IN THE SUPREME COURT OF PENNSYLVANIA

No. 67 MAP 2013

COMMONWEALTH OF PENNSYLVANIA,
PENNSYLVANIA GAMING CONTROL BOARD,

Petitioner,

v.

OFFICE OF OPEN RECORDS,

Respondent,

and

EASTERN PENNSYLVANIA CITIZENS AGAINST GAMBLING and
JAMES D. SCHNELLER, Intervenors,

and

VALLEY FORGE CONVENTION CENTER PARTNERS, LP, Intervenor.

BRIEF OF *AMICUS CURIAE* PENNSYLVANIA FREEDOM OF INFORMATION COALITION, IN SUPPORT OF RESPONDENT OFFICE OF OPEN RECORDS AND INTERVENOR JAMES D. SCHNELLER

Appeal from the Commonwealth Court Order dated June 11, 2012 at
No. 1134 CD 2009, affirming in part and vacating in part the
Final Determination of the Office of Open Records, dated May 13, 2009

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INTEREST OF *AMICUS CURIAE*

The Pennsylvania Freedom of Information Coalition (the "Coalition") is a Pennsylvania non-profit corporation headquartered in Harrisburg, Pennsylvania. The Coalition consists of journalists, librarians, attorneys, educators, community and business leaders. The Coalition is dedicated to protecting the right of all Pennsylvania citizens to open and unfettered access to all levels of Commonwealth, county and local government. Access to public records guaranteed by the Pennsylvania Right-to-Know Law ("RTKL"), 65 Pa. C.S. § 67.101, *et seq.*, is of particular concern to the Coalition.

This case raises important questions regarding the inherent flexibility of the RTKL, in particular the liberal construction of requests that would permit the maximum access to documents legitimately available to citizens and would not erect technical obstacles. The Coalition participates to emphasize the jurisprudential and legislative history behind the RTKL and highlight the prevailing interpretative approaches across the country.

COUNTER-STATEMENT OF THE QUESTION INVOLVED

The Coalition participates on the first question presented to the Court:

A. Should the written submission for records submitted by James Schneller have been treated by the Pennsylvania Gaming Control Board as a request for records?

Suggested Answer: Yes.

STATEMENT OF THE CASE

It is undisputed that on March 20, 2009, James D. Schneller ("Mr. Schneller"), a member of Eastern Pennsylvania Citizens Against Gambling, sent a letter to an employee of the Pennsylvania Gaming Control Board ("Gaming Board") that began: "I am writing to repeat my verbal and written requests of February 2009 for copies of the communications sent to the Category 3 license applicants pertaining to the directive of the Board issued on January 21, 2009, that new financial data be submitted, and their responses thereto, including the financial data." (R. 111a). In addition to sending the request by First Class Mail, it was addressed and transmitted via email to Catherine Stetler ("Ms. Stetler"), an aide in the Gaming Board's media relations department, with additional Gaming Board employees copied on the email. (R. 118a-119a). Ms. Stetler responded to parts of Mr. Schneller's letter, pertaining to other matters, but failed to mention Mr. Schneller's request for documents. (R. 116a). Nor did Ms. Stetler forward the request to the Gaming Board's open records officer, who is charged with evaluating and responding to requests for documents under the RTKL.

With the Gaming Board's period for response having expired and no response to his request received, Mr. Schneller submitted an appeal to the Office of Open Records ("OOR"), the body charged with resolving such disputes. (R. 114a). The Gaming Board took the position that the OOR lacked jurisdiction because Mr.

Schneller's March 20, 2009 letter was not a valid "request" in that it did not explicitly invoke the RTKL and was sent to Ms. Stetler, a press aide, rather than the open records officer. The OOR docketed the appeal, and on May 11, 2009 issued a Final Determination granting Mr. Schneller's appeal and directing the Gaming Board to release the records. (R. 72a-76a). In that Final Determination, the OOR observed that there was no statutory requirement that a requester cite to the RTKL in his request. (R. 74a). Additionally, the OOR held, the Gaming Board could not ignore a request that was addressed to someone other than the open records officer, where both the statute and the Gaming Board's own policy stated that requests received in other offices should in such instances be forwarded to the open records officer. (R. 75a).

