



November 19, 2020

VIA EMAIL: rsmith@eastgoshen.org

Louis F. Smith
East Goshen Township
1580 Paoli Pike
West Chester, PA 19380

RE: Right-to-Know Request Tracking Number: 2020-0648 (SE)

Dear Requester:

The Department of Environmental Protection's (DEP) Open Records Officer received your request and assigned the above-listed tracking number to it. This letter is the DEP's final response to your request under the Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-67.3104 (RTKL).

A copy of your request is enclosed and incorporated into this response.

The DEP's offices have been closed since March 16, 2020 due to the COVID-19 pandemic. On May 29, 2020, the County where the DEP's Agency Open Records Officer is stationed moved to the yellow phase of the Governor's reopening plan. While the DEP's offices remain closed at this time, the DEP will make its best efforts to respond to your RTKL request in a manner consistent with the Governor's pandemic mitigation plan.

Under the RTKL, a written response to your RTKL request was due by October 21, 2020. On October 21, 2020, DEP notified you that it required an additional 30 days, until November 20, 2020, to respond to your request.

DEP denies your request because it is insufficiently specific. Section 703 of the RTKL states that "[a] written request should identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested..." 65 P.S. §67.703. Your request does not identify a discrete group of records by transaction, activity, recipient, type, timeframe, or location. A RTKL request is insufficiently specific when it requests a broad category of records without limitation. *Pennsylvania Department of Education v. Pittsburgh Post-Gazette*, 119 A. 3d 1121 (Pa. Cmwlth. 2015). Your RTKL request seeks "any and all documents ... regarding ... the August 22, 2020 letter." Your request is problematic because it has an unlimited scope asking the Department to examine all records it possesses and manually determine which ones relate to any of the subject matters identified in the August 22, 2020 letter. This information is insufficient for the Department to ascertain which records are being requested.

Your letter indicates that you are seeking records regarding alleged subsidence reported by a whistleblower. To the extent that you request records that contain confidential complainant information, the DEP denies your request because such records are exempt from disclosure by the

RTKL. Specifically, Section 708(b)(17)(i) of the RTKL exempts a requester's access to complaints submitted to an agency relating to a noncriminal investigation. 65 P.S. § 67.708(b)(17)(i). The Commonwealth Court of Pennsylvania determined that information in a complaint, including the name of a complainant, that is received by an agency in connection with a noncriminal investigation is exempt from access by a requester under Section 708(b)(17)(i) of the RTKL. *Stein v. Plymouth Twp.*, 994 A.2d 1179, 1184 (Pa. Cmwlth. 2010).

The DEP also denies your request to the extent it seeks information that is protected by the informant's privilege. The informant's privilege is a privilege of the government to withhold the identity of persons who furnish information of violations of law to those charged with enforcement of that law. *Rovario v. United States*, 353 U.S. 53, 59 (1957). The privilege applies in both civil and criminal matters. *Bocchicchio v. Curtis Pub. Co.*, 203 F. Supp. 403, 407 (E.D. Pa. 1962). "[DEP] has a privilege to protect its confidential sources of information to ensure the free flow of information concerning activities that violate statutes enacted for the protection of the environment, the public health and the public safety." *Colombo et al. v. DER*, 1989 EHB 606.

Therefore, based on the foregoing authority, DEP withholds the August 22, 2020 letter from Tim Fitchett Esq. of Fair Shake, Environmental Legal Services to Patrick Patterson.

To the extent that your request seeks investigative material, please note that Section 708(b)(17) of the RTKL states that a Commonwealth agency may withhold "[a] record of an agency relating to a noncriminal investigation, including: ... [i]nvestigative material, notes, correspondence and reports [and a] record that, if disclosed, would ... [r]eveal the institution, progress or result of an agency investigation...." 65 P.S. § 67.708(b)(17)(ii) and (vi).

You have a right to appeal this response in writing to the Executive Director, Office of Open Records (OOR), 333 Market Street, 16th Floor, Harrisburg, Pennsylvania 17101. If you choose to file an appeal you must do so within 15 business days of the mailing date of this response and must provide the OOR with (1) your RTKL request, (2) all DEP responses to your RTKL request, and (3) the reasons that you think DEP erred when it responded to your request.

An appeal form is available on the OOR website at <http://www.openrecords.pa.gov/Appeals/HowToFile.cfm>.

Sincerely,

Sachin Shankar

Sachin Shankar, P.E.
Assistant Regional Director
Right-to-Know Law Official
Southeast Regional Office

Enclosure: Original Request