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Appeal Date Received

Official Use Only – Due Date

**PENNSYLVANIA OFFICE OF ATTORNEY GENERAL  
RIGHT-TO-KNOW APPEAL OFFICER  
16<sup>TH</sup> FLOOR – STRAWBERRY SQUARE  
HARRISBURG, PA 17120  
[www.attorneygeneral.gov/r2k.aspx](http://www.attorneygeneral.gov/r2k.aspx)**

**RIGHT-TO-KNOW LAW APPEAL FORM**

I am appealing the denial or partial denial of my request for records and provide the following information in accordance with the Pennsylvania Right to Know Law, 65 P.S. §67.101 et seq.

Please print all information legibly.

**Name of Requestor:** Bagwell Ryan  
Last First Initial

**Mailing Address:** c/o Nauman, Smith, Shissler & Hall, LLP P.O. Box 840  
Street/P.O. Box Apt. No.  
Harrisburg PA 17108-0840  
City State Zip Code

**Telephone Number:** 717-236-3010 ext. 26 **Fax Number:** 717-234-1925  
optional optional

**Date of request:** 12/14/13 **Date of Agency Response:** 1/22/14

**Description of records requested:** See attached Supplemental Statement.

**Reasons asserted that the record is a public record:** See attached Supplemental Statement.

**Grounds stated for Agency denial or partial denial of request:** See attached Supplemental Statement.

Please visit [www.attorneygeneral.gov](http://www.attorneygeneral.gov) for more information about the Office of Attorney General.

**Supplemental Statement by Ryan Bagwell, Requester, to  
OAG's Standard RTKL Appeal Form**

**Description of Records Requested:**

A copy of the request is attached hereto as Exhibit "A." The Requester is limiting this appeal to the subpart of the request quoted below:

"All letters, emails, memos, reports, transcripts, audio recordings and video records that were sent or received by OAG employees including, but not limited to, Frank Fina, Linda Kelly, Joe McGettigan, and Randy Feathers, between November 1, 2011 and December 31, 2012, and were sent from or to the following individuals:

- a. Louis Freeh, an employee of The Freeh Group
- b. Omar Y. McNeil, an employee of The Freeh Group
- c. Thomas Cload, an employee of the Freeh Group
- d. Gregory Paw, an employee of the Freeh Group
- e. any other employee of the Freeh Group"

Due to the fact that the OAG has not complied with its own guidelines regarding submission of evidence and legal argument when the requester has filed a previous appeal, the requester is attaching a legal memorandum setting forth exceptions to the OAG's partial denial of the request and argument in support thereof.

**Reasons asserted that the record is a public record:**

The materials that are responsive to the request constitute "records" as defined by Section 102 of the Right-to-Know Law (RTKL), 65 P.S. § 67.102. A record in the possession of a Commonwealth agency is presumed to be a public record. 65 PS. § 67.305(a). It is believed and therefore averred that the reasons asserted by the Office of the Attorney General (OAG) to purportedly justify the nondisclosure of the responsive records are not supported in law or in fact. Furthermore, to the extent the OAG voluntarily disclosed the responsive records to third parties, including but not limited to the Pennsylvania State University, the Freeh Group, Freeh

International Solutions, the NCAA, and/or the Big Ten Conference, the OAG waived the ability to assert such records are exempt from public disclosure. Due to the fact the OAG's open records officer (ORO) failed to describe the records that are responsive to the request or to state specific reasons why each record is exempt from public disclosure, as required by RTKL Section 903, 65 P.S. § 67.903, the requester requests the opportunity to supplement the reasons asserted that the responsive records are public records, to the extent the OAG provides a sufficient description of the responsive records and the reason that each record is purportedly exempt from public disclosure.

**Grounds stated for Agency denial or partial denial of the request:**

A copy of the agency's interim response is attached hereto as Exhibit "B." A copy of the denial letter is attached hereto as Exhibit "C." The ORO did not fully process the request because it was purportedly "disruptive" under RTKL Section 506(a), 65 P.S. § 67.506(a). To the extent the ORO processed the request, the ORO asserted "that documents do not exist as agency records and that [the agency] is not required to create a record. 65 P.S. § 67.705." It is not clear whether the ORO is asserting that the requested records are not in possession, custody, or control of the OAG, or whether there are responsive materials that the ORO has deemed to not be records "of" the OAG. The ORO further asserted that "previous denials based on the Investigating Grand Jury Act, 42 Pa.C.S.A. § 4541 et seq. and the RTKL, 65 P.S. § 67.101 et seq., still remain in force ...."

