURE OF A
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Petitioner Pennsylvania Interscholastic Athletic Association, Inc. (“PIAA”), by and through its attorneys, McNees Wallace & Nurick LLC, invokes this Court’s original jurisdiction and submits the following Petition for Review in the Nature of a Complaint for Declaratory and Injunctive Relief (“Petition”) against Respondents Commonwealth of Pennsylvania and the Office of Open Records to challenge application of the Pennsylvania Right To Know Law (“RTKL”) to PIAA. In support of this Petition, Petitioner avers as follows:

I. STATEMENT OF JURISDICTION

1. This Court has jurisdiction over this matter by reason of 42 Pa. C.S. § 761. This Petition is addressed to the Court's original jurisdiction and is in the nature of a Complaint for declaratory and injunctive relief.

2. This Petition seeks to declare the inclusion of PIAA within the definition "State-affiliated entity" of Section 102 of the RTKL as unenforceable and/or unconstitutional on the grounds that (1) the provision is inherently contradictory as it defines a "State-affiliated entity" as "a Commonwealth authority or entity" but then expressly identifies PIAA as being covered by the definition when PIAA is not, nor has it ever been, either a Commonwealth authority or entity; (2) the provision singling out PIAA is special legislation targeting a specific corporation and imposing on PIAA obligations that are not imposed on other analogous entities; and (3) the provision violates PIAA's federal and state constitutional rights of equal protection since the provision arbitrarily singles out PIAA and imposes on it obligations and duties not imposed on any other interscholastic athletic organization in the Commonwealth nor any other private membership corporation in the Commonwealth.

3. Petitioner further seeks to preliminarily and permanently enjoin application of Section 102's definition of State-affiliated entity to PIAA and to

further enjoin the Pennsylvania Office of Open Records (“OOR”) from having jurisdiction over any matters relating to PIAA based on Section 102’s inclusion of PIAA as a State-affiliated entity.

II. PARTIES

4. Petitioner is the Pennsylvania Interscholastic Athletic Association, Inc. (“PIAA”), a Pennsylvania not-for-profit voluntary membership corporation.

5. Respondent Commonwealth of Pennsylvania is established and governed by the Constitution of the Commonwealth of Pennsylvania.

6. Respondent Pennsylvania Office of Open Records (“OOR”) is acting by and through the powers and authority granted it by under Section 1310 of the Pennsylvania Right To Know Law, Act 3 of 2008, 65 P.S. § 67.101, *et. seq.*

III. STATEMENT OF FACTS

A. PIAA

7. In December 1913, the Pennsylvania Interscholastic Athletic Association was established by a group of high school principals as an unincorporated membership association.

8. The entity was established as a voluntary association of schools for the purpose of establishing uniform rules and eliminating abuses in the growing phenomenon of interscholastic athletics.

9. In September 1978, the association filed Articles of Incorporation with the Commonwealth Department of State, Corporation Bureau. A copy of the Articles of Incorporation is attached hereto as Exhibit A.

10. PIAA's membership consists of both public and private schools that choose to join the organization.

B. The Right To Know Law and PIAA

11. The Pennsylvania General Assembly, through Act 3 of 2008, adopted the Pennsylvania Right To Know Law ("RTKL"), 65 P.S. § 67.101, *et. seq.*

12. Pursuant to Section 301(a) of the RTKL, "Commonwealth agencies" are subject to the RTKL.

13. Section 102 of the RTKL defines terms used in the RTKL.

14. A "Commonwealth agency" is defined under Section 102 of the RTKL to include a "State-affiliated entity."

15. A "State-affiliated entity" is defined under Section 102 of the RTKL as follows:

State-affiliated entity. A Commonwealth authority or Commonwealth entity. The term includes the Pennsylvania Higher Education Assistance Agency and any entity established thereby, the Pennsylvania Gaming Control Board, the Pennsylvania Game Commission, the Pennsylvania Fish and Boat Commission, the Pennsylvania Housing Finance Agency, the Pennsylvania Municipal Retirement Board, the State System of Higher Education, a community college, the Pennsylvania Turnpike Commission, the Pennsylvania Public Utility Commission, the Pennsylvania Infrastructure Investment Authority, the State Public School Building Authority, **the Pennsylvania Interscholastic Athletic Association** and the Pennsylvania Educational Facilities Authority. The term does not include a State-affiliated institution.

Emphasis added.

16. Although expressly identified within the scope of the definition of “State-affiliated entity,” PIAA is not, nor has it ever been, a “Commonwealth authority,” nor has it ever been an “authority” of any kind.

17. Although expressly identified within the scope of the definition of “State-affiliated entity,” PIAA is not, nor has it ever been, a “Commonwealth entity.”

18. Of the entities identified under Section 102’s definition of “State-affiliated entity,” all save one (PIAA) were expressly created by enabling legislation adopted by the General Assembly.

19. PIAA receives no tax dollars or other funding from the Commonwealth of Pennsylvania.

20. PIAA has not been granted any powers or authority by the General Assembly other than that possessed by all corporations registered with the Corporation Bureau of the Department of State.

21. PIAA rules apply to only its member schools and only to those certain sports over which it has chosen to accept responsibility.

22. PIAA member schools are free to join other organizations and participate in non-PIAA sports without any involvement by PIAA.

23. There are numerous organizations in Pennsylvania which govern athletic and academic competitions between high schools and high school students, and which are joined by public and private high schools in Pennsylvania.

24. Among others organizations which regulate non-PIAA interscholastic athletic competition in Pennsylvania are Rugby PA, the Inter-Academic Association of Philadelphia and Vicinity (Inter-Act League), Central Pennsylvania Interscholastic Hockey League (ice hockey), the Mid-Atlantic Prep League (MAPL), Pennsylvania Independent Schools Athletic Association (PISAA), the Interstate Preparatory League, the Pennsylvania Interscholastic Cycling League, and the Pennsylvania Interscholastic Esports Association.

25. Among the many organizations which regulate interscholastic academic competition in Pennsylvania, and which are joined by Pennsylvania high

schools, or for which schools pay fees to enter competition, are the Pennsylvania High School Speech League, local chapters of the National Forensics League, the Pennsylvania Bar Association (for the Statewide Mock Trial Competition), the Pennsylvania Math League, and the Pennsylvania Interscholastic Marching Band Association.

26. None of the above interscholastic competition organizations are identified in the RTKL as State-affiliated entities.

C. The Simon Campbell Request

27. On November 2, 2020, PIAA received an extensive request for records from Simon Campbell. A true and correct copy of the request is attached hereto as Exhibit B.

28. On December 7, 2020, PIAA responded to Mr. Campbell's request, providing a substantive response, and also informing him that PIAA intended to challenge its inclusion under the RTKL in response to his request.

29. On December 11, 2020, Mr. Campbell appealed PIAA's response to the OOR.

30. On December 11, 2020, the OOR directed that the parties provide submissions to the OOR on the appeal on or before December 22, 2020.

31. The OOR lacks the authority to declare PIAA's inclusion in the definition of State-affiliated entity to be unconstitutional and/or otherwise unenforceable as applied to PIAA.

32. The requirement of the OOR that PIAA respond to the appeal of Mr. Campbell creates a case or controversy requiring this Court's intervention.

COUNT I: THE SECTION 102 DEFINITION OF "STATE-AFFILIATED ENTITY" PRECLUDES ITS APPLICATION TO PIAA

33. Petitioner incorporates Paragraphs 1 – 32 herein as if set forth in full.

34. Section 102 defines a "State-affiliated entity" as a "Commonwealth authority or entity."

35. PIAA is not, nor has it ever been, a Commonwealth authority or entity.

36. PIAA was not created by enabling legislation by the General Assembly.

37. PIAA has no power or authority granted to it by the Commonwealth.

38. PIAA does not receive taxes or funding from the Commonwealth.

39. PIAA is not a State-affiliated entity as that term is defined in Section 102 of the RTKL.

40. The inclusion of PIAA within the definition of “State-affiliated entity” is wholly inconsistent with, and contrary to, the definition of that term.

41. Because PIAA is not a State-affiliated entity, it is not a “Commonwealth agency” as defined under Section 102 of the RTKL.

42. Because PIAA is not a Commonwealth agency as defined by the RTKL, it is not subject to requirements and obligations of the RTKL.

**COUNT II: VIOLATION OF PENNSYLVANIA
CONSTITUTION BAR ON SPECIAL LEGISLATION**

43. Petitioner incorporates Paragraphs 1 - 32 herein as if set forth in full.

44. Article III, Section 32 of the Constitution of the Commonwealth of Pennsylvania provides in pertinent part that "[t]he General Assembly shall pass no local or special law in any case which has been or can be provided for by general law[.]" PA. CONST., Article III, § 32.

45. The Pennsylvania Constitution's proscription on special legislation mandates that like persons in like circumstances must be treated similarly by the Commonwealth.

46. Legislative classifications set by the General Assembly must be reasonable and have a fair and substantial relationship to a legitimate object of the legislation.

47. "[L]egislative classifications must be founded on real distinctions in the subjects classified and not on artificial or irrelevant ones used for the purpose of evading the constitutional prohibition." *Pa. Tpk. Comm'n*, 899 A.2d at 1095.

48. There are multiple incorporated and unincorporated associations which govern athletic and academic competition between Pennsylvania high schools and their students.

49. No other interscholastic athletic or academic organization in Pennsylvania is identified in the RTKL as a State-affiliated entity.

50. There are numerous private corporations in the Commonwealth that were not expressly created by the General Assembly.

51. By including PIAA within the scope of the RTKL through the definition of State-affiliated entity, the Commonwealth has imposed duties and obligations on PIAA that do not apply to any other interscholastic athletic or academic association nor to any other corporation not expressly created by the General Assembly.