On appeal before the Commonwealth Court of Pennsylvania, the Gaming Board challenged, in pertinent part for purposes of this *amicus curiae* brief, the OOR's conclusion that Mr. Schneller's letter constituted a valid request. In its appellate briefs, the Gaming Board has argued that Mr. Schneller's letter failed to comply with the Gaming Board's request policy in that it was not submitted on the Gaming Board's, or Pennsylvania's, uniform request form, did not cite to the RTKL and was not addressed directly to the Gaming Board's open records officer. On June 11, 2012, the Commonwealth Court issued its decision, affirming the OOR's determination that Mr. Schneller's letter was a valid RTKL request. *Pa.*

Gaming Control Bd. v. Office of Open Records, 48 A.3d 503 (Pa. Commw. Ct. 2012). The Gaming Board sought review of that portion of the Commonwealth Court's decision, which this Court granted. (R. 12a-13a).

SUMMARY OF THE ARGUMENT

Since the initial filing of Mr. Schneller's appeal to the OOR following denial of his clear and unambiguous March 20, 2009 request for records ("the Request"), the Gaming Board has proffered various explanations for its refusal to treat his letter as a request for records under the RTKL. It has argued variously that Mr. Schneller failed to use an official form available to requesters, that he neglected to cite to the RTKL and that he erred in directing his request to Ms. Stetler, rather than the open records officer. The OOR and the Commonwealth Court correctly found that none of these purported reasons is a proper basis for concluding that Mr. Schneller's request was invalid and could therefore be ignored by the Gaming Board.

In fact, the RTKL requires neither an official form nor invocation of the law itself. It demands no "magic words," advising simply that one identify any documents sought "with sufficient specificity to enable the agency to ascertain which records are being requested" and the name and address to which they must be sent. 65 Pa. C.S. § 67.703 (RTKL written requests). There is no dispute that Mr. Schneller's request, which sought a discrete number of clearly identifiable documents from a delimited time period, satisfied this substantive requirement. The lower court properly rejected the Gaming Board's attempt to graft additional requirements beyond those outlined in the statute, just as courts around the

country, loathe to place on public records requesters burdens not prescribed by their legislatures, have so held.

The Gaming Board's additional theory that Mr. Schneller's decision to begin his letter "Dear Mrs. Stetler," rather than addressing it to the open records officer, was fatal to his request is unavailing. It fails both as a matter of the language of the statute, which expressly provides that misdirected requests be forwarded to the open records officer, and as a matter of the statute's indisputable remedial purpose.

Furthermore, the Gaming Board's theory is solidly outside of the mainstream. The trend nationwide is a flexible and functional approach to open records laws. This general approach includes the treatment of open records requests, which in many states like Pennsylvania may be oral or written, anonymous, and transmitted via numerous methods. In light of this flexibility, which seeks to elevate substance over technicalities in order to ensure legitimate records requests are fulfilled, it is unsurprising that the courts around the country that have considered whether an allegedly deficient request triggers that state's open records law have held that technical deficiencies are not grounds for deeming invalid an otherwise unambiguous request for public records.

Because the Request was a valid request under the RTKL, the decision of the Commonwealth Court should be affirmed.