**LEGAL MEMORANDUM OF RYAN BAGWELL, REQUESTER, SETTING FORTH  
EXCEPTIONS TO OAG'S PARTIAL DENIAL OF REQUEST FOR PUBLIC RECORDS  
AND ARGUMENT IN SUPPORT THEREOF**

**I. EXCEPTIONS TO PARTIAL DENIAL:**

1. The open records officer (ORO) erred by finding the request was a "disruptive request" under RTKL Section 506(a) and by limiting the search for responsive records to the time frame that was purportedly not repetitive of prior requests. These errors constitute a violation of the OAG's duty under Section 901 of the RTKL to make a good faith effort to determine whether the OAG had possession, custody or control of records that were responsive to the request.
2. The ORO failed to comply with his duty under RTKL Section 903 to sufficiently describe the records that were deemed to be responsive to the request and set forth specific reasons why each responsive record was exempt from public disclosure.
3. The ORO erred in determining the unidentified responsive records were exempt from public disclosure under the Grand Jury privilege and/or the Criminal Investigation Exception.
4. The ORO failed to consider whether the OAG waived the alleged exemptions from public disclosure by voluntarily disclosing the responsive records to third parties, including but not limited to Penn State University, the Freeh Group, and/or Freeh International Solutions.
5. To the extent the OAG has possession, custody or control of responsive records, the ORO erred by determining the responsive records were not records "of" the agency.

**II. ARGUMENT**

1. **The open records officer (ORO) erred by finding the request was a "disruptive request" under RTKL Section 506(a) and by limiting the search for responsive records to the time frame that was purportedly not repetitive of prior requests. These errors constitutes a violation of the OAG's duty under Section 901 of the RTKL to make a good faith effort to determine whether the OAG had possession, custody or control of records that were responsive to the request.**

**A. The request was not disruptive under Section 506(a) of the RTKL**

Section 506 of the RTKL provides that "an agency may deny a requester access to a record if the requester has made repeated requests for the same record and the repeated requests have place an unreasonable burden of the agency." 65 P.S. § 67.506(a). Under this section, an

agency must demonstrate that (1) the requester has made repeated requests for the same record(s) and (2) the repeated requests have placed an unreasonable burden on the agency. Borough of W. Easton v. Mezzacappa, 74 A.3d 417, 419-20 (Pa. Cmwlth. 2013). The duplicative expenditure of an agency's resources is true of any repetitive request and does not establish that the request is unreasonably burdensome. Office of the Governor v. Bari, 20 A.3d 634, 645 (Pa.Cmwlth.2011). The current request is not “disruptive” because it is neither repetitive nor unreasonably burdensome.

The instant request is not repetitive. The language of the current request is different than the language of any of the prior requests. The ORO strains to connect the instant request with prior requests that were submitted by the requester. Many, if not all, of the prior requests had been deemed insufficiently specific. It is bad faith for an agency to not process a request because it is insufficiently specific, and then to subsequently deny a more specific request as repetitive.

The instant request was not unreasonably burdensome. The Commonwealth Court’s decision in Mezacappa is instructive. In Mezacappa, the requester submitted a request for public records. After the Borough processed the request and duplicated the responsive records, the requester withdrew the request. The requester subsequently submitted a second request for the same records. The Borough denied the second request as disruptive, arguing that Borough’s small staff did not have the resources to process the request for the same records a second time. The Commonwealth Court held that an agency cannot cite staffing restraints to prove that a repetitive request is unreasonably burdensome. Id., 74 A.3d at 420.

The OAG cannot prove Mr. Bagwell’s instant request placed an unreasonable burden on the ORO. Any burden on the ORO in this case was self-created. It is apparent from the face of the denial letter that the ORO spent more time straining to connect the instant requests to prior

requests than the ORO spent complying with his statutory duty under § 901 to conduct a good faith search for responsive records or determining whether the responsive records were truly exempt from public disclosure.

There is one more reason the ORO should process the request. Attorney General Kathleen Kane issued a press release on February 15, 2014, in which she provided a status report on her investigation of the prior Attorney Generals' investigation of the Jerry Sandusky investigation/prosecution. The press release revealed:

... until last fall we believed that OAG emails for the relevant time period had been permanently removed from OAG storage systems (pursuant to a then-existing document-retention policy) and were unrecoverable. Since then, we have developed a recovery process that is ongoing.

The press release is available at <http://www.attorneygeneral.gov/press.aspx?id=7434>. The press release provides a substantive basis to assert that the OAG may have possessed responsive records on the date of the instant request that were not in the possession of the OAG on the dates the previous requests were filed.

**B. The OAG must comply with its duty under RTKL Section 901 to to make a good faith effort to determine whether the OAG had possession, custody or control of records that were responsive to the request.**

Section 901 of the RTKL provides, “[u]pon receipt of a written request for access to a record, an agency shall make a good faith effort to determine ... whether the agency has possession, custody or control of the identified record.” 65 P.S. § 901. Since the request was not “disruptive” under Section 506 of the RTKL, the OAG must comply with its duty to conduct a full “good-faith” search for responsive records.

WHEREFORE, the Requester demands that the OAG conduct a complete search to determine whether the OAG currently has possession, custody or control of records that are responsive to the request.

2. **The ORO failed to comply with his duty under RTKL Section 903 to sufficiently describe the records that were deemed to be responsive to the request and set forth specific reasons why each responsive record was exempt from public disclosure.**

Section 903 of the RTKL requires an agency to sufficiently describe the records that are deemed to be responsive to a request and to set forth specific reasons for the denial, including a citation of supporting legal authority. 65 P.S. § 67.903. See Bagwell v. Pennsylvania Dep't of Educ., 76 A.3d 81, 85 (Pa. Commw. Ct. 2013)(finding partial denial was “deficient” because it did not adequately describe the responsive records to which the alleged exemptions apply, nor correlate exemptions with records). Here, just like in the Mr. Bagwell’s case against the Department of Education, the OAG has failed to adequately describe the responsive records or correlate the asserted exemptions with the responsive records.