52. By including PIAA within the scope of the RTKL through the definition of State-affiliated entity, the Commonwealth has denied PIAA privileges enjoyed by other interscholastic athletic associations and other corporations not expressly created by the General Assembly.

53. Although specifically identified within the definition of “State-affiliated entity,” PIAA does not meet the definition therein of a State-affiliated entity.

54. The specific inclusion of PIAA in the definition of “State-affiliated entity” is arbitrary and capricious, and in violation of the prohibition on special laws.

55. The inclusion of PIAA in the definition of “State-affiliated entity” creates a class of one member because PIAA is the only entity included within that definition that was not granted any power or authority by the General Assembly, was not created by enabling legislation by the General Assembly, and does not receive funds from the Commonwealth or any other through state-approved funding mechanisms.

56. Every other entity identified in Section 102 as a “State-affiliated entity” was created by the General Assembly, given powers by the Commonwealth and receives funds from the Commonwealth or through state-approved funding mechanisms.

57. The inclusion of PIAA in the definition of a State-affiliated entity under Section 102 of the RTKL renders it an unconstitutional special law as

applied to PIAA because no other non-profit corporations not expressly created by the General Assembly are subject to the RTKL.

58. Moreover, no other similar organizations in Pennsylvania which govern interscholastic athletic and/or academic competitions, and which are joined by public and private high schools in Pennsylvania, are subject to the Section 102 definition of a State-affiliated entity.

59. The inclusion of PIAA in the RTKL is in direct conflict with the Constitution of the Commonwealth of Pennsylvania and violates that charter's prohibition of special legislation.

COUNT III: VIOLATION OF EQUAL PROTECTION RIGHTS UNDER THE UNITED STATES AND PENNSYLVANIA CONSTITUTIONS

60. Petitioner incorporates Paragraphs 1 - 32 herein as if set forth in full.

61. Both the 14th Amendment to the Constitution of the United States and Article I, Sections 1 and 26, of the Constitution of the Commonwealth of Pennsylvania entitle PIAA to equal protection of the law.

62. Claims of violation of the equal protection provisions of the Pennsylvania Constitution are analyzed under the same standards used by the United States Supreme Court when reviewing equal protection claims under the Fourteenth Amendment.

63. An equal protection violation occurs when a party has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment.

64. PIAA is a private membership corporation registered to do business with the Department of State Corporations Bureau.

65. There are numerous private membership corporations operating in the Commonwealth of Pennsylvania.

66. The Commonwealth does not require private membership corporations to comply with the terms of the RTKL.

67. PIAA is the only private membership corporation included within the scope of the RTKL.

68. PIAA is not the only athletic association of high schools operating in the Commonwealth of Pennsylvania.

69. PIAA is the only athletic association of high schools operating in the Commonwealth of Pennsylvania that is included within the scope of the RTKL.

70. The RTKL's inclusion of PIAA through Section 102's definition of State-affiliated entities violates PIAA's equal protection rights because it places PIAA into a class of one whereby PIAA is the only interscholastic athletic

association and only private membership corporation in Pennsylvania made subject to the RTKL through this provision.

71. Section 102 of the RTKL violates PIAA's equal protection rights because the Commonwealth treats PIAA differently than similarly situated corporations and interscholastic athletic associations.

72. The RTKL specifically identifies and singles out PIAA in an arbitrary and capricious manner as it is the only private membership corporation and only interscholastic athletic association that is named therein.

73. PIAA is the only entity identified in Section 102's definition of State-affiliated entities that was not created by enabling legislation of the General Assembly.

74. PIAA is the only entity identified in Section 102's definition of State-affiliated entities that is not granted governmental powers and/or authority by the General Assembly.

75. The RTKL's inclusion of PIAA through Section 102's definition of State-affiliated entities violates PIAA's equal protection rights because it places PIAA into a class of one whereby PIAA is the only entity included therein not created by enabling legislation nor having state-granted powers and funding made subject to the RTKL through this provision.

76. Section 102's definition of State-affiliated entity specifically identifies and singles out PIAA in an arbitrary and capricious manner as it is the only entity identified therein that was not created by the General Assembly.

77. The inclusion of PIAA in the RTKL through Section 102's definition of State-affiliated entity does not have a rational basis, does not serve any compelling state interest, and is arbitrary and capricious in nature.

78. PIAA seeks relief under 42 U.S.C. § 1983 for violation of PIAA's constitutional right to equal protection and further seeks relief for violation of PIAA's equal protection rights under the Pennsylvania Constitution.

RELIEF SOUGHT

79. Petitioner seeks declaratory and preliminary and permanent injunctive relief.

80. Petitioner seeks a declaration that the inclusion of PIAA within the scope of Section 102's definition of a State-affiliated entity is improper and unenforceable.

81. Petitioner seeks a declaration that PIAA is not a Commonwealth agency under the definition of that term as set forth in Section 102 of the RTKL.

82. As to PIAA's request for injunctive relief, PIAA seeks to enjoin any application of the RTKL as to PIAA's based on the definition of State-affiliated entity under Section 102 of the RTKL.

83. PIAA further requests that any and all proceedings under the RTKL as applied to PIAA be dismissed as PIAA is not a Commonwealth agency as that term is defined under the RTKL.

84. Permanent injunctive relief is needed to prevent a legal wrong for which PIAA has no adequate redress at law and because PIAA has a clear right to relief.

WHEREFORE, Petitioner respectfully requests that this Honorable Court declare the definition of "state-affiliated entity" in Section 102 of the Pennsylvania Right To Know Law inapplicable to PIAA and unconstitutional as it applies to

PIAA, enjoin application of that provision to PIAA, and grant such other relief as the Court deems appropriate.

McNEES WALLACE & NURICK LLC

By 

Alan R. Boynton, Jr.

Pa. I.D. No. 39850

Logan Hetherington

Pa I.D. No. 326048

Austin D. Hughey

Pa. I.D. No. 326309

100 Pine Street

P.O. Box 1166

Harrisburg, PA 17108-1166

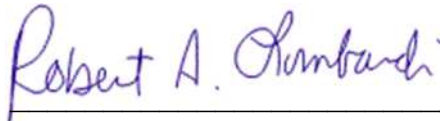
(717) 232-8000

Dated: December 18, 2020

*Attorneys for Petitioner Pennsylvania
Interscholastic Athletic Association, Inc.*

VERIFICATION

I, Robert A. Lombardi, Executive Director of the Pennsylvania Interscholastic Athletic Association, Inc., hereby verify that the facts contained in the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.



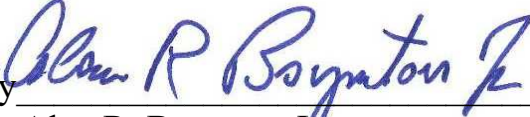
Robert A. Lombardi

Date: December 18, 2020

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

McNEES WALLACE & NURICK LLC

By 

Alan R. Boynton, Jr.

Pa. I.D. No. 39850

Logan Hetherington

Pa I.D. No. 326048

Austin D. Hughey

Pa. I.D. No. 326309

100 Pine Street

P.O. Box 1166

Harrisburg, PA 17108-1166

(717) 232-8000

Dated: December 18, 2020

*Attorneys for Petitioner Pennsylvania
Interscholastic Athletic Association, Inc.*

EXHIBIT A

APPLICANT'S ACCT NO.

DSCB: 15-7316 (Rev. 11-72)

Filing Fee: \$75

AIN-8

Articles of
Incorporation—

Domestic Nonprofit Corporation

1980

(Line for numbering)

637396

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
CORPORATION BUREAU

Filed is 12th day of
September, 1978

Commonwealth of Pennsylvania
Department of State

Barton A. Fields

Secretary of the Commonwealth

(Box for Certification)

j1w

In compliance with the requirements of 15 Pa. S. §7316 (relating to articles of incorporation) the undersigned, desiring to be incorporated as a nonprofit corporation, hereby certifies (certify) that:

1. The name of the corporation is:

Pennsylvania Interscholastic Athletic Association Inc.

2. The location and post office address of the initial registered office of the corporation in this Commonwealth is:

1104

(NUMBER)

Fernwood Avenue

(STREET)

Camp Hill

(CITY)

Pennsylvania

17011

(ZIP CODE)

3. The corporation is incorporated under the Nonprofit Corporation Law of the Commonwealth of Pennsylvania for the following purpose or purposes:

1. Health.

To organize, develop, and direct an interscholastic athletic program which will promote, protect and conserve the health and physical welfare of all participants.

2. Education.

To formulate and maintain policies that will safeguard the educational values of interscholastic athletics and cultivate high ideals of good sportsmanship.

3. Competition.

To promote uniformity of standards in all interscholastic athletic competition.

(CONTINUED ON ATTACHED RIDER)

The corporation does not contemplate pecuniary gain or profit, incidental or otherwise.

4. The term for which the corporation is to exist is: perpetual

- 5. The corporation is organized upon a nonstock basis.
- 6. (Strike out if inapplicable) The corporation shall have no members.
- 7. (Strike out if inapplicable) The incorporators constitute a majority of the members of the committee authorized to incorporate Pennsylvania Interscholastic Athletic Association
(NAME OF UNINCORPORATED ASSOCIATION) by the requisite vote required by the organic law of the association for the amendment of such organic law.
- 8. The name(s) and post office address(es) of each incorporator(s) is (are):

NAME

ADDRESS
(Including street and number, if any)

I. Charles McCullough, 309 Keith Road, Mechanicsburg, PA 17055
Michael Arbutina RD #2, Box 500, Engle Road, Industry, PA 15052
William Holland West Church Street, Lock Haven, PA 17745
James Manners 100 Alexander Street, Brockway, PA 15824

**

IN TESTIMONY WHEREOF, the incorporator(s) has (have) signed and sealed these Articles of Incorporation this 1st day of August, 19 78.