ARGUMENT

I. A BROAD CONSTRUCTION OF "REQUEST" COMPORTS WITH THE "SUBSTANTIALLY ENLARGE[D]" ACCESS TO GOVERNMENT DOCUMENTS ASSURED BY THE NEW RIGHT-TO-KNOW LAW

Pennsylvania's recent and wholesale revision of its open records law was intended to sweep away unnecessary impediments to public access to government documents that were embedded in the old law and to ensure the full level of transparency that enables meaningful public evaluation of governmental operation. *See, e.g.*, *Pa. Dep't of Envtl. Prot. v. Cole*, 52 A.3d 541, 547 (Pa. Commw. Ct. 2012) (RTKL "promotes access to government information in order to increase transparency and accountability of government"); *Bowling v. Office of Open Records*, 990 A.2d 813, 815 (Pa. Commw. Ct. 2010), *aff'd*, 75 A.3d 453 (Pa. 2013) (RTKL "made sweeping changes to access of government records"). The new law, which passed in 2008 and took effect in 2009, represented a rebirth of first principles and an express rejection of the limited disclosure previously available under Pennsylvania law.

Pennsylvania first enacted an open records law in 1957. *See* The Right to Know Law Act of 1957, Pub. L. No. 390-212, 65 Pa. C.S. § 66.1, *et seq.* (repealed 2008). That early law placed critical burdens on a person requesting documents, such as requiring the requester to prove that the document sought was a public record and that the need for public access outweighed the government's need for

confidentiality. Even after the passage in 2002 of amendments to the law designed to foster more efficient disclosure of public documents, it remained one of the country's most restrictive public disclosure laws. *See, e.g.*, *Right to Know Law, Third Consideration and Final Passage, Hearing on S.B. 1*, S. JOURNAL, 2007-08 Reg. Sess. ("*RTKL Hearing*") 1405 (Nov. 27, 2007) (statement of sponsor Sen. Pileggi) (despite "some improvements" over the years, "most of the [1957 law] remains the same today," and the "increasing degree of cynicism and distrust of State government" is partially because state business is not "an open process that people can easily access and follow").

Pennsylvania's replacement of the 1957 law with the current RTKL, 65 P.S. § 67.101, *et seq.*, in 2008 constituted "a dramatic expansion of the public's access to government documents." *Levy v. Senate*, 65 A.3d 361, 381 (Pa. 2013); *see RTKL Hearing* 1406 (statement of Sen. A.H. Williams) (describing the bipartisan introduction of the RTKL as "an historic moment . . . because it truly represents where the Senate is going and not just where it has been"). In overhauling a restrictive open records law in favor of the current legislative scheme, the legislature expressed its view that "the true foundation of government reform is a strong open records law." *RTKL Hearing* 1405 (statement of sponsor Sen. Pileggi). This Court has itself observed that "the Legislature's main goal in implementing the new Right–to–Know Law was to substantially enlarge public

access to government records." *SWB Yankees LLC v. Wintermantel*, 45 A.3d 1029, 1038, 615 Pa. 640, 655 (2012) (applying RTKL law to records held by private government contractor); *accord Levy*, 65 A.3d at 381 ("significant changes demonstrate a legislative purpose of expanded government transparency through public access to documents").

The new RTKL provides easier and more direct public access to government records than did its predecessor, its drafters specifically eschewing technicalities that could operate to prevent a citizen from obtaining records to which he or she is entitled. *See, e.g.*, *RTKL Hearing* 1406 (statement of Sen. A.H. Williams) ("We are cutting through a variety of bureaucratic tape to allow for the constituents across the Commonwealth of Pennsylvania to have access to their government.").

This Court has explicitly stated that Pennsylvania "courts should liberally construe the RTKL to effectuate its purpose of promoting 'access to official government information in order to prohibit secrets, scrutinize actions of public officials, and make public officials accountable for their actions.'" *E.g.*, *Levy*, 65 A.3d at 381 (citation omitted) (applying RTKL to find that client identities and general descriptions of legal services are subject to disclosure); *SWB Yankees LLC*, 45 A.3d at 1042, 615 Pa. at 662 (adopting a "broad construction" of a statutory provision to "best comport[] with the objective of the Right–to–Know Law, which

is to empower citizens by affording them access to information concerning the activities of their government”).[1]

