



The Honorable
Judith Moser, M.S.
Register of Wills & Clerk of Orphans' Court
Marriage License Bureau

Voice 724.284.5348
Fax 724.284.5278
[*jmoser@co.butler.pa.us*](mailto:jmoser@co.butler.pa.us)

Butler County Government Center
POB 1208
124 West Diamond St
Butler PA 16003-1208

Leo M. Stepanian, Solicitor

Cindy Fry,
Chief Deputy Register of Wills & Clerk OC

Jayne Duke
Second Deputy Register of Wills & Clerk OC

From: Moser, Judy
Sent: Friday, February 20, 2009 2:27 PM
To: 'OpenRecords@state.pa.us'
Subject: Requests for Non-Existing Records

In response to a public record request, County Commissioners are trying to order row offices to create a record of every contact with our office solicitors solely for the purpose of fulfilling a request for a non-existent record. Solicitors are contracted by annual Retainers, and no records of contact/time expended have ever existed.

Pursuant to Black's Law Dictionary: "Retainer. A fee that a client pays to a lawyer simply to be available when the client needs legal help during a specified period or on a specified matter."

Pursuant to Section 705.Creation of Record:

"When responding to a request for access, an agency shall not be required to create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which the agency does not currently compile, maintain, format or organize the record."

We row officers opine we are not required to create this record solely because someone asked for it when it has never existed.

Therefore, I am requesting a formal opinion on this matter for proper documentation.

Thank you.

The Honorable Judith Moser, MS

**Butler County Register of Wills &
Clerk of Orphans' Court**



November 2, 2009

The Honorable Judith Moser
Register of Wills & Clerk of Orphans' Court
Butler County Government Center
PO Box 1208
124 West Diamond Street
Butler, PA 16003-1208

Re: Advisory Opinion Request

Dear Ms. Moser:

Thank you for writing to the Office of Open Records ("OOR") with your request for an Advisory Opinion pursuant to the Right-to-Know Law, 65 P.S. §§67.101, *et seq.*, ("RTKL").

You asked the OOR to interpret if the RTKL requires agencies to create a record in order to fulfill a request for a record that does not currently exist. I have attached a copy of your letter for your convenience.

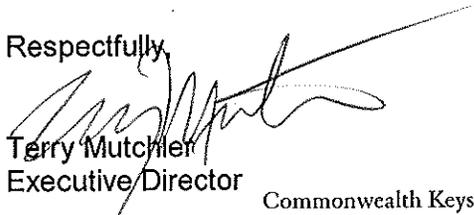
Please be advised that the OOR has decided not to grant this request for an Advisory Opinion at this time. We are declining to accept this request because ***the request seeks response to general questions without presenting sufficient specific facts to which the law may be applied.*** However, the OOR provides the following guidance with respect to the question you pose.

You are correct in your reading of the RTKL, which does not require agencies to create a record. As you have identified, Section 705 of the RTKL provides as follows: "When responding to a request for access, an agency shall not be required to create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which the agency does not currently compile, maintain, format or organize the record. 65 P.S. §67.705.

In the appeals of denials of records under the RTKL, this office has accepted as adequate proof of nonexistence of a record either a certified statement made pursuant to 42 Pa.C.S. §6103 or an unsworn statement made subject to penalty of perjury as per 18 Pa. C.S. §4904. Samples of these kinds of statements may be found on the OOR website at <http://openrecords.state.pa.us> under the "Forms" section.

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

Respectfully,


Terry Mutchler
Executive Director

Commonwealth Keystone Building | 400 North Street, 4th Floor
Harrisburg, Pennsylvania 17120-0225
(717)346-9903 | (717) 425-5343 (Fax)
<http://openrecords.state.pa.us>