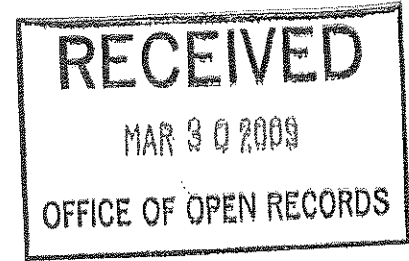




Goehring Rutter & Boehm

ATTORNEYS AT LAW

Straightforward Thinking.



► Pittsburgh Office

Frick Building
437 Grant Street, 14th Floor
Pittsburgh, PA 15219-6107

Phone: 412-281-0587

Fax: 412-281-2971

► North Hills Office

Waterfront Corporate Park
2100 Georgetowne Drive
Suite 300
Sewickley, PA 15143-8782

Phone: 724-935-4777

Fax: 724-935-4123

www.grblaw.com

March 26, 2009

Charles M. Means
Pittsburgh Office
cmeans@grblaw.com

Office of Open Records
Attn: Terry Mutchler, Executive Director
400 North Street
Harrisburg, PA 17120

Re: Ben Avon Borough – Request for Open Records Advisory Opinion
Our File No. 62084-24

Dear Ms. Mutchler:

I am the Solicitor for Ben Avon Borough, Allegheny County, Pennsylvania. The Borough office is open, and the Borough Secretary, who is the designated Open Records Officer, is present in the office on Tuesdays and Thursdays from 8:00 a.m. to 4:00 p.m. and on Wednesdays from 8:00 a.m. to noon. The Borough has no other office staff, except a part-time bookkeeper. The only other Borough employees are two full-time road crew workers, who do not have access to Borough mail or e-mail. When the Borough Secretary/Open Records Officer is away on vacation or sick leave, the office is closed to the public.

Because of the limited office hours, the Open Records Officer seeks guidance on when the time for response to an open records request begins to run. For example, if a request arrives by e-mail on Thursday at 5:00 p.m., when the office is closed, the Borough assumes that the request is not considered to be received, at the earliest, until the following Tuesday when the office is open and that the time for a response would not commence running until the next day, Wednesday.

The Borough also seeks advice as to properly calculating the date of receipt of a request for public record. If an e-mail or letter arrives at the Borough office on Thursday at 5:00 p.m., but is not opened by the Open Records Officer until the following Wednesday (because of the press of other business or because she is away from the office on Tuesday), is the request deemed to be received when it arrives at the Borough office or when it is actually received by the Open Records Officer?

The Borough assumes that the provision at Section 901 of the Right-to-Know Law, that "The time for response shall not exceed five business days from the date the written request is received by the open records officer for an agency," refers to actual receipt by the Open Records Officer and not merely the arrival of the request at the Borough office. In the case of e-mail, this would mean that "receipt" occurs when the Open Records Officer opens the e-mail. The Borough believes that individuals are or should be aware of the Borough's regular office hours and would not expect records requests to be processed when the office is not open.

Thank you for the assistance that your Advisory Opinion will provide to Ben Avon Borough. If there is any additional information that you need in order to respond to this request, please do not hesitate to contact me.

Yours truly,



Charles M. Means

CMM/dlk

cc: Carmella Hallstein
Ken Opiery, Jr.



October 29, 2009

Charles M. Means, Esquire
GRB Goehring Rutter & Boehm
Attorneys At Law
Frick Bldg., 14th Fl.
437 Grant Street
Pittsburgh, PA 15219-6107

Re: Advisory Opinion Request Regarding –Five Business Days Calculation

Dear Attorney Means:

Thank you for writing to the Office of Open Records with your request for an Advisory Opinion pursuant to the Right-to-Know Law, 65 P.S. §§67.101, *et seq.*, (“RTKL”), your file no. 62084-24.

You asked the OOR to explain the calculation of five business days when a local agency, such as your client Ben Avon Borough, is open for business only three days, Tuesday, Wednesday and Thursday, out of a five day week.

Please be advised that the OOR has decided not to grant this request for an Advisory Opinion. We are declining to accept this request because the request seeks a response to a general question of calculation that is routinely answered in the trainings conducted by the OOR.

However, we will provide you with an explanation. As you noted in your letter, a request must be answered within five business days. Business days are calculated based upon the days that an agency is open for business. Weekends and holidays are not counted in business days, and in the case of your client, neither would Mondays or Fridays because the Borough is not open and staffed.

Therefore, you are correct that the five business days would not begin for a request received by your agency Thursday until the following Tuesday which is the first business day following receipt. As provided in Section 502(b) of the RTKL, the agency should state the date of receipt as the first day the office is open after the request is received. However, the office need not be open for a full day in order for the day to count within the business day calculation.

In the case in which the Ben Avon Borough received the request Thursday, for example, the first business day is the following Tuesday, the second business day would

be Wednesday, and the third would be Thursday, the fourth the following Tuesday, and fifth the following Wednesday. A response for a request received by your agency on Thursday, September 10th, therefore, would not be due until Wednesday, September 23rd.

With regard to your question of whether a request must actually be received by the Open Records Officer in order to be designated "received" under the RTKL, the law presumes that if the request is presented within business hours, that it would have been viewed during those business hours, and failure to review an e-mail or a fax or otherwise see a request will not permit a delay in the receipt date.

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

Respectfully,


Terry Mutchler