The lower courts of this Commonwealth that have considered the proper interpretative approach to requests under the RTKL have implemented the same broad construction. As one court explained, given that “the RTKL does not define ‘Request,’ we construe the RTKL to give effect to its remedial purposes of ensuring access to existing information.” *Gingrich v. Pa. Game Comm’n*, 1254 C.D. 2011, 2012 WL 5286229, at *5 (Pa. Commw. Ct. Jan. 12, 2012) (although questions requiring research did not constitute a request, most of the communication that sought records and information was a request triggering agency’s duty to respond); *see Pa. Dep’t of Envtl. Prot. v. Legere*, 50 A.3d 260, 264-65 (Pa. Commw. Ct. 2012), *reconsideration denied* (Aug. 30, 2012) (finding letter seeking documents sufficiently specific to constitute valid request); *see also Lukes v. Pa. Dep’t of Pub. Welfare*, 976 A.2d 609, 616 (Pa. Commw. Ct. 2009)

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[1] *Accord, e.g.*, *Barnett v. Pa. Dep’t of Pub. Welfare*, 71 A.3d 399, 403 (Pa. Commw. Ct. 2013) (“‘[C]ourts should liberally construe the RTKL to effectuate its purpose of promoting access to official government information in order to prohibit secrets, scrutinize actions of public officials, and make public officials accountable for their actions.’” (citations omitted)); *Allegheny Cnty. Dep’t of Admin. Servs. v. A Second Chance, Inc.*, 13 A.3d 1025, 1034 (Pa. Commw. Ct. 2011) (same).

(concluding, after thorough statutory construction analysis, that undefined word in former open records law should be liberally construed).[2]

II. THE LANGUAGE OF THE RIGHT-TO-KNOW LAW AFFORDS BROAD LATITUDE TO REQUESTERS SEEKING INFORMATION

The language of the RTKL expressly embodies its broad legislative purpose. Particularly relevant here, the Law does not define "request" in its definition section, which contains twenty-five definitions of equally important terms, 65 Pa. C.S. § 67.102 (RTKL definitions), and likewise does not set out any particular format for a request and, in fact, permits requests to be oral, or "verbal," and even "anonymous." *Id*. § 67.702 (RTKL requests).[3] It directs the OOR to design a form

[2] The Gaming Board's heavy reliance, before the Commonwealth Court and in its petition for review to this Court, on the OOR's Final Determination in *Hocker v. East Stroudsburg Area School District*, AP 2009-0193 (Apr. 27, 2009) (*see* R.R. 64a ¶ 12; Br. of Pet. Gaming Control Bd. to Commw. Ct., Aug. 25, 2009, at 15-18), was severely misplaced. In that decision, the requester, Audrey Hocker, was a member of the school board. Her emails seeking certain documents from the school district, which were not addressed to an open records officer and did not invoke the RTKL, were held not to be valid requests under the law. The OOR explained the "key distinction" leading to this result: namely, that Hocker's requests were part of an ongoing, internal email chain among school officials who interacted with her as a board member and that, as a board member, she was entitled to unredacted documents she would not have been permitted to see as a member of the public proceeding under the RTKL. It was therefore reasonable for the school officials to assume she was requesting documents in her official capacity as a school board member and *not* to have understood her to be making a RTKL request as a private citizen. Making the decision's inapplicability to the current facts even clearer, the OOR cautioned: "[A]n agency cannot ignore requests under the RTKL that are made to its employees instead of the open records officer. *Agency employees are required to forward any RTKL request to the open records officer*." *Hocker*, AP 2009-0193 at 5 (emphasis added).

[3] Appeals can be taken only with respect to written requests for records. 65 Pa. C.S. § 67.702 (RTKL requests).

that *may* be used statewide by Commonwealth and local agencies, but it does not require that agencies utilize this form or state what its contents should be, and it does not require requesters to use the OOR's form, or any other form devised by any agency. *Id.* § 67.505 (RTKL uniform form).

The Law further states:

> A written request for access to records may be submitted in person, by mail, by e-mail, by facsimile or, to the extent provided by agency rules, by any other electronic means. A written request must be addressed to the open-records officer designated pursuant to section 502. Employees of an agency shall be directed to forward requests for records to the open-records officer. A written request should identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested and shall include the name and address to which the agency should address its response. A written request need not include any explanation of the requester's reason for requesting or intended use of the records unless otherwise required by law.