It is within the discretion of the agency to choose the manner in which to address an agency’s claim of disclosure under the RTKL. Office of Governor v. Scolforo, 65 A.3d 1095, 1104, fn. 13 (Pa. Commw. Ct. 2013). The Commonwealth Court has derived guidance for agencies from the Federal courts’ interpretation the Freedom of Information Act (FOIA). Id. Federal courts typically require an agency to produce a so-called “Vaughn index”, an item-by-item indexing system which correlates to a specific FOIA exemption. Id. citing Vaughn v. Rosen, 484 F.2d 820 (D.C.Cir.1973). In limited circumstances where a satisfactory index would undermine the exemption, agencies may justify their exemptions on a category-of-document methodology. Id. citing Curran v. Dep't of Justice, 813 F.2d 473 (1st Cir.1987). This does not, however, absolve agencies from making a minimally sufficient showing of exemption. Id. The classification should be clear enough to permit a court to ascertain how each category of documents, if disclosed, would interfere with the agency's duty not to disclose exempt public records. Id.

The ORO's denial letter is not sufficient under either method. The denial letter does not adequately describe the responsive records to which the alleged exemptions apply, nor correlate exemptions with records.

Wherefore, the requester demands that the OAG sufficiently describe the records that were deemed to be responsive to the request and set forth specific reasons why each responsive record is exempt from public disclosure.

**3. The ORO erred in determining the unidentified responsive records were exempt from public disclosure under the Grand Jury privilege and/or the Criminal Investigation exemption.**

**A. The Grand Jury privilege applies only to prevent disclosure of matters occurring before the grand jury.**

Proceedings before a grand jury are protected by a general rule of secrecy. Levy v. Senate of Pennsylvania ("Levy II"), --- A.3d ---, 2222 C.D. 2010, 2014 WL 129222 (Pa. Commw. Ct. Jan. 15, 2014) citing Section 4549 of the Investigating Grand Jury Act, 42 Pa.C.S. § 4549.

Section 4549(b) provides:

**(b) Disclosure of proceedings by participants other than witnesses.--**

Disclosure of matters occurring before the grand jury other than its deliberations and the vote of any juror may be made to the attorneys for the Commonwealth for use in the performance of their duties. The attorneys for the Commonwealth may with the approval of the supervising judge disclose matters occurring before the investigating grand jury including transcripts of testimony to local, State, other state or Federal law enforcement or investigating agencies to assist them in investigating crimes under their investigative jurisdiction. Otherwise a juror, attorney, interpreter, stenographer, operator of a recording device, or any typist who transcribes recorded testimony may disclose matters occurring before the grand jury only when so directed by the court. All such persons shall be sworn to secrecy, and shall be in contempt of court if they reveal any information which they are sworn to keep secret.

42 Pa.C.S.A. § 4549(b).



The Commonwealth Court recently held that the grand jury secrecy rule applies only to prevent the unauthorized disclosure of “matters occurring before the grand jury.” Levy II, quoting 42 Pa.C.S. § 4549(b). For example, the state Senate could not redact the names of individuals receiving government reimbursed legal services, even where the legal invoices referenced grand jury proceedings, where there was no evidence to connect the names of the individuals to secret grand jury material. Id.

**B. The Grand Jury Privilege cannot apply to communications from the Freeh Group to the OAG because the Freeh Group did not participate in the grand jury proceedings.**

The requester seeks correspondence between two groups of individuals, OAG employees and Freeh Group employees. Correspondence from the Freeh Group could not be protected by the rule of grand jury secrecy because the Freeh Group did not participate in the grand jury proceedings. Only the grand jury participants are bound by the oath of secrecy. Castellani v. Scranton Times, L.P., 598 Pa. 283, 307, 956 A.2d 937, 952 (2008). Even if witnesses before the grand jury disclosed to the Freeh Group matters occurring before the grand jury, as grand jury witnesses are permitted to do under 42 Pa.C.S.A. § 4549 (d), the grand jury privilege would not reach subsequent disclosures by the Freeh Group because the Freeh Group was not sworn to secrecy during the grand jury proceedings.

**C. It is highly unlikely the Grand Jury Privilege applies to the communications from the OAG to the Freeh Group because it would have been improper for the OAG to leak matters occurring before the grand jury to the Freeh Group.**

If the rule of grand jury secrecy applies to information learned by OAG employees who participated in the grand jury proceedings, it would have been illegal for the OAG employees to disclose such information to the Freeh Group. Section 4549(b) of the investigating grand jury prohibits an attorney for the Commonwealth to disclose matters occurring before the grand jury

to anyone except local, State, other state or Federal law enforcement or investigating agencies to assist them in investigating crimes under their investigative jurisdiction. 42 Pa.C.S.A. § 4549(b). The Freeh Group does not qualify as an entity to whom the OAG can disclose matters occurring before the grand jury. Thus, the OAG's denial of Mr. Bagwell's request on the basis of the grand jury privilege is either inaccurate, or a concession that the OAG disclosed matters occurring before a grand jury to an unauthorized person contrary to 42 Pa. C.S.A. § 4549(b).