I. Charles McCullough (SEAL) x William Holland (SEAL)
Michael Arbutina (SEAL) James L Manners (SEAL)

INSTRUCTIONS FOR COMPLETION OF FORM:

- A. For general instructions relating to the incorporation of nonprofit corporations see 19 Pa. Code Ch. 29 (relating to nonprofit corporations generally). These instructions relate to such matters as corporate name, stated purposes, term of existence, authorized share structure, inclusion of names of first directors in the Articles of Incorporation, provisions on incorporation of unincorporated associations, etc.
- B. One or more corporations or natural persons of full age may incorporate a nonprofit corporation.
- C. If the corporation is to be organized upon a stock share basis Paragraph 5 should be modified accordingly.
- D. Optional provisions required or authorized by law may be added as Paragraphs 9, 10, 11 . . . etc.
- E. The following shall accompany this form:
 - (1) Any necessary copies of Form DSCB 17.2 (Consent to Appropriation of Name) or Form DSCB:17.3 (Consent to Use of Similar Name).
 - (2) Any necessary governmental approvals.
- F. 15 Pa. S. §7317 (relating to advertisement) requires that the incorporators shall advertise their intention to file or the corporation shall advertise the filing of articles of incorporation. Proofs of publication of such advertising should not be delivered to the Department, but should be filed with the minutes of the corporation.

(**SEE ATTACHED RIDER FOR ADDITIONAL PROVISIONS)

RIDER

(No. 3, continued:)

and, in addition the corporation shall have unlimited power to engage in and to do any lawful act concerning the foregoing purposes.

(Additional Provisions)

9. No part of the net earnings of the corporation shall inure to the benefit of or be distributable to its directors, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services actually rendered and to make payments and distributions in furtherance of the purposes and objects set forth herein. No substantial part of the activities of the corporation shall be the carrying on of propaganda or otherwise attempting to influence legislation and the corporation shall not participate in or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office.

10. Notwithstanding any other provision of these Articles, the corporation shall not conduct or carry on any activities not permitted to be conducted or carried on by an organization exempt under Section 501(c)(3) of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent Federal tax laws, or by an organization, contributions to which are deductible under Section 170(c)(2) of such Code or corresponding provisions of any subsequent Federal tax laws.

11. Upon the dissolution of the corporation or the winding up of its affairs, after payment of all liabilities is made or provided for, the assets of the corporation shall be distributed exclusively for charitable, religious, scientific, testing for public safety, literary, or educational purposes to organizations which are then exempt from Federal tax under Section 501(c)(3) of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent Federal tax laws, and to which contributions are then deductible under Section 170(c)(2) of such Code or corresponding provisions of any subsequent Federal tax laws.

12. Notwithstanding any other provision set forth in these Articles of Incorporation, during any period the corporation is deemed to be a private foundation as defined in Section 509 of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent Federal tax laws, the corporation shall distribute its income for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by Section 4942 of the Internal Revenue Code of 1954 or corresponding provisions of

12. continued

any subsequent Federal tax laws; the corporation shall not engage in any act of self-dealing as defined in Section 4941(d) of the Internal Revenue Code of 1954 or corresponding provisions of any subsequent Federal tax laws; the corporation shall not retain any excess business holdings as defined in Section 4943(c) of the Internal Revenue Code of 1954 or corresponding provisions of any Federal tax laws; the corporation shall not make any investments in such manner as to subject the corporation to the tax under Section 4944 of the Internal Revenue Code of 1954 or corresponding provisions of any subsequent Federal tax laws; and the corporation shall not make any taxable expenditures as defined in Section 4945(d) of the Internal Revenue Code of 1954 or corresponding provisions of any subsequent Federal tax laws.

EXHIBIT B

NOTICE RELATED TO THE CORONAVIRUS (COVID-19) EMERGENCY

Pennsylvania is currently under a declared state of emergency related to the coronavirus (COVID-19). Some agencies and requesters may face challenges in regard to their ability to meaningfully participate in Right-to-Know Law (RTKL) appeals. Accordingly, and to ensure due process, the Office of Open Records (OOR) is taking the following temporary steps.

The timeline for this RTKL appeal may be extended by the OOR during the appeal. This extension will allow the OOR the flexibility it requires to protect due process and to ensure that the agency and requester, along with any third parties, have a full and fair opportunity to meaningfully participate in the appeal.

The appeal has been docketed by the OOR and it has been assigned to an Appeals Officer. The docket number and the Appeals Officer's contact information are included in the attachments you received along with this notice.

The Final Determination is currently due on **January 11, 2021**.

Evidence, legal argument and general information to support your position must be submitted within seven (7) business days from the date of this letter, unless the Appeals Officer informs you otherwise. *Note: If the proceedings have been stayed for the parties to submit a completed mediation agreement, the record will remain open for seven (7) business days beyond the mediation agreement submission deadline.*

Submissions in this case are currently due on **December 22, 2020**.

If you are unable to meaningfully participate in this appeal under the above deadlines, please notify the Appeals Officer as soon as possible.

Every staff member of the OOR is working remotely, and we are only able to receive postal mail on a limited basis at this time. Accordingly, we urge agencies and requesters to use email for all communication with the OOR at this time.

If you have any questions about this notice or the underlying appeal, please contact the Appeals Officer. The OOR is committed to working with agencies and requesters during this time to ensure that the RTKL appeal process proceeds as fairly and as smoothly as possible.

December 11, 2020

Via Email Only:

Mr. Simon Campbell
668 Stony Hill Rd #298
Yardley, PA 19067
parighttoknow@gmail.com

Via Email Only:

Robert Lombardi
Agency Open Records Officer
Pennsylvania Interscholastic Athletic
Association (PIAA)
550 Gettysburg Rd
Mechanicsburg, PA 17055
rlombardi@piaa.org

RE: OFFICIAL NOTICE OF APPEAL - Campbell v. Pennsylvania Interscholastic Athletic Association (PIAA) OOR Dkt. AP 2020-2639

Dear Parties:

Review this information and all enclosures carefully as they affect your legal rights.


The Office of Open Records (“OOR”) received this appeal under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101, et seq. on December 10, 2020. A binding Final Determination (“FD”) will be issued pursuant to the timeline required by the RTKL, **subject to the enclosed information regarding the coronavirus (COVID-19).**

Notes for both parties (more information in the enclosed documents):

- The docket number above must be included on all submissions related to this appeal.
- Any information provided to the OOR must be provided to all parties involved in this appeal. Information that is not shared with all parties will not be considered.
- All submissions to the OOR, other than *in camera* records, will be public records. Do not include any sensitive information- such as Social Security numbers.

If you have questions about this appeal, please contact the assigned Appeals Officer (contact information enclosed), providing a copy of any correspondence to all parties involved in this appeal.

Sincerely,



Erik Arneson
Executive Director

Enc.: Description of RTKL appeal process
Assigned Appeals Officer contact information
Entire appeal as filed with OOR

The Right-to-Know Law Appeal Process

Please review this information carefully as it affects your legal rights.

The Office of Open Records (“OOR”) has received the enclosed appeal, which was filed under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101, et seq. A binding Final Determination will be issued by the OOR pursuant to the statutory timeline, subject to the enclosed information regarding the coronavirus (COVID-19). If you have any questions, please contact the Appeals Officer assigned to this case. Contact information is included on the enclosed documents.

Submissions to the OOR

Both parties may submit evidence, legal argument, and general information to support their positions to the assigned Appeals Officer. Please contact the Appeals Officer as soon as possible.

Any information provided to the OOR must be provided to all parties involved in this appeal. Information submitted to the OOR will not be considered unless it is also shared with all parties.

Include the docket number on all submissions.

The agency may assert exemptions on appeal even if it did not assert them when the request was denied (*Levy v. Senate of Pa.*, 65 A.3d 361 (Pa. 2013)).

Generally, submissions to the OOR — other than *in camera* records — will be public records. Do not include sensitive or personal information, such as Social Security numbers, on any submissions.

Agency Must Notify Third Parties

If records affect a legal or security interest of a third party; contain confidential, proprietary or trademarked records; **or** are held by a contractor or vendor, **the agency must notify such parties of this appeal immediately and provide proof of that notice by the record closing date set forth above.**

Such notice must be made by: (1) Providing a copy of all documents included with this letter; **and** (2) Advising relevant third parties that interested persons may request to participate in this appeal by contacting the Appeals Officer assigned to this case (see 65 P.S. § 67.1101(c)).

The Commonwealth Court has held that “the burden [is] on third-party contractors... to prove by a preponderance of the evidence that the [requested] records are exempt.” (*Allegheny County Dep't of Admin. Servs. v. A Second Chance, Inc.*, 13 A.3d 1025, 1042 (Pa. Commw. Ct. 2011)).

A third party's failure to participate in a RTKL appeal before the OOR may be construed as a waiver of objections regarding release of requested records.

NOTE TO AGENCIES: If you have questions about this requirement, please contact the Appeals Officer immediately.

Statements of Fact & Burden of Proof

Statements of fact must be supported by an affidavit or attestation made under penalty of perjury by a person with actual knowledge. Statements of fact or allegations submitted without an affidavit may not be considered.

Under the RTKL, the agency has the burden of proving that records are exempt from public access (see 65 P.S. § 67.708(a)(1)). **To meet this burden, the agency must provide evidence to the OOR.**

The law requires the agency position to be supported by sufficient facts and citation to all relevant sections of the RTKL, case law, and OOR Final Determinations.