65 Pa. C.S. § 67.703 (footnote omitted).

The law thus provides the means by which the requester must "submit" the request to the agency: in person or by mail, email, fax and other permitted "electronic means." And, once the request has been delivered to the agency, it must go to the open records officer.

The Gaming Board predicates its argument on these barebones instructions. It argues, first, that the request was flawed because it did not state that it was being made pursuant to the RTKL and, second, focusing primarily on the language in section 67.703 that "[a] written request must be addressed to the open-records

officer," that the Request is invalid because it was not sent by the requester directly to the open records officer. However, as the Commonwealth Court ruled, neither is a necessary predicate to a valid request. *See Pa. Gaming Control Bd.*, 48 A.3d at 507-13.

First, there is not a single word in section 67.703 that requires that a request contain a reference to the RTKL.

Second, by its terms, the statute expressly places the duty for delivery of the request to the open records officer on the "[e]mployees of an agency," and not on the requester. The Gaming Board's proposed requirement that the request must, in the first instance, be sent to or name the open records officer misplaces that burden. In addition, such a construction would render superfluous the subsequent sentence of section 67.703 directing that "[e]mployees of an agency shall be directed to forward requests for records to the open-records officer." It is a basic canon of statutory construction that an interpretation of one statutory provision that would render another moot is not favored. 1 Pa. C.S. § 1922(2) (presumptions in ascertaining legislative intent) ("In ascertaining the intention of the General Assembly . . . the following presumptions, among others, may be used: . . . That the General Assembly intends the entire statute to be effective"); *see also Levy*, 65 A.3d at 369 n.7 (observing that an argument that an entire document is exempt from disclosure because one portion of it contains privileged content renders the

RTKL's redaction provision "superfluous"). Consistent with these principles and the statutory language, "addressed to the open-records officer" means that it is the open records officer's role to consider the request. And, to the extent that the two sentences taken together result in ambiguity, the Court should "ascertain the intention of the General Assembly by considering such things as '[t]he occasion and necessity for the statute,' '[t]he mischief to be remedied,' '[t]he object to be attained,' and '[t]he consequences of a particular interpretation.'" *Levy*, 65 A.3d at 380 (quoting 1 Pa. C.S. § 1921(c) (legislative intent controls)); *see also* 65 Pa. C.S. § 67.502(b) (open-records officer functions) (providing that "[t]he open-records officer shall receive requests *submitted to the agency* under this act . . . ." (emphasis added)).[4]

Indeed, the floodgates argument advanced by the Gaming Board and its *amici*, *see, e.g.*, Br. of Petitioner Gaming Control Bd. at 12 & n.4, 15; Br. of Amicus Curiae Penn. Sch. Bd. Ass'n at 10-12; Br. of Amicus Curiae Gen. Assembly of Pa. at 4-6, only serves to illustrate that they are urging this Court to

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[4] In addition, the open records officer is of course the agent of the agency for purposes of the RTKL. Throughout the RTKL, the response by the open records officer is deemed to be the response of "the agency." *See*, *e.g.*, 65 Pa. C.S. § 67.901 (calculating agency's response deadline by date of receipt by open records officer); *id.* § 67.902(a) ("the open-records officer for an agency shall determine" if an extension of time to respond is warranted); *id.* § 67.902(b) (open records officer contacts the requester with a notice of receipt and timeline for compliance); *id.* § 67.903 (agency's denial of a request must include "signature of the open-records officer on whose authority the denial is issued"); *id.* § 1102 (open records officer submits documents to appeals officer to support agency's position denying request).

interpret and apply the law in the most restrictive manner possible, in order to choke off all but the most specific requests by imposing requirements that simply do not exist and that are antithetical to the policy underlying the Law.[5] This approach is squarely inconsistent with the edict that all statutes must be construed in a manner consistent with "the intention of the General Assembly." 1 Pa. C. S. § 1921(a); *see also Allegheny Cnty. Dep't of Admin. Servs. v. A Second Chance, Inc.*, 13 A.3d 1025, 1039 (Pa. Commw. Ct. 2011) (adopting a broad interpretation of a statutory provision that is "consistent with the overall purposes and goals of the RTKL; avoids a construction that is absurd, unreasonable, and impossible to execute; and gives meaning and certainty to this and other provisions of the law").