**D. The ORO has failed to show the unidentified responsive records are exempt from access under the Criminal Investigation Exception to the RTKL.**

Section 708(b)(16) of the RTKL provides the following records are exempt from access by a requester:

- (16) A record of an agency relating to or resulting in a criminal investigation, including:
  - (i) Complaints of potential criminal conduct other than a private criminal complaint.
  - (ii) Investigative materials, notes, correspondence, videos and reports.
  - (iii) A record that includes the identity of a confidential source or the identity of a suspect who has not been charged with an offense to whom confidentiality has been promised.
  - (iv) A record that includes information made confidential by law or court order.
  - (v) Victim information, including any information that would jeopardize the safety of the victim.
  - (vi) A record that, if disclosed, would do any of the following:
    - (A) Reveal the institution, progress or result of a criminal investigation, except the filing of criminal charges.
    - (B) Deprive a person of the right to a fair trial or an impartial adjudication.
    - (C) Impair the ability to locate a defendant or codefendant.
    - (D) Hinder an agency's ability to secure an arrest, prosecution or conviction.
    - (E) Endanger the life or physical safety of an individual.

65 P.S. § 67.708(b)(16).

The ORO's denial letter is conclusory and void of any facts to support the assertion that the records requested fall within any of the above categories and are exempt under the Criminal Investigation Exception. Generic determinations or conclusory statements are not sufficient to

justify the exemption of public records. Office of Governor v. Scolforo, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013). An adequate description of responsive records is crucial to demonstrate why the record is exempt from public disclosure. Carey v. Pennsylvania Dep't of Corr., 61 A.3d 367, 377 (Pa. Cmwlth. 2013) supplemented, 1348 C.D. 2012, 2013 WL 3357733 (Pa. Cmwlth. July 3, 2013). Affidavits containing “mere conjecture” and “general, broad-sweeping conclusions” are not sufficient exempt records from public disclosure. Governor's Office of Admin. v. Purcell, 35 A.3d 811, 820 (Pa. Cmwlth. 2011); Delaware County v. Schaefer ex rel. Philadelphia Inquirer, 45 A.3d 1149, 1158 (Pa. Cmwlth. 2012).

**E. It is highly unlikely the Criminal Investigation Exception applies to the communications from the OAG to the Freeh Group because it would have been improper for the OAG to disclose investigative information to the Freeh Group.**

Agencies are prohibited, except in circumstances not applicable here, from disclosing “investigative information” as defined by the Criminal History Records Information Act (CHRIA) to third parties. DiMartino v. Pennsylvania State Police, 340 C.D. 2011, 2011 WL 10841570 at \*5 (Pa. Commw. Ct. Sept. 19, 2011)(unpublished memorandum opinion). Investigative information is “[i]nformation assembled as a result of the performance of any inquiry, formal or informal, into a criminal incident or an allegation of criminal wrongdoing and may include *modus operandi* information.” Id. quoting 18 Pa.C.S. § 9102. Under CHRIA, “[i]nvestigative ... information shall not be disseminated to any department, agency or individual unless the department, agency or individual requesting the information is a criminal justice agency which requests the information in connection with its duties, and the request is based upon a name, fingerprints, modus operandi, genetic typing, voice print or other identifying characteristic....” Id. quoting 18 Pa.C.S. § 9106(c)(4).

If the communications from the OAG to the Freeh Group contained materials that are exempt from public disclosure under the Criminal Investigation Exception, Section 9106 (c)(4) of the CHRIA would have prohibited the OAG employees to disclose such information to the Freeh Group. The Freeh Group does not qualify as an entity to whom the OAG can disclose such information under CHRIA. Thus, the OAG's denial of Mr. Bagwell's request on the basis of the Criminal Investigation Exception is either inaccurate, or a concession that the OAG improperly disclosed investigative materials to an unauthorized person contrary to the restrictions under the CHRIA.

**F. If the responsive records contain information that is exempt from public disclosure under the Grand Jury Privilege and/or the Criminal Investigation Exception, the OAG is required to redact such information and provide redacted copies to the requester.**

Section 706 of the RTKL provides:

If an agency determines that a public record, legislative record or financial record contains information which is subject to access as well as information which is not subject to access, the agency's response shall grant access to the information which is subject to access and deny access to the information which is not subject to access. If the information which is not subject to access is an integral part of the public record, legislative record or financial record and cannot be separated, the agency shall redact from the record the information which is not subject to access, and the response shall grant access to the information which is subject to access. **The agency may not deny access to the record if the information which is not subject to access is able to be redacted.**

65 P.S. § 67.706(emphasis supplied). The Supreme Court has opined in *dicta* that the argument that an entire document is exempt from disclosure if part of it is privileged would make the redaction provision of the RTKL superfluous. Levy v. Senate of Pennsylvania, 65 A.3d 361, 369 (Pa. 2013).

Wherefore, the Requester demands that the OAG disclose the responsive records. If the responsive records contain information that is allegedly exempt from public disclosure, the

Requester demands that the OAG disclose copies of the responsive records with exempt information redacted pursuant to § 706.