An affidavit or attestation is required to prove that records do not exist.

Sample affidavits are on the OOR website, openrecords.pa.gov.

Any evidence or legal arguments not submitted or made to the OOR may be waived.

Preserving Responsive Records

The agency must preserve all potentially responsive records during the RTKL appeal process, including all proceedings before the OOR and any subsequent appeals to court.

Failure to properly preserve records may result in the agency being sanctioned by a court for acting in bad faith.

See *Lockwood v. City of Scranton*, 2019-CV-3668 (Lackawanna County Court of Common Pleas), holding that an agency had “a mandatory duty” to preserve records after receiving a RTKL request. Also see generally *Uniontown Newspapers, Inc. v. Pa. Dep’t of Corr.*, 185 A.3d 1161 (Pa. Commw. Ct. 2018), holding that “a fee award holds an agency accountable for its conduct during the RTKL process...”

Mediation

The OOR offers a mediation program as an alternative to the standard appeal process. To participate in the mediation program, both parties must agree in writing.

The agency must preserve all potentially responsive records during the RTKL appeal process. Mediation is a voluntary, informal process to help parties reach a mutually agreeable settlement. The OOR has had great success in mediating RTKL cases.

If mediation is successful, the requester will withdraw the appeal. This ensures that the case will not proceed to court — saving both sides time and money.

Either party can end mediation at any time.

If mediation is unsuccessful, both parties will be able to make submissions to the OOR as outlined on this document, and the OOR will have no less than 30 calendar days from the conclusion of the mediation process to issue a Final Determination.

Parties are encouraged to consider the OOR's mediation program as an alternative way to resolve disputes under the RTKL.



APPEALS OFFICER:

Magdalene C. Zeppos-Brown, Esq.

CONTACT INFORMATION:

Commonwealth of Pennsylvania
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234

FACSIMILE:

(717) 425-5343

EMAIL:

mazepposbr@pa.gov

**Preferred method of contact and
submission of information:**

EMAIL

**Please direct submissions and correspondence related to this appeal to the above Appeals Officer.
Please include the case name and docket number on all submissions.**

**You must copy the other party on everything you submit to the OOR. The Appeals Officer cannot
speak to parties individually without the participation of the other party.**

The OOR website, <https://openrecords.pa.gov>, is searchable and both parties are encouraged to review
prior final determinations involving similar records and fees that may impact this appeal.

The OOR website also provides sample forms that may be helpful during the appeals process. OOR staff
are also available to provide general information about the appeals process by calling (717) 346-9903.

REQUEST TO PARTICIPATE BEFORE THE OOR

Please accept this as a Request to Participate in a currently pending appeal before the Office of Open Records. The statements made herein and in any attachments are true and correct to the best of my knowledge, information and belief. I understand this statement is made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities.

NOTE: The requester filing the appeal with the OOR is a named party in the proceeding and is NOT required to complete this form.

OOR Docket No: _____

Today's date: _____

Name: _____

PUBLIC RECORD NOTICE: ALL FILINGS WITH THE OOR WILL BE PUBLIC RECORDS AND SUBJECT TO PUBLIC ACCESS WITH LIMITED EXCEPTION. IF YOU DO NOT WANT TO INCLUDE PERSONAL CONTACT INFORMATION IN A PUBLICLY ACCESSIBLE RECORD, PLEASE PROVIDE ALTERNATE CONTACT INFORMATION IN ORDER TO RECEIVE FUTURE CORRESPONDENCE RELATED TO THIS APPEAL.

Address/City/State/Zip _____

E-mail _____

Fax Number: _____

Name of Requester: _____

Address/City/State/Zip _____

Telephone/Fax Number: _____ / _____

E-mail _____

Name of Agency: _____

Address/City/State/Zip _____

Telephone/Fax Number: _____ / _____

E-mail _____

Record at issue: _____

I have a direct interest in the record(s) at issue as (check all that apply):

- ☐ An employee of the agency
- ☐ The owner of a record containing confidential or proprietary information or trademarked records
- ☐ A contractor or vendor
- ☐ Other: (attach additional pages if necessary) _____

I have attached a copy of all evidence and arguments I wish to submit in support of my position.

Respectfully submitted, _____ (must be signed)

Please submit this form to the Appeals Officer assigned to the appeal. Remember to copy all parties on this correspondence. The Office of Open Records will not consider direct interest filings submitted after a Final Determination has been issued in the appeal.

Devenyi, Dylan

From: no-reply@openrecordspennsylvania.com
Sent: Thursday, December 10, 2020 6:42 PM
To: parighttoknow@gmail.com
Subject: [External] PA Office of Open Records - Appeal Confirmation

ATTENTION: This email message is from an external sender. Do not open links or attachments from unknown sources. To report suspicious email, forward the message as an attachment to CWOPA_SPAM@pa.gov.



You have filed an appeal of an agency's response to a request for records under the Right-to-Know Law.

Name:	Simon Campbell
Company:	
Address 1:	668 Stony Hill Rd #298
Address 2:	
City:	Yardley
State:	Pennsylvania
Zip:	19067
Phone:	267-229-3165
Email:	parighttoknow@gmail.com
Agency (list):	Pennsylvania Interscholastic Athletic Association (PIAA)
Agency Address 1:	550 Gettysburg Rd
Agency Address 2:	
Agency City:	Mechanicsburg
Agency State:	Pennsylvania
Agency Zip:	17055
Agency Phone:	717-697-0374
Agency Email:	rlombardi@piaa.org

Records at Issue in this Appeal:	See attached request. The agency's final answer reflects a denial or deemed denial of all seven (7) request items. The agency's refusal to provide records responsive to all seven (7) request items is challenged on appeal. The agency acted in bad faith/wanton disregard of law by refusing to conduct a timely good faith search for, and timely release of, responsive records that do, in fact, exist.
Request Submitted to Agency Via:	e-mail
Request Date:	11/02/2020
Response Date:	12/07/2020
Deemed Denied:	No
Agency Open Records Officer:	Robert Lombardi
Attached a copy of my request for records:	Yes
Attached a copy of all responses from the Agency regarding my request:	Yes
Attached any letters or notices extending the Agency's time to respond to my request:	Yes
Agree to permit the OOR additional time to issue a final determination:	No
Interested in resolving this issue through OOR mediation:	No
Attachments:	<ul style="list-style-type: none"> • 11-2-20 RTKL Request of PIAA.pdf • 11-6-20 30-Day Extension.pdf • 12-8-20 Final Answer.pdf

I requested the listed records from the Agency named above. By submitting this form, I am appealing the Agency's denial, partial denial, or deemed denial because the requested records are public records in the possession, custody or control of the Agency; the records do not qualify for any exemptions under § 708 of the RTKL, are not protected by a privilege, and are not exempt under any Federal or State law or regulation; and the request was sufficiently specific.



PENNSYLVANIA INTERSCHOLASTIC ATHLETIC ASSOCIATION, INC.

550 Gettysburg Road • P.O. Box 2008
Mechanicsburg, Pennsylvania 17055-0708
(800) 382-1392 • (717) 697-0374
FAX (717) 697-7721
WEB SITE: www.piaa.org

December 7, 2020

Mr. Simon Campbell
668 Stony Hill Road #298
Yardley, PA 19067

Mr. Campbell:

The purpose of this letter is to respond to the Right To Know Law (RTKL) request sent by you on November 2, 2020 and received by me the same date. Under Section 902 of the RTKL, PIAA requested an extension of 30 days to respond to your request. Our responses to your requests are as follows:

General objection: PIAA is not a Commonwealth authority or entity. It is a 501c(3) nonprofit membership corporation that receives no tax dollars and was not created by an Act of the General Assembly. For this reason, it is not subject to the Pennsylvania Right To Know Law. Please be on notice that it is the intention of PIAA to litigate this issue in response to this request.

Specific responses:

Request #1: All legal invoices that already exist in electronic form that were paid by PIAA to any and all attorneys/law firms between the dates of January 1, 2012 and the present.

Response #1: PIAA has no documents responsive to this request. Law firms paid by PIAA since 2012 are believed to have thousands of pages of invoices but PIAA is not aware of how many of those are in an electronic format. All such records, if they exist, must be redacted prior to productions.

Request #2: the fronts of all electronic cleared check images that already exist in electronic form for all financial accounts owned/operated by PIAA between the dates of June 1, 2019 and the present.

Response #2: PIAA has no documents that exist which are responsive to this request. The security features of our banking institution do not allow for modification of electronic images to remove confidential information. PIAA also has no current means of obtaining, preserving and producing the requested records in an electronic format.

Request #3: electronic copies of all monthly bank (or other financial institution) statements that already exist in electronic form for all financial records owned or operated by PIAA between the dates of December 1, 2013 and the present.

Response #3: There are no documents that exist which are responsive to this request nor any current means to obtain, preserve and produce electronic files from such institutions in an electronic format.

Request #4: all posted line item transactions in all bank (or other financial institution) accounts that already exist in electronic form for all financial records owned or operated by PIAA between the dates of June 1, 2019 and the present.

Response #4: There are no documents that exist which are responsive to this request nor any current means to obtain, preserve and produce electronic files from such institutions in an electronic format.

Request #5: PIAA's most recent three (3) years of independent audited financial statements that already exist in electronic form.

Response #5: PIAA has requested these records from its auditors but has not yet received them. They will be produced upon receipt.

Request #6: PIAA's most recent Form 990 filing with the IRS that already exist in electronic form.