Many open records laws across the country similarly require that misdirected requests be forwarded to other offices or employees within the agency, rather than ignored, as was the case here. *See* 5 U.S.C. § 552(a)(6)(A) (amended to require persons to forward misdirected FOIA requests to appropriate office or

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[5] Not only did legislators intend that the RTKL would apply to the Gaming Board, the legislative history shows that there was a particular focus on the law's application to the Gaming Board, which was perceived as resistant to requests for information. *See, e.g.*, *Right to Know Law, Second Consideration, Hearing on S.B. 1*, H. JOURNAL, 2007-08 Reg. Sess. 2821 (Dec. 10, 2007) (statement of Rep. Mahoney) ("[I]t is my intention to make the Gaming Board more attentive to people that are requesting records."); *see also, e.g.*, *id.* at 2816 (statement of Rep. Clymer) ("We certainly want to make sure that their records are available for public scrutiny. . . . [T]he news media has brought out the fact that it is very difficult to get some of this information from the [Gaming Board]."); *id.* (statement of Rep. Mahoney) ("the presumption of openness will apply to the Gaming Board").

employee within that agency);[6] *see also, e.g.*, Alaska Admin. Code tit. 2, § 96.320 ("If the request is received by the office of the public agency that does not maintain the requested records, the receiving office shall promptly forward the request to the office responsible for maintaining those records."); Mich. Comp. Laws Ann. § 15.233(1) ("An employee of a public body who receives a request for a public record shall promptly forward that request to the freedom of information act coordinator."); N.J. Stat. Ann. § 47:1A-5(h) ("Any officer or employee of a public agency who receives a request for access to a government record shall forward the request to the custodian of the record or direct the requestor to the custodian of the record."); N.M. Stat. Ann. § 14-2-8(E) ("In the event that a written request is not made to the custodian having possession of or responsibility for the public records requested, the person receiving the request shall promptly forward the request to the custodian of the requested public records, if known, and notify the requester."). As the Commonwealth Court observed, rather than allow "technicalities . . . [to] stop a written request for records in its tracks," *Pa. Gaming Control Bd.*, 48 A.3d at 509, the Legislature has provided that agencies bear the responsibility for ensuring that a misdirected request receives a response.

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[6] Pennsylvania courts "seek guidance from the Freedom of Information Act (FOIA), the federal counterpart to" the RTKL. *Bowling v. Office of Open Records*, 990 A.2d 813, 819 (Pa. Commw. Ct. 2010) *aff'd*, 75 A.3d 453 (Pa. 2013).

III. THE TERM "REQUEST" IS BROADLY CONSTRUED NATIONWIDE

The Commonwealth Court's reading of the statute is consistent with that of sister courts around the nation construing similar laws. As a preliminary matter, all 50 states, the District of Columbia and the U.S. Congress have enacted right to know statutes. While these laws vary in their specifics, courts across the nation, like those in Pennsylvania, routinely construe these laws broadly so as to maximize government transparency and accountability. *See, e.g.*, *Municipality of Anchorage v. Anchorage Daily News*, 794 P.2d 584, 589 (Alaska 1990) (Alaska disclosure requirements are construed broadly and exceptions narrowly "in furtherance of the legislature's expressed bias in favor of broad public access."); *Daugherty v. Jacksonville Police Dep't*, --- S.W.3d---, 2012 Ark. 264, at *7-8 (June 14, 2012), *reh'g denied* (Aug. 14, 2012) (Arkansas courts "liberally interpret the FOIA to accomplish its broad and laudable purpose that public business be performed in an open and public manner" (citation omitted)); *Dade Aviation Consultants v. Knight Ridder, Inc.*, 800 So. 2d 302, 304 (Fla. Dist. Ct. App. 2001) (Florida disclosure law "is to be construed liberally in favor of openness," with "any doubt" to be resolved "in favor of disclosure"); *Boise State Univ. v. Smith*, No. 97785, at *4, 6 (Idaho 4th Dist. Sept. 21, 1995) (unpublished) (Idaho "policy in favor of making public records available for inspection" makes courts "reluctant to impose limits that may deny the public access to legitimate information," so even "extremely broad"