**4. The ORO failed to consider whether the OAG waived the alleged exemptions from public disclosure by voluntarily disclosing the responsive records to third parties, including but not limited to Penn State University, the Freeh Group, and/or Freeh International Solutions.**

Exemptions to public disclosure can be waived by disclosure to third parties. See e.g., Philadelphia Pub. Sch. Notebook v. Sch. Dist. of Philadelphia, 49 A.3d 445, 453 (Pa. Commw. Ct. 2012)(resolutions reflecting predecisional deliberations, were no longer “internal ” deliberations once they were presented for public consideration and comment at public meeting). Privileges, such as the attorney-client privilege, can be waived by disclosing the communications at issue to a third party. Nationwide Mut. Ins. Co. v. Fleming, 924 A.2d 1259, 1265 (Pa. Super. 2007), affirmed by an equally divided court, 605 Pa. 484 (2010).

There is evidence that materials related to the investigation of Graham Spanier, Gary Schultz, and Timothy Curley were obtained by the media. CNN reported on emails that Louis Freeh allegedly discovered and turned over the AOG. See <http://www.cnn.com/2012/06/30/justice/penn-state-emails/> (last visited 12/30/13). Louis Freeh acknowledged at a public press conference that “portions of these emails have been leaked to the media. We strongly condemn and deplore those leaks. Let me assure you that none of these leaks came from the Special Investigative Counsel team.” Louis Freeh’s press-conference are publicly available at <http://progress.psu.edu/the-freeh-report> (last visited 12/30/13).

There is evidence of public record that the OAG disclosed materials related to the investigation of Jerry Sandusky and the Penn State administrators to Penn State. For example, Braden Cook, a senior supervisory special agent with the Office of Attorney General, Computer Forensics Unit, testified at the preliminary hearing for Graham Spanier, Gary Schultz and

Timothy Curley on July 30, 2013. A copy of his testimony is available at <http://www.dauphincounty.org/government/Court-Departments/Curley-Schultz-Spanier/Documents/July%2030,%202013%20Preliminary%20Hearing%20Transcript%201%20of%202.PDF>.

Mr. Cook testified that the OAG met with a member of Penn State's IT department, John Corro, and "[the OAG] identified 108 items that were collected relative to approximately 60 individuals. That included desk top computers, laptop computers, cell phones, handheld devices such as I-pads and also server backups, mail and network file share, files for every individual." p. 64, lines 1-6. "... [the OAG] obtained the original hard drives in the presence of Mr. Corro with the security operations group, and [the OAG] duplicated the hard drives with Mr. Corro. The duplicate hard drive was returned back to Penn State, and we maintained the original hard drive." p. 64, lines 10-16. "There was a process that [the OAG] went through with each and every device. The first process was [OAG] ran approximately 60 keywords for a search for privilege or confidential material related to attorneys and counsel for either individuals or the University in particular. After that keyword search was completed, those results were turned over to Dwayne [sic] Morris [counsel for Penn State University] in a sealed envelope for them to review for any privileged or confidential information." p. 65, lines 9-18.

Braden Cook's testimony shows that the OAG voluntarily returned the results of their investigation to Penn State. This act, along with other potential acts of disclosure (which are unknown to the Requester currently as the OAG has not provided documents, redacted or otherwise, nor a Vaughn Index) which may have occurred, and which would be known or should be known by the OAG, constitutes waiver of the exemptions from public disclosure asserted by the OAG here.

Wherefore, the Requester demands the OAG consider whether the OAG waived the alleged exemptions from public disclosure by voluntarily disclosing the responsive records to third parties, including but not limited to Penn State University, the Freeh Group, and/or Freeh International Solutions; and if so, to disclose the responsive records to the Requester.

**5. To the extent the OAG has possession, custody or control of responsive records, the ORO erred by determining the responsive records were not records "of" the agency.**

Information that documents a transaction or activity of an agency and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of an agency, meets the definition of a "record" under Section 102 of the RTKL. A record in the possession of a Commonwealth agency is presumed to be a public record. 65 PS. § 67.305(a).

To the extent the OAG has possession, custody or control of responsive records, the ORO erred by determining the responsive records were not records "of" the agency. For records to be "of" an agency, for purposes of a Right-to-Know Law (RTKL) request, they do not need to originate with or be created by that agency. Bagwell v. Pennsylvania Dep't of Educ., 76 A.3d 81, 90 (Pa. Commw. Ct. 2013).

The denial letter implies that the OAG possesses a copy of the contracts and agreements [by the Pennsylvania State University] to retain the services of the law firm of Freeh, Sporkin, Sullivan and/or Freeh International Solutions to conduct an independent investigation related to the Sandusky matter. Curiously, in response to Mr. Bagwell's instant request for correspondence between the OAG and the Freeh Group, the denial letter references a prior request for:

all emails, letters, notes, transcripts, audio recordings, memorandums, contracts and agreements provided to or received from the law firm of Freeh, Sporkin, and Sullivan and/or Freeh International Solutions in regard to the 'Report of the Special Investigative Counsel Regarding Actions of the Pennsylvania State University Related to the Child Abuse Committed by GERAL A. SANDUSKY.