Response#6: The IRS 990 Form is available for public view on the IRS site. This may be accessed at www.irs.gov

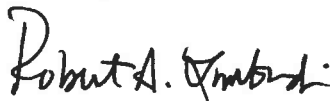
Request #7: all electronic copies of written communications that already exist in electronic form and that were exchanged between PIAA officials' (and between PIAA officials and legal counsel) between the dates of January 1, 2020 and the present that discuss the topic of PIAA being improperly included in the RTKL.

Response #7: There are no documents responsive to this request.

Request #8: Please send me a screenshot image showing the name of the software program in PIAA's possession, custody or control that can perform electronic redactions on PDF files and/or other electronic type files.

Response #8: PIAA is not aware of any record responsive to this request.

Sincerely,

A handwritten signature in black ink that reads "Robert A. Lombardi". The signature is written in a cursive, slightly stylized font.

Dr. Robert A. Lombardi
Executive Director

RAL/bl



PENNSYLVANIA INTERSCHOLASTIC ATHLETIC ASSOCIATION, INC.

550 Gettysburg Road • P.O. Box 2008
Mechanicsburg, Pennsylvania 17055-0708
(800) 382-1392 • (717) 697-0374
FAX (717) 697-7721
WEB SITE: www.piaa.org

November 6, 2020

Mr. Simon Campbell
668 Stony Hill Road #298
Yardley, PA 19067

Mr. Campbell:

The purpose of this letter is to respond to the Right To Know Law (RTKL) request received by me Sunday, November 1, 2020, but dated by you Monday, November 2, 2020.

Your request requires an extension of time under Section 902 of the RTKL to review and analyze your request, gather any documents responsive to this request, and appropriately consider any sort of confidential and/or privileged information that may be contained in any responsive documents. Therefore, we will provide a response to you on or before Monday, December 7, 2020.

Sincerely,

Dr. Robert A. Lombardi
Executive Director

RAL/bl



Standard Right-to-Know Law Request Form

Good communication is vital in the RTKL process. Complete this form thoroughly and retain a copy; it may be required if an appeal is filed. You have 15 business days to appeal after a request is denied or deemed denied.

SUBMITTED TO AGENCY NAME: Pennsylvania Interscholastic Athletic Association (PIAA) (Attn: AORO)

Date of Request: November 2, 2020 Submitted via: ☒ Email ☐ U.S. Mail ☐ Fax ☐ In Person

PERSON MAKING REQUEST:

Name: Simon Campbell Company (if applicable): _____

Mailing Address: 668 Stony Hill Rd #298

City: Yardley State: PA Zip: 19067 Email: parighttoknow@gmail.com

Telephone: 267-229-3165 Fax: _____

How do you prefer to be contacted if the agency has questions? ☐ Telephone ☒ Email ☐ U.S. Mail

RECORDS REQUESTED: *Be clear and concise. Provide as much specific detail as possible, ideally including subject matter, time frame, and type of record or party names. RTKL requests should seek records, not ask questions. Requesters are not required to explain why the records are sought or the intended use of the records unless otherwise required by law. Use additional pages if necessary.*

Please see attached and below. The specificity of my request/s is important. Right-to-Know Law (RTKL) legal analysis cannot be assessed against records that are simply not requested. An agency may not amend the request nor attempt to produce records not sought. Only the Requester has authority to define the breadth and scope of the request. 65 P.S. §67.703. See also Section 102 definition of a Record ("Information, regardless of physical form or characteristics ...stored or maintained electronically"). I am exclusively seeking electronic information.

DO YOU WANT COPIES? ☐ Yes, printed copies (default if none are checked)

[No printed copies] ☒ Yes, electronic copies preferred if available **ONLY (see attached)**

☐ No, in person inspection of records preferred (may request copies later)

Do you want certified copies? ☐ Yes (may be subject to additional costs) ☒ No

RTKL requests may require payment or prepayment of fees. See the [Official RTKL Fee Schedule](#) for more details.

Please notify me if fees associated with this request will be more than ☐ \$100 (or) ☒ \$ 0.00.

ITEMS BELOW THIS LINE FOR AGENCY USE ONLY

Tracking: _____ Date Received: _____ Response Due (5 bus. days): _____

30-Day Ext.? ☐ Yes ☐ No (If Yes, Final Due Date: _____) Actual Response Date: _____

Request was: ☐ Granted ☐ Partially Granted & Denied ☐ Denied Cost to Requester: \$ _____

☐ Appropriate third parties notified and given an opportunity to object to the release of requested records.

NOTE: In most cases, a completed RTKL request form is a public record.
More information about the RTKL is available at <https://www.openrecords.pa.gov>

Form updated Feb. 3, 2020

PIAA². That said, PIAA must still perform a ‘constructive possession’ search under Section 901³ and/or Section 506(d)⁴ for responsive electronic records that might exist in the possession of applicable third parties such as the retained lawyers/law firms that generated the requested electronic legal invoices (self-evidently a client ‘controls’ the attorney-client relationship).⁵

ITEM 2

Using the cheapest redaction (if necessary), copy, and delivery methods possible, please send me electronic copies of the fronts of all electronic cleared check images that **already exist in electronic form** (e.g. via online banking) for all financial accounts owned/operated by PIAA between the dates of June 1, 2019 and the present. A redacted illustration of what I seek is shown below. Most financial institutions have online banking features where cleared check images can be viewed by the account owner. I am looking for snapshot copies of such check images in whatever electronic form PIAA might wish to take the electronic copies e.g. screenshot capture, print to PDF, etc. I do not authorize PIAA to print any cleared check image to paper because, again, I am not seeking paper copies of electronic records (Requester defines the scope and parameters of the request, not the PIAA; 65 P.S. § 67.703). To the extent the requested electronic cleared check images are not in the PIAA’s actual possession I posit that they are in PIAA’s constructive possession (“control”) via the applicable financial institutions’ online banking features. Example:

² 65 P.S. § 67.703 (“[a] written request should identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested”).

³ 65 P.S. § 67.901 (“[w]hether the agency has possession, custody or **control** of the identified record”).

⁴ 65 P.S. § 67.506(d).

⁵ See *Uniontown Newspapers, Inc. v. Pa. Department of Corrections*, 185 A.3d 1161, 1171-72 (Pa. Commw. Ct. 2018) (“When records are not in an agency’s physical possession, an open records officer has a **duty to contact agents within its control**, including third-party contractors ... After obtaining potentially responsive records, an agency has the duty to review the records and assess their public nature under ... the RTKL”).

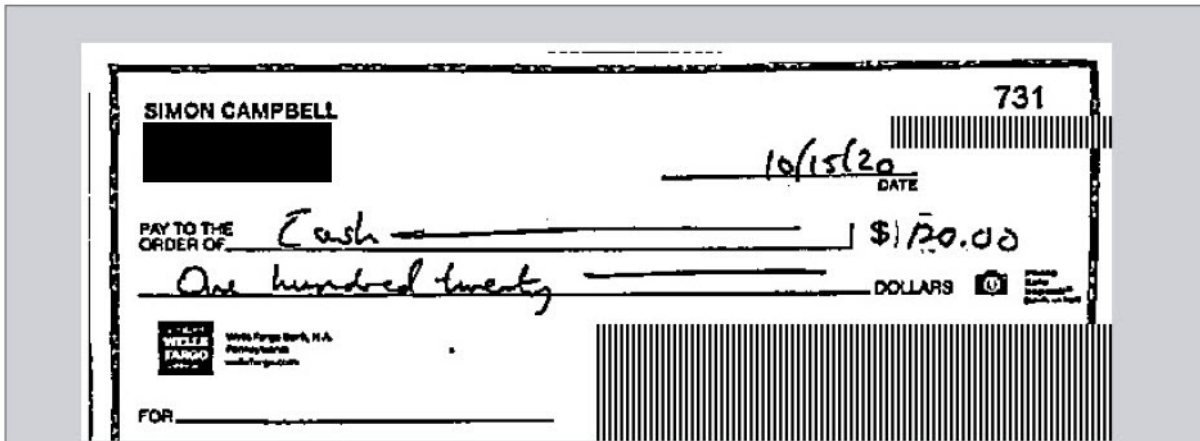
Check Details



Item 7 of 29 [Show full image](#) *

Print

Check Number	EXAMPLE OF A CLEARED CHECK IMAGE OBTAINED VIA ONLINE BANKING.	731
Date Posted		10/15/20
Check Amount		\$120.00



[< Previous](#)

[Flip](#)

[Zoom](#)

[Next >](#)

* For your security, information like account numbers, signatures, and the ability to view the backs of checks have been removed from the images.

You can see full or partial fronts and backs of the images by using the link at the top of the window.

Equal Housing Lender

ITEM 3

Using the cheapest redaction (if necessary), copy, and delivery methods possible, please send me electronic copies of all monthly bank (or other financial institution) statements that **already exist in electronic form** for all financial accounts owned/operated by PIAA between the dates of December 1, 2013 and the present. Again, no paper records are requested. Example:

Statements and Documents

It's easy to access your account documents online. Wells Fargo offers a secure, convenient, and environmentally friendly way to manage your documents from one central place – helping you reduce clutter and stay organized.

Related Information

[Request statement copies by mail](#)

[Manage Delivery Preferences](#) >

Statements and Disclosures

Select account

For time period

Recent statements

Statements

Deposit account statements are available online for up to 7 years.