request was valid under statute); *Williams Law Firm v. Bd. of Supervisors of La. State Univ.*, 878 So. 2d 557, 562, 2003-0079 (La. App. 1 Cir. 4/2/04), at *5 ("right of access to public records is fundamental" so Louisiana's "statute should be construed liberally" and "access may be denied only when the law specifically and unequivocally denies" it); *Renna v. Cnty. of Union*, 970 A.2d 414, 419, 407 N.J. Super. 230, 238 (N.J. Super. Ct. App. Div. 2009) (interpreting open records statute with "the guiding principle that [it] reflects New Jersey's commitment to openness and transparency in governmental actions and activities" (citations omitted)); *State ex rel. Beacon Journal Publ'g Co. v. Bond*, 781 N.E.2d 180, 186, 2002-Ohio-7117, 98 Ohio St. 3d 146, 148 (2002) (Ohio disclosure law "'must be construed liberally in favor of broad access'" (citation omitted)); *Simmons v. Kuzmich*, 166 S.W.3d 342, 346 (Tex. App. 2005) (Texas courts "liberally construe [open record law] provisions in favor of disclosure"); *ECO, Inc. v. City of Elkhorn*, 655 N.W.2d 510, 515-16, 2002 WI App 302, 259 Wis. 2d 276, 287-88 (Wisconsin open records statute "shall be construed in every instance with a presumption of complete public access" because "denial of public access generally is contrary to the public interest," justified "only in an exceptional case"). As many state courts have at one time or another held, the "bias in favor of public disclosure" requires that "[d]oubtful cases should be resolved by permitting public inspection." *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, 642 P.2d 1316, 1323 (Alaska 1982);

accord, e.g., *Williams Law Firm*, 878 So. 2d at 562, 2003-0079 (La. App. 1 Cir. 4/2/04), at *5 ("any doubt must be resolved in favor of the right of access"); *State ex rel. Beacon Journal Publ'g Co.*, 781 N.E.2d at 186, 2002-Ohio-7117, 98 Ohio St. 3d at 148 (same).

Like Pennsylvania, most states statutes neither define "request" nor mandate the precise form it must take or the information it must contain. That is by design and not by neglect. Clearly the intent of the legislatures nationwide has been to place few, if any, restrictions on the format of records requests. Indeed, courts and agencies around the country have adopted a functional approach that focuses not on the form but on the substance of the request at issue. *See*, *e.g.*, *Renna*, 970 A.2d at 421 & nn.4-5, 407 N.J. Super. at 241 & nn.4-5 (surveying jurisdictions and concluding "[t]he vast majority of other jurisdictions fostering public access to government records have adopted policies and procedures that eschew the necessity for official forms and in some instances, even written requests").[7]

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[7] *See also, e.g.*, *Daugherty v. Jacksonville Police Dep't*, --- S.W.3d---, 2012 Ark. 264, at *7-8 (June 14, 2012), *reh'g denied* (Aug. 14, 2012) (request need only be "sufficiently specific to enable the custodian to locate the records with reasonable effort"); Alaska Admin. Code tit. 2, § 96.315(a) (requester need only describe the records "in sufficient detail to enable the public agency to which the request is made to locate the records" and agency must "assist the requester in formulating the request" and "attempt to communicate with the requester in order to identify the public records requested" if needed but may not use such communications "as a means to discourage requests"); SEC'Y OF STATE, GUIDE TO MASS. PUB. RECS. LAW at 2 (rev. Jan. 2013), *available at* http://www.sec.state.ma.us/pre/prepdf/guide.pdf ("There is no specific form that must be used to request records, nor is there any language that must be included in such a request. A records custodian may provide a form, but cannot demand that the form be used.").