Denial Letter p. 2. The denial letter further states:

to the extent that you were seeking contracts and agreements to retain the services of the law firm of Freeh, Sporkin, Sullivan and/or Freeh International Solutions to conduct an independent investigation related to the Sandusky matter, the OAG did not hire the Freeh law firm or Freeh International Solutions and documents do not exist **as agency records**.

Denial Letter p. 2 (emphasis supplied). The fact that the ORO strains to connect Mr. Bagwell's previous request for the Freeh contract with Mr. Bagwell's current request for correspondence between the OAG and the Freeh Group suggests that the OAG in fact retains a copy of the contract. If the OAG in fact retrieved this document during its investigation of Jerry Sandusky and the Penn State administrators, the document is presumed to be a public record under § 305(a).

Wherefore, to the extent the OAG has possession, custody or control of responsive records that are not exempt from public disclosure, the Requester demands that the OAG disclose such records to the Requester.

### **III. CONCLUSION WITH REQUESTED RELIEF**

WHEREFORE, the Requester requests the following relief:

1. The Requester demands that the OAG conduct a complete search to determine whether the OAG currently has possession, custody or control of records that are responsive to the request, including documents continuing to be reviewed by the OAG.
2. The Requester demands that the OAG sufficiently describe the records that were deemed to be responsive to the request and set forth specific reasons why each responsive record is exempt from public disclosure.
3. The Requester demands that the OAG disclose the responsive records. If the responsive records contain information that is allegedly exempt from public disclosure, the

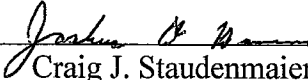


Requester demands that the OAG disclose copies of the responsive records with exempt information redacted pursuant to § 706.

4. The Requester demands the OAG consider whether the OAG waived the alleged exemptions from public disclosure by voluntarily disclosing the responsive records to third parties, including but not limited to Penn State University, the Freeh Group, and/or Freeh International Solutions; and if so, to disclose the responsive records to the Requester.

5. To the extent the OAG has possession, custody or control of responsive records that are not exempt from public disclosure, the Requester demands that the OAG disclose such records to the Requester.

NAUMAN, SMITH, SHISSLER & HALL, LLP

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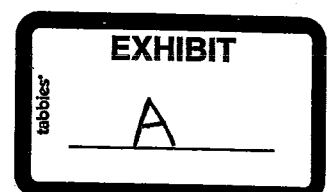
Office of Attorney General  
Right-to-Know Officer  
15th Floor, Strawberry Square  
Harrisburg, PA 17120

December 14, 2013

Dear Right-to-Know Officer:

This is a request for public records from the Pennsylvania Office of the Attorney General ("OAG") pursuant to the Pennsylvania Right-to-Know Law ("RTKL"), 65 P.S. §67.101 *et seq.* I hereby request copies of the following:

1. all letters, emails, memos, reports, transcripts, audio recordings and video recordings that were sent or received by OAG employees including, but not limited to, Frank Fina, Linda Kelly, Joe McGettigan, and Randy Feathers, between November 1, 2011 and December 31, 2012, and were sent from or to the following individuals:
  - a. Louis Freeh, an employee of The Freeh Group
  - b. Omar Y. McNeil, an employee of The Freeh Group
  - c. Thomas Cloud, an employee of The Freeh Group
  - d. Gregory Paw, an employee of The Freeh Group
  - e. any other employee of The Freeh Group
2. all contracts, memorandums of understanding, engagement letters and agreements by any other nomenclature between the OAG and the The Pennsylvania State University, its Board of Trustees and/or The Freeh Group that were signed between November 1, 2011, and December 31, 2013.
3. all records of payments from the OAG to The Pennsylvania State University, its Board of Trustees and/or The Freeh Group between November 1, 2011, and December 31, 2013.
4. all letters, memos, and e-mails sent to the OAG from The Freeh Group between November 1, 2011, and July 31, 2012 requesting information from the OAG.



5. any replies to requests for information as described in item no. 4 (above), and all internal correspondence concerning the fulfillment of such requests.
6. all letters, memos, e-mails, reports and other correspondence between OAG employees and employees of the National Collegiate Athletic Association and/or the Big Ten Conference between November 1, 2011, and December 31, 2012.
7. all e-mails between former prosecutor Frank Fina and former supervising grand jury judge Barry Feudale sent or received between January 1, 2011, and December 31, 2012.
8. a letter sent to former attorney general Linda Kelly from John A. Askew on or about January 13, 2012 concerning Louis Freeh. This letter was carbon copied to the state police commissioner and recorded in the commissioner's office correspondence log under #41482.
9. all e-mails sent or received between January 1, 2011, and December 31, 2012, concerning the attorney general's investigation into child sexual abuse by Jerry Sandusky that were sent to or by the following individuals who were not employed by the OAG:
  - a. James Schultz
  - b. Brian Nutt
  - c. Todd Shamash
  - d. Steven Aichele
  - e. Jennifer Branstetter
  - f. Kathleen Duffy Bruder
  - g. Christopher Abruzzo
  - h. William Ward
  - i. Kevin Harley

Please note that references to "The Freeh Group" contained in this request are intended to include the law firm of Freeh, Sporkin & Sullivan and the firm Freeh International Solutions. While each entity is separate and distinct, they are commonly and collectively referred to as "The Freeh Group."