 [Statement 09/30/20 \(23K, PDF\)](#)

 [Statement 08/31/20 \(21K, PDF\)](#)

 [Statement 07/31/20 \(21K, PDF\)](#)

 [Statement 06/30/20 \(24K, PDF\)](#)

 [Statement 05/31/20 \(23K, PDF\)](#)

 [Statement 04/30/20 \(22K, PDF\)](#)

 [Statement 03/31/20 \(22K, PDF\)](#)

 [Statement 02/29/20 \(22K, PDF\)](#)

 [Statement 01/31/20 \(23K, PDF\)](#)

 [Statement 12/31/19 \(24K, PDF\)](#)

 [Statement 11/30/19 \(24K, PDF\)](#)

**EXAMPLE OF MONTHLY BANK
STATEMENTS BEING
READILY AVAILABLE ONLINE,
FOR UP TO 7 YEARS, IN
ELECTRONIC FORM (PDF).**

Wells Fargo will notify you when your account statement is available online. If we do not have a valid email address for you, we cannot provide this notice and will have to switch future online statements to paper statements via U.S. mail. As an online customer, you are responsible for notifying us if you change your email address. Please refer to the [Online Access Agreement](#) for details. If you receive both paper and online statements on an account, we will not notify you by email when your online statement is ready.

ITEM 4

Using the cheapest redaction (if necessary), copy, and delivery methods possible⁶, please send me all posted line item transactions in all bank (or other financial institution) accounts that **already exist in electronic form** for all financial accounts owned/operated by PIAA between the dates of June 1, 2019 and the present. Again, no paper records are requested. Example:

⁶ For Request Item 4 I seek the delivery method of comma delimited (ASCII, Spreadsheet) if it is an available option, otherwise any available electronic form and electronic delivery method will suffice.

Download Your Account Activity

Personal Accounts [What is this?](#)

Upgrade to Direct Connect and you can automatically download all your eligible accounts and pay bills directly through Quicken or QuickBooks - just select Wells Fargo Bank from within your software.

- See fees and learn more about using Online Banking and Bill Pay with [Quicken](#) or [QuickBooks](#).
- Need financial management software? Purchase discounted [QuickBooks](#) software.

Download your account information by following these steps:

Step 1: Choose an account.¹

Account



Step 2: Verify the pre-filled date range.²

For the selected account, you can download up to 18 months of previous account history.

Note: Always confirm "From" and "To" dates before downloading account activity.

Date Range



Step 3: Select a file format to download.³

File Format

- ☐ Quicken® ([Web Connect](#))
- ☐ QuickBooks® ([Web Connect](#))
- ☐ QuickBooks® (.iif) ([More Information](#))
- ☐ Comma Delimited ([ASCII](#), [Spreadsheet](#))

Download

* Account Disclosures

¹Only posted transactions are available for download.

Please note that if PIAA downloads the requested line item transactions into a manipulable database format and then redacts certain information I think it is important to identify in the file itself what information has been redacted. Unlike a blacked out image on a document or image file, I cannot visibly “see” if a column, row, or cell box has been deleted.

ITEM 5

Using the cheapest redaction (if necessary), copy, and delivery methods possible, please send me PIAA’s most recent three (3) years of independent audited financial statements that **already exist in electronic form**. If they do not already exist in electronic form then the financial statements are not requested (if necessary, PIAA must check with the auditors to see if the auditors possess them in electronic form).

ITEM 6

Using the cheapest redaction (if necessary), copy, and delivery methods possible, please send me PIAA's most recent Form 990 filing with the IRS⁷ that **already exists in electronic form**. If the requested document does not already exist in electronic form then it is not requested (if necessary, PIAA must check with its Form 990 preparer to see if he/she possesses it in electronic form).

ITEM 7

This request item stems from my curiosity about a recent Office of Open Records ("OOR") Final Determination, *Francis Scarella & the Daily Item v. PIAA*; Dkt. No. AP 2020-1371. On September 2, 2020, PIAA submitted argument to the OOR via counsel. On page 2 footnote 1 of that pleading, PIAA stated:

"[PIAA] does not receive any tax money⁸ ... Unless all not-for-profit corporations that have schools for members are Commonwealth authorities or entities, PIAA believes that it is improperly included in the RTKL. For purposes of the current proceeding, it has chosen not to object to the request submitted by Requester on this ground nor pursue this issue here as the OOR is not the appropriate venue to address the validity and/or constitutionality of the legislative enactment."

I quote the above because I wish to be clear what records I am seeking. Using the cheapest redaction (if necessary), copy, and delivery methods possible, please send me electronic copies of all written communications that **already exist in electronic form**, and that were exchanged between PIAA officials (and between PIAA officials and counsel) between the dates of January 1, 2020 and the present, that discuss the topic of PIAA being improperly included in the RTKL.

When I use the term "PIAA officials" I am referring to the PIAA's Board of Directors, Executive Committee (President, Vice President, and Treasurer), and Executive Director. When I use the term "written communications" I am referring to any and all non-verbal communications (examples would include emails, text messages, social media messages) irrespective of whether

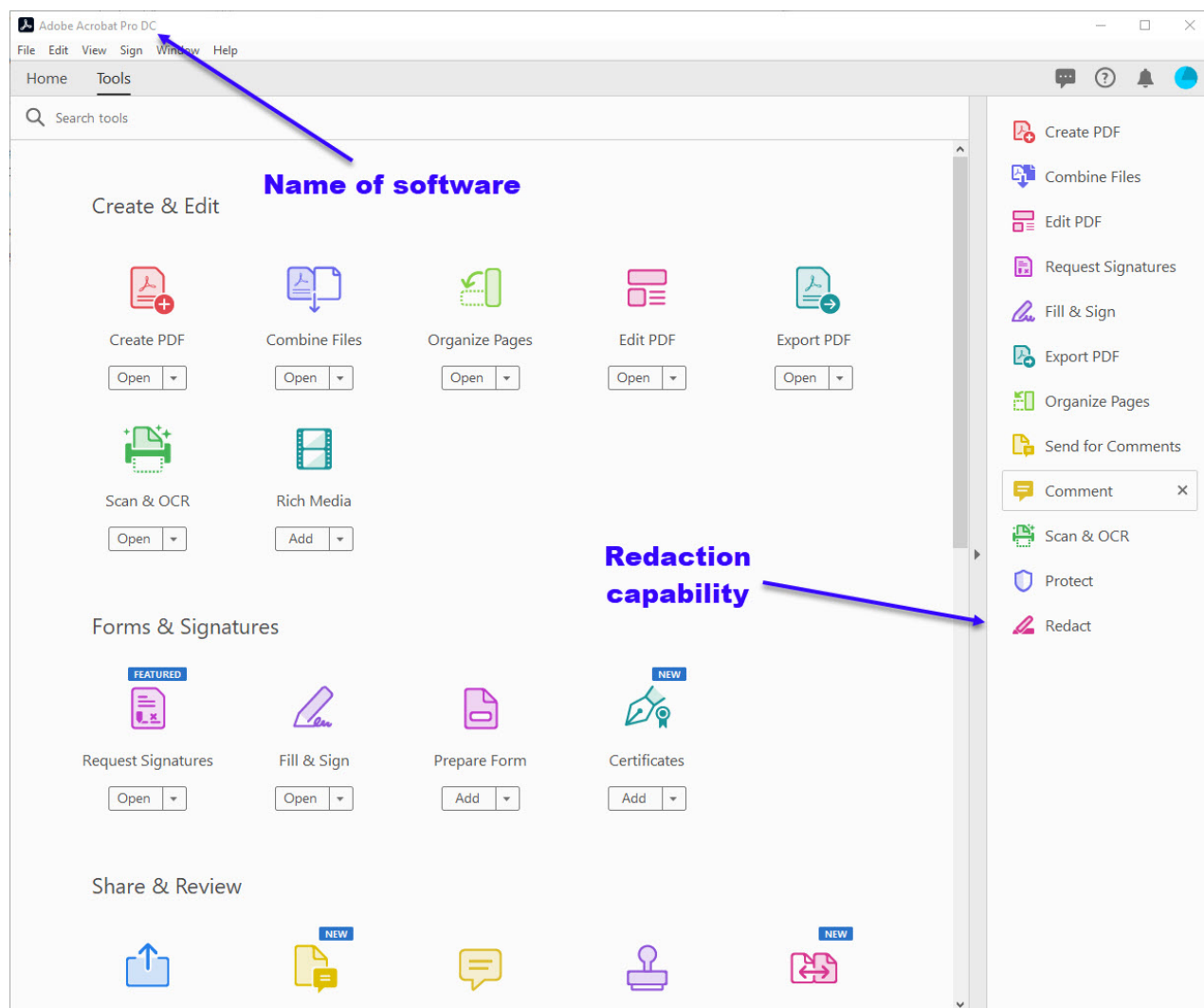
⁷ "Return of Organization Exempt from Income Tax" (Form 990).

⁸ A disingenuous argument to make. PIAA's member public schools are not private donors. They are public entities funded by taxpayers; and for constitutional purposes PIAA is a pervasively entwined State Actor. *See Brentwood Academy v. Tennessee Secondary School Athletic Association*, 531 U.S. 288 (2001); *also see Campbell et al v. PSBA et al*, 336 F. Supp. 3d 482 - Dist. Court, ED Pennsylvania 2018 (PSBA Motion to Dismiss denied, June 19, 2018). PIAA should not seek to bypass the statutory scheme of the RTKL if wishing to argue that the RTKL is unconstitutional as to PIAA's inclusion. Any legal action taken by PIAA outside of the RTKL, involving my request items, would be First Amendment retaliation. PIAA can make any arguments it likes but it must do so via the RTKL statutory process to which I am clearly entitled. PIAA cannot presume the RTKL is unconstitutional and must therefore follow it. PIAA is required to act in good faith and can be sanctioned if it does not. 65 P.S. § 67.1304. Put plainly, PIAA can hold whatever fanciful legal theories it likes if it wants to sue the Commonwealth of Pennsylvania and have the Attorney General defend against such suit as required by the Commonwealth Attorneys Act. But such fanciful legal theories must be pursued within the confines of the RTKL process. That said, it is hard to imagine any public relations consultant counseling that PIAA use taxpayer-sourced member dues for such a speculative headline-grabbing endeavor. Even harder to imagine the media and general assembly being impressed by such move. If anything, it might trigger the general assembly to add the likes of PSBA into the RTKL. That would be a good amendment. All pervasively entwined State Actors should be accountable to the public that *de facto* funds them.

such communications occurred on the agency officials' personal communication devices. I posit that PIAA's "good faith effort" (Section 901) to search for responsive records necessitates the PIAA's Open Records Officer asking the agency officials to preserve (then release to the Open Records Officer for analysis) all responsive records on any personal communication devices.

ITEM 8

Please send me a screenshot image showing the name of the software program/s in PIAA's possession, custody or control that can perform electronic redactions on PDF files and/or other electronic file types. By way of example one software program that I use myself to perform such tasks is called Adobe Acrobat Pro:



POSITION STATEMENT/S OF REQUESTER

It seems from reading the appeal submissions to OOR in *Francis Scarcella and The Daily Item v. Pennsylvania Interscholastic Athletic Association*, OOR Dkt. AP 2020-1371, that PIAA District IV may be run by people unfamiliar with modern banking tools and modern software tools. The

Glenn Fogel (District IV Treasurer) affidavit of September 2, 2020, stated in paragraph 12 “As Treasurer, I keep almost all District IV third party records, such as ...bank records⁹, in paper format” and in paragraph 15 “I am not aware of any records of District IV that were requested by Mr. Scarcella that are kept electronically”. If District IV has a bank account then it is irrelevant what bank records Mr. Fogel personally keeps or what banking facilities he may be unaware of. What is relevant is what online banking facilities he (or the appropriate PIAA official) has the **actual ability to access** even if he has never done it before and even if he isn’t personally aware that online records exist. Ignorance is a not a valid denial argument under the RTKL. The Daily Item newspaper did not press these issues so these issues were not adjudicated. By contrast, I am putting PIAA on notice to think about these issues. If local Treasurers have never done things like set up an online banking username and password, or never accessed online banking records before, it doesn’t mean they can avoid doing it now in response to my request items. PIAA has a *duty* to retrieve what I seek if PIAA possesses or controls access to the records in the electronic medium that I seek them.

Aside from Adobe Acrobat Pro I possess an inexpensive software tool called “SnagIt” that, like Adobe Acrobat Pro, can be used to capture screen images and create blacked out areas to redact image files like .gif, .jpg, .tiff, etc. (and do it far more securely than a black sharpie pen on a piece of paper, where holding up the paper to a bright light can reveal the redaction underneath¹⁰). By no means are these software tool examples meant to be exhaustive of all possibilities for how electronic records may be electronically redacted by PIAA. In 2020, we live in a modern world with modern software tools that are readily available to us.

The particular electronic form of the sought-after electronic copies is irrelevant to my request items. Aside from the the limited (additional) specificity of re: Item 4, PIAA is welcome to use any electronic format and any electronic medium of its choice to grant and deliver my requested items (e.g. image files, database files, document files, etc.). Since fee disputes can be adjudicated separately to PIAA's position on the merits of requested information being public or nonpublic, please do not actually incur any allegedly chargeable fees to process any of my request items without first seeking agreement from me that I will pay the allegedly chargeable fees (see Section 1304; PIAA required to act in good faith¹¹). My position is that any redactions (which are not

⁹ The phrase “bank records” was not probed by the Requester but self-evidently it speaks to the existence of a bank account. Should it become relevant here I ask that PIAA attorneys provide careful counsel to affiants, given the potential of a Requester to seek sanctions in court for perjury.

¹⁰ OOR has no statutory authority to include non-defined phrases like “secure redaction” in its fee schedule (footnote 6) when no such phrase exists in the statute. Section 706 (redactions) does not mention either the word “secure” or “securely”. OOR has no statutory authority to set redaction costs on electronic records in its fee schedule. That OOR has acted outside the scope of its statutory authority in establishing its current fee schedule, re: redacting electronic records, cannot be used as a denial basis by PIAA. OOR cannot cite a single case for the premise that it can unilaterally declare, via its fee schedule, that agencies have a “right” to print pieces of paper (at \$0.25 per page cost to the Requester) from electronic records in order to take out a black sharpie pen and redact them. PIAA is obliged to follow the law not OOR’s unlawful power grab.

¹¹ See also OOR Final Determination, *Francis Scarcella and The Daily Item v. Pennsylvania Interscholastic Athletic Association*, OOR Dkt. AP 2020-1371 (PIAA not entitled to copy fees where Requester objection is on record).

admitted is necessary) on electronic records would need to be performed electronically in accordance with Sections 706 and 1307(g) of the RTKL¹².

My position (given the specificity of my requests) is that Section 1307(b) – which references the OOR’s fee schedule - is not triggered, at least in terms of redaction, by any of my request items¹³. I do not agree that any paper copy fees can be charged because I am only seeking electronic copies of records that *already exist* in electronic form. Put another way, it is not a ‘necessarily incurred’ cost to print electronic records onto paper in order to redact or copy them.¹⁴

My position is that the only permissible fees that may be charged to me is the delivery method by which the electronic information is sent. If the granted records are too large to send as e-mail attachments PIAA should seek the lowest cost alternative delivery method to send me the released records. Examples might include mailing me a USB stick or DVD (where the cost of the thumb drive/disc plus postage might be chargeable). Or, even better, PIAA could use a free file-share cloud service like Google Drive, OneDrive, Dropbox etc¹⁵. I encourage PIAA to enter into constructive dialogue with me about delivery costs rather than assume PIAA is entitled to charge whatever PIAA wants to charge.

If PIAA disagrees with any of my position statements and wishes to charge paper copy fees, please estimate (but do not actually incur) the allegedly chargeable fees into a dollar amount and please explain the rationale behind such position, including providing legal citation as required by Section 903(2) of the RTKL when issuing PIAA’s final answer.

In recent days I googled and found these media stories about PIAA:

“Open records office rules PIAA can’t charge for some documents”
https://www.dailyitem.com/news/open-records-office-rules-piaa-cant-charge-for-some-documents/article_492b9e20-1557-11eb-9f8a-eb810ce71104.html

“Legislators want to discuss District IV concerns with PIAA Oversight Committee”

¹² Numerous software tools exist – many for free – that can be used to electronically redact a range of different electronic file types. If the PIAA wishes to allege that it doesn’t possess any applicable software redaction tool and further wishes to argue it is under no obligation to obtain one, please state that position when issuing the PIAA’s final answer because my position is that the PIAA would be required to obtain such software tool.

¹³ The RTKL only authorizes OOR to establish “fees for duplication” not fees for redaction. 65 P.S. § 67.1307(b)(1). Any necessarily incurred costs for redaction “must be reasonable” and fall under Section 1307(g). See OOR Final Determination, *Mezzacappa v. Colonial Intermediate Unit 20*, Dkt. No. 2019-1922 (“[t]he {PIAA’s} redactions are governed by Section 1307(g) of the RTKL”).

¹⁴ Redaction costs are limited to costs that the “agency **necessarily incurs** ...for complying with the request, and such fees must be reasonable.” 65 P.S. § 67.1307(g)((emphasis added).

¹⁵ Many options exist at no cost. See <https://www.computerworld.com/article/3262636/top-10-file-sharing-options-dropbox-box-google-drive-onedrive-and-more.html>. I encourage PIAA to review the statutory language of Section 1307(g) in this regard (i.e. “**necessarily incurs**” and “such fees must be reasonable”). To me, it seems so, well, 1950s to think of mailing items on a USB stick. I’m not sure it’s necessary. PIAA could probably tap into the expertise of a 14 year high school member to see how to use a free file-share service. If PIAA wants to have a fight about 1307(g) I encourage PIAA to read *Mezzacappa v. Colonial Intermediate Unit 20*, Dkt. No. AP 2019-1922(July 31, 2010); footnotes 8 & 9.

https://www.dailyitem.com/news/legislators-want-to-discuss-district-iv-concerns-with-piaa-oversight-committee/article_dfe4c2f2-c6be-11ea-956f-f76d6997bd3a.html

It seems like there is no love lost between PIAA and the Daily Item newspaper when it comes to the RTKL. But as the Pennsylvania Newspaper Association attorney Melissa Melewsky was quoted in the second article: “PIAA’s position on the use of the RTKL is unfortunate ...[t]he RTKL was not intended to be an adversarial process, but one designed to inform the public and improve government function. Reasonableness and collaboration can go a long way in easing the process along.”

Indeed so.

I want to know what is going on with the millions of dollars of taxpayer-sourced money that flows into PIAA and I want to understand why PIAA thinks it should be unaccountable to the public for any of that money by suggesting that PIAA not be included in the RTKL. To any extent it may be relevant please know that I intend to publish all released records on the internet.

I look forward to hearing from PIAA within the required five (5) business days.

Sincerely,
Simon Campbell

PS. OOR recently invited the public to provide input into its decision-making process for the biannual review of its fee schedule. See <https://openrecordspennsylvania.com/2020/10/27/oor-solicits-comments-on-biannual-review-of-rtkl-fee-schedule/>. FYI, to help PIAA better understand my position on copy fees, I attach my own feedback to OOR. I encourage PIAA not to rely on statutory authority that OOR does not possess when deciding what fees PIAA thinks might be chargeable, and instead focus only on what the RTKL says. Put plainly, if the only argument PIAA has about copy fees is “the OOR fee schedule says we can do it” then we have a problem in which OOR could become an indispensable party because there are certain things that OOR is not allowed to say in its fee schedule that PIAA can do.



Simon Campbell <parighttoknow@gmail.com>

OOR's fee schedule - revisions needed

1 message

Simon Campbell <parighttoknow@gmail.com>

Sat, Oct 31, 2020 at 6:13 PM

To: FeeReviewOOR@pa.gov

Cc: Erik Arneson <earneson@pa.gov>, Nathanael' <nbyerly@pa.gov>, "Brown, Charles (OOR)" <charlebrow@pa.gov>, "Lantz-Johnson, Delene" <dlantz-joh@pa.gov>, "Spiess, George" <gespiess@pa.gov>

Dear OOR,

What's the expression for activist Judges? Legislating from the bench, I believe. Why would OOR do that from an administrative office? I was happy to see the general assembly limit OOR's 1307(b) statutory authority to "fees for duplication". I can only assume that whomever fell in love, inside OOR, with a "securely redacting" black sharpie pen several years ago (see current OOR fee schedule footnotes 4 & 6) that person wanted to re-write the RTKL to give more power to OOR than the general assembly gave to OOR.

See OOR Final Determination, page 8:

<https://www.openrecords.pa.gov/Appeals/DocketGetFile.cfm?id=55570>

[Quote]: "With respect to the electronic invoices that were in Dr. Lombardi's possession, the OOR's Fee Schedule does not permit fees to be imposed for redactions, see 65 P.S. § 67.1307(g), but does state that "[i]f a requester seeks records requiring redaction, an agency may copy or print the records to provide for secure redaction. Accordingly, the agency may charge the fees noted above for ... copies, as appropriate."

May I suggest OOR pen more succinct FDs?. The above verbiage - making the exact same legal points - would be better written:

"With respect to the electronic invoices that were in Dr. Lombardi's possession, the OOR's Fee Schedule does not permit fees to be imposed for redactions, see 65 P.S. § 67.1307(g), but OOR does it anyway."

Of course, even the more succinct version doesn't address the underlying cultural problem at OOR. The problem right now, and the reason so many citizens are continuing to be ripped off with unlawful copy fees being imposed on them by an OOR with General Assembly aspirations, is not OOR's fee schedule per se. The structural problem is that OOR is addressing things in its fee schedule that OOR is not allowed to address in its fee schedule.

Specifically, OOR is not statutorily authorized to suggest, infer, or otherwise rule in its fee schedule that agencies have a right to print electronic records onto paper to redact them with a black sharpie pen. That entire mentality at OOR is far removed from OOR's statutory authority in Section 1307(b). OOR may adjudicate but OOR may not legislate. Different agencies might have different costs for e-redaction. Not all agencies possess the same, if any, software redaction tools. "Necessary" costs may vary between agencies. Different arguments may be put forth by different agencies. And the wording of requests may vary between requesters.

Such realities suggest that redaction cost disputes be assessed on a case-by-case basis where OOR acts only as an adjudicator not as a legislator. In setting its upcoming revised fee schedule OOR needs to resist a desire to still be King. Section 1307(b) should be seen as restricting not as all encompassing.

Redaction costs for all **electronic records** are properly analyzed under Section 1307(g) not Section 1307(b). See OOR Final Determination, *Mezzacappa v. Colonial Intermediate Unit 20*, Dkt. No. AP 2019-1922(July 31, 2010)("The Unit's redactions are governed by Section 1307(g) of the RTKL"). The electronic records at issue in *Mezzacappa* were video records. It is absurd for OOR to believe that one type of electronic record (video) can have redaction costs assessed under 1307(g) while another type of electronic record (non-video) has redaction costs assessed under 1307(b). *Mezzacappa* drew its own authority from a PA Supreme Court case. *Easton Area Sch. Dist. v. Miller* 13 MAP 2019, 2020 Pa. LEXIS 3378:

"Thus, insofar as the video itself is a public record subject to disclosure under the RTKL but contains the images of school students which are not subject to disclosure, which, in our view, it is and does, the District is obligated to redact students' images by, for example, blurring or darkening portions of the video revealing the students' identities, and to subsequently provide access to the redacted video." [Footnote 15]: "We do not suggest the District is obligated to finance such redaction, which responsibility may fall either to the District or to the Requester depending upon other laws, policies, or legal directives that are not before the Court in the present appeal."

Notably, the PA Supreme Court did not state that redaction costs on e-records could be established by the OOR in its fee schedule. The OOR's sound reasoning in *Mezzacappa* flowed from this Supreme Court decision. Different facts presented by different cases are going to arise over the issue of redaction costs on **electronic records**. It is not appropriate for OOR to declare or suggest, via its fee schedule, how redactions on electronic records must occur and what the costs associated with such redaction can be.

Part of the challenge is that OOR was operating in the 1920s under Terry Mutchler in terms of being a forward-looking entity. Mr.

Arneson has at least elevated OOR into the 1950s. But all this obsession about paper records is an obsession that only government officials get wrapped up in. What agency does NOT keep its records in some computer form or another? Why are we talking about paper copies in 2020? It is a dinosaur mentality where type-writers and filing cabinets still rule the day. Such dinosaur mentality has been ripping citizens off for years. \$0.25 per page copy fees? Come on. Even if an agency really did live in the 1950s with a type-writer and filing cabinet instead of a computer, you can go to Staples and get paper copies done for \$0.10 per page. As a reminder, OOR is limited in terms of what it can do by the language of Section 1307(b)(2). I Hope someone at OOR is surveying local business entities.

OOR lives in an ivory tower when it comes to seeing the RTKL. It is a sheltered governmental world where OOR never sees the ordinary Requester who gets beaten down with denials and who quits because they think (often, all too correctly) the system is stacked against them. OOR needs to stop listening to the government people and the 'advocacy' self-serving special interest groups who cater to them. OOR needs to re-focus on the ordinary citizen and the law itself. This time around, OOR needs to pay much greater attention to what it is NOT ALLOWED to establish in terms of fees. There can be no King OOR. Section 1307(b) fee-setting needs to be an exercise in restraint. In line with case law and the statutory limits imposed on OOR by the general assembly, I propose the follow changes to the OOR's current fee schedule:

Footnote 4: Problem. The 1950s dinosaur is in town (i.e. someone still in love with paper records and black sharpie pens). The current phrase "records which require redactions in electronic format" makes no legal sense because the word "records" doesn't differentiate between paper records and electronic records (how can paper records "require" electronic redaction?). Redactions for paper records have costs assessed under 1307(b) whereas redactions for electronic records have costs assessed under 1307(g). Solution: eliminate this footnote in its entirety. Stop telling agencies they can live in the 1950s. Stop legislating. OOR doesn't have statutory authority to establish, in its fees schedule, any costs relating to redaction. Let such issues be decided on a case-by-case basis via Final Determinations.

Footnote 6: Same problem. Same solution. Scrap it.

Additional Notes

Inspection of Redacted Records: Similar problem. Current phraseology is legally contradictory ("An agency may not charge the requester for the redaction itself. However, an agency may charge (in accordance with the OOR's Official Fee Structure) for any copies it must make [to do the redaction]"). The implication is that the agency "must" print paper to perform the redaction. Where does such thinking come from? Certainly not the law. It is the 1950s dinosaur mentality again. Suppose the Requester wanted to inspect a screenshot image that needed to be redacted. Under the current phraseology OOR falls right back into the trap of Footnotes 4 and 6. When in fact the agency might be easily able to redact the screenshot electronically and present it for inspection electronically. By setting fees for things OOR is not authorized to set fees for (redaction costs of e-records) OOR is shutting out legal arguments - good legal arguments - that citizens could otherwise make during an appeal. Instead of adjudicating the law, OOR has fallen into the trap of becoming the law. The solution again is to simply abolish this particular additional note in its entirety.

All other aspects of the OOR's fee schedule are fine as they are. Don't mess with what works. Just fix the stuff that has been ripping citizens off because King OOR has been exceeding its statutory authority.

Do I win a free black sharpie pen if my ideas are deemed the best?

SC.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Pennsylvania Interscholastic Athletic Association, : New Case
Inc. v. Commonwealth of Pennsylvania, et al. :
:

PROOF OF SERVICE

I hereby certify that this 18th day of December, 2020, I have served the attached document(s) to the persons on the date(s) and in the manner(s) stated below, which service satisfies the requirements of Pa.R.A.P. 121:

Service

Served: Commonwealth of Pennsylvania
Service Method: First Class Mail
Service Date: 12/18/2020
Address: Strawberry Square
16th Floor
Harrisburg, PA 17120
Phone: --
Representing: Respondent Commonwealth of Pennsylvania

Served: Pennsylvania Office of Open Records
Service Method: First Class Mail
Service Date: 12/18/2020
Address: 333 Market Street
16th Floor
Harrisburg, PA 17101
Phone: --
Representing: Respondent Pennsylvania Office of Open Records

/s/ Alan R. Boynton

(Signature of Person Serving)

Person Serving: Boynton, Alan R.
Attorney Registration No: 039850
Law Firm: McNees Wallace & Nurick LLC
Address: Po Box 1166
Harrisburg, PA 171081166
Representing: Petitioner Pennsylvania Interscholastic Athletic Association, Inc.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Charles Rees Brown, Esq.
PENNSYLVANIA OFFICE OF OPEN RECORDS
333 Market St., Fl. 16
Harrisburg, PA 17101-2234

Counsel for Respondent Pennsylvania Office of Open Records

Dated: January 20, 2021

Respectfully submitted,

JOSH SHAPIRO
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