The few state courts that have considered the issue of what constitutes a valid open records request under circumstances analogous to those here have rejected strained interpretations of their respective statutes. They refused to place outsized import on technical errors in an otherwise unambiguous open records request or read into the statute restrictions not fairly written in by the legislature. *ECO, Inc.*, 655 N.W.2d at 517, 2002 WI App 302, 259 Wis. 2d at 292 (rejecting that "any 'magic words'" must be used in a valid request, which was undefined in the statute other than the requirement that it "reasonably describe[] the requested record or the information requested.'" (citation omitted)). Moreover, they declined to ignore the underlying purpose of each of the statutes intending to enhance disclosure. In so doing, these state courts reached conclusions similar to that of the Commonwealth Court in this case. *See, e.g.*, *Dade Aviation Consultants*, 800 So. 2d at 304-05 & n.1 (rejecting the defendant's "threshold" argument that it "was not properly served with written notice" of the records request, via a forwarded letter, as an attempt to place strictures not mandated by the statute); *Howard v. Sumter Free Press, Inc.*, 531 S.E.2d 698, 699, 272 Ga. 521 (2000) (finding defendant's contention that he need only respond to "bona fide" written requests "unavailing"); *State ex rel. Morgan v. New Lexington*, 857 N.E.2d 1208, 1216, 2006-Ohio-6365, 112 Ohio St. 3d 33, 39 (2006) ("the failure to [include certain specifying information in a records request] does not automatically

result in an improper request for public records, particularly where . . . the public office was aware of the specific records requested. We do not require perfection in public-records requests."); *ECO, Inc.*, 655 N.W.2d at 515, 2002 WI App 302, 259 Wis. 2d at 286-87 (rejecting city's argument that letters seeking records "were not 'requests' pursuant to open records law" that triggered city response because they were mistakenly titled FOIA requests (citation omitted)).

Similarly, a New Jersey court recently afforded the broadest possible interpretation in construing a request under its statute. In *Renna v. County of Union*, the requester sent an email to her county government seeking, like here, a specific public record. 970 A.2d at 416, 407 N.J. Super. at 233. The request, however, was denied on the basis that it was not submitted on the official form that the administrative agency charged with enforcing the open records law had recently mandated. The requester appealed. Although acknowledging that one plausible reading of the statute "suggests that the Legislature intended requests to be submitted [via an official] form," the court found that this was not the only plausible reading. 970 A.2d at 418-21, 407 N.J. Super. at 236-40. Faced with competing interpretations of the statute, the court was guided by the law's original purpose to maximize public access and, accordingly, rejected outright a "rigid interpretation" of "request" that "contradicts the spirit and intent of the underlying statute." 970 A.2d at 420, 407 N.J. Super. at 239.

CONCLUSION

For all of these reasons, both the OOR and the Commonwealth Court in this case correctly found that Mr. Schneller's letter constituted a valid request for records. The fact is that the very specific, typed request at issue here, which was faxed, emailed and mailed via first-class certified mail to an agency employee, fully comports with the statute's requirement that the request be delivered to the agency and be sufficiently specific for purposes of the open records officer's review. Indeed, even the Gaming Board inadvertently concedes this point when it refers to the March 20, 2009 request by Mr. Schneller as the "March 20, 2009 Right–to-Know Request by Mr. James Schneller." (R. pp. ii; 118a-119a).

Dated: November 22, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of November, 2013, I served the foregoing document to the persons on the date(s) and in the manner(s) stated below, which service satisfied the requirements of Pa. R.A.P. 121:

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