To demonstrate that your office has acted in good faith, and to reduce the possibility of an appeal, please provide a so-called "Vaughn Index" or other similar document in the event your office determines any requested records are exempt from disclosure.

Whenever possible, please provide any responsive records in an electronic format such as Adobe PDF, and send the records by e-mail to [ryan@ryanbagwell.com](mailto:ryan@ryanbagwell.com).

I look forward to hearing from your office as soon as possible, but in any event within five business days as required by statute. Additionally, I ask that you correspond with me by e-mail or telephone instead of U.S. Postal Service mail.

Please don't hesitate to contact me with any questions. Thank you for your time.

Sincerely,

/s/

Ryan Bagwell  
608-466-6195  
[ryan@ryanbagwell.com](mailto:ryan@ryanbagwell.com)



Ryan Bagwell <ryan@ryanbagwell.com>

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## RTK Response

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Right To Know Response <rtkr@attorneygeneral.gov>  
To: "ryan@ryanbagwell.com" <ryan@ryanbagwell.com>

Mon, Dec 23, 2013 at 9:23 AM

December 23, 2013

15th Floor, Strawberry Square  
Harrisburg, PA 17120  
(717) 783-1111

Email: ryan@ryanbagwell.com

Ryan Bagwell  
5219 Shorecrest Drive  
Middleton, WI 53562

Re: Right to Know Request

Dear Mr. Bagwell:

This letter acknowledges receipt by the Office of Attorney General of your written request for records under the Pennsylvania Right-to-Know Law (65 P.S. §67.101 et seq.) ("RTKL"). Your request was received by the Right to Know Office on December 16, 2013. Therefore, under the RTKL, a written response to your request must be mailed on or before December 23, 2013. This letter is provided pursuant to that requirement. For purposes of this letter, the "identified records" are those in your email, as modified by any subsequent communications.

Your request states "I hereby request copies of the following:

1. all letters, emails, memos, reports, transcripts, audio recordings and video recordings that were sent or received by OAG employees including, but not limited to, Frank Fina, Linda Kelly, Joe McGettigan, and Randy Feathers, between November 1, 2011 and December 31, 2012, and were sent from or to the following individuals: Louis Freeh, an employee of The Freeh Group; Omar Y. McNeil, an employee of The Freeh Group; Thomas Cloud, an employee of The Freeh Group; Gregory Paw, an employee of The Freeh Group; any other employee of The Freeh Group
2. all contracts, memorandums of understanding, engagement letters and agreements by any other nomenclature between the OAG and the The Pennsylvania State University, its Board of Trustees and/or The Freeh Group that were signed between November 1, 2011, and December 31, 2013.
3. all records of payments from the OAG to The Pennsylvania State University, its Board of Trustees and/or The Freeh Group between November 1, 2011, and December 31, 2013.
4. all letters, memos, and e-mails sent to the OAG from The Freeh Group between November 1, 2011, and July 31, 2012 requesting information from the OAG.
5. any replies to requests for information as described in item no. 4 (above), and all internal correspondence concerning the fulfillment of such requests.
6. all letters, memos, e-mails, reports and other correspondence between OAG employees and employees of the National Collegiate Athletic Association and/or the Big Ten Conference between November 1, 2011, and December 31, 2012.

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7. all e-mails between former prosecutor Frank Fina and former supervising grand jury judge Barry Feudale sent or received between January 1, 2011, and December 31, 2012.

8. a letter sent to former attorney general Linda Kelly from John A. Askew on or about January 13, 2012 concerning Louis Freeh. This letter was carbon copied to the state police commissioner and recorded in the commissioner's office correspondence log under #41482.

9. all e-mails sent or received between January 1, 2011, and December 31, 2012, concerning the attorney general's investigation into child sexual abuse by Jerry Sandusky that were sent to or by the following individuals who were not employed by the OAG: James Schultz, Brian Nutt, Todd Shamash, Steven Aichele, Jennifer Branstetter, Kathleen Duffy Bruder, Christopher Abruzzo, William Ward [and] Kevin Harley"

You are hereby notified that to the extent records may exist, a legal review is necessary to determine whether the requested records are subject to release under this act and the extent or nature of the request precludes a response within the required time period. As provided by in the statute, the Office of Attorney General will require up to an additional 30 calendar days, or until January 22, 2014, in which to provide a final written response to your request. 65 P.S. §67.902(a)(4) and (7).

Please note that this response is being sent from an unmonitored site. Do not reply to this email. If you have any questions regarding this letter, please contact this office at 717-783-1111 or by mail at the following address: Right to Know Officer, Office of Attorney General, 15th Floor, Strawberry Square, Harrisburg, PA 17120.

Sincerely,

Robert A. Mulle  
Chief Deputy Attorney General  
Right to Know Officer

RAM:mlm  
SR-53877-DHKS

—Original Message—

From: info@attorneygeneral.gov [mailto:info@attorneygeneral.gov]  
Sent: Friday, December 13, 2013 11:15 PM  
To: ContactUS CVL RTKL  
Subject: Right To Know Law Topics : All Right To Know Law Topics

From: Ryan Bagwell  
Email: ryan@ryanbagwell.com  
Right To Know Law Topics : All Right To Know Law Topics

5219 Shorecrest Drive  
Middleton, WI 53562

Office of Attorney General  
Right-to-Know Officer  
15th Floor, Strawberry Square  
Harrisburg, PA 17120

December 14, 2013

Dear Right-to-Know Officer:

This is a request for public records from the Pennsylvania Office of the Attorney General ("OAG") pursuant to the Pennsylvania Right-to-Know Law ("RTKL"), 65 P.S. &#167;67.101 et seq. I hereby request copies of the following:

1. all letters, emails, memos, reports, transcripts, audio recordings and video recordings that were sent or

received by OAG employees including, but not limited to, Frank Fina, Linda Kelly, Joe McGettigan, and Randy Feathers, between November 1, 2011 and December 31, 2012, and were sent from or to the following individuals:

Louis Freeh, an employee of The Freeh Group  
Omar Y. McNeil, an employee of The Freeh Group  
Thomas Cloud, an employee of The Freeh Group  
Gregory Paw, an employee of The Freeh Group  
any other employee of The Freeh Group

2. all contracts, memorandums of understanding, engagement letters and agreements by any other nomenclature between the OAG and the The Pennsylvania State University, its Board of Trustees and/or The Freeh Group that were signed between November 1, 2011, and December 31, 2013.

3. all records of payments from the OAG to The Pennsylvania State University, its Board of Trustees and/or The Freeh Group between November 1, 2011, and December 31, 2013.

4. all letters, memos, and e-mails sent to the OAG from The Freeh Group between November 1, 2011, and July 31, 2012 requesting information from the OAG.

5. any replies to requests for information as described in item no. 4 (above), and all internal correspondence concerning the fulfillment of such requests.

6. all letters, memos, e-mails, reports and other correspondence between OAG employees and employees of the National Collegiate Athletic Association and/or the Big Ten Conference between November 1, 2011, and December 31, 2012.

7. all e-mails between former prosecutor Frank Fina and former supervising grand jury judge Barry Feudale sent or received between January 1, 2011, and December 31, 2012.

8. a letter sent to former attorney general Linda Kelly from John A. Askew on or about January 13, 2012 concerning Louis Freeh. This letter was carbon copied to the state police commissioner and recorded in the commissioner's office correspondence log under #41482.

9. all e-mails sent or received between January 1, 2011, and December 31, 2012, concerning the attorney general's investigation into child sexual abuse by Jerry Sandusky that were sent to or by the following individuals who were not employed by the OAG:

James Schultz  
Brian Nutt  
Todd Shamash  
Steven Aichele  
Jennifer Branstetter  
Kathleen Duffy Bruder  
Christopher Abruzzo  
William Ward  
Kevin Harley

Please note that references to "The Freeh Group" contained in this request are intended to include the law firm of Freeh, Sporkin & Sullivan and the firm Freeh International Solutions. While each entity is separate and distinct, they are commonly and collectively referred to as "The Freeh Group."

To demonstrate that your office has acted in good faith, and to reduce the possibility of an appeal, please provide a so-called "Vaughn Index" or other similar document in the event your office determines any requested records are exempt from disclosure.

Whenever possible, please provide any responsive records in an electronic format such as Adobe PDF, and send the records by e-mail to ryan@ryanbagwell.com.

I look forward to hearing from your office as soon as possible, but in any event within five business days as required by statute. Additionally, I ask that you correspond with me by e-mail or telephone instead of U.S. Postal Service mail.

Please don't hesitate to contact me with any questions. Thank you for your time.

Sincerely,

Ryan Bagwell  
608-466-6195  
ryan@ryanbagwell.com

The information transmitted is intended only for the person or entity to whom it is addressed and may contain confidential and/or privileged material. Any use of this information other than by the intended recipient is prohibited. If you receive this message in error, please send a reply e-mail to the sender and delete the material from any and all computers. Unintended transmissions shall not constitute waiver of any applicable attorney-client or any other applicable privilege. PA-OAG





COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF ATTORNEY GENERAL  
HARRISBURG, PA 17120

KATHLEEN G. KANE  
ATTORNEY GENERAL

January 22, 2014

15<sup>th</sup> Floor, Strawberry Square  
Harrisburg, PA 17120  
(717) 783-1111

Email: [ryan@ryanbagwell.com](mailto:ryan@ryanbagwell.com)

Ryan Bagwell  
5219 Shorecrest Drive  
Middleton, WI 53562

**Re: Right to Know Request**

Dear Mr. Bagwell:

This letter acknowledges receipt by the Office of Attorney General ("OAG") of your written request for records under the Pennsylvania Right-to-Know Law (65 P.S. §67.101 et seq.) ("RTKL"). Your request was received by the Right to Know Office on December 16, 2013. On December 23, 2013, you were notified that to the extent records may exist, a legal review was necessary to determine whether the requested records are subject to release under this act and the extent or nature of the request precludes a response within the required time period. This letter serves as a final response to your request. For purposes of this letter, the "identified records" are those in your email, as modified by any subsequent communications.

Your request, which is restated below is responded to as follows:

1. all letters, emails, memos, reports, transcripts, audio recordings and video recordings that were sent or received by OAG employees including, but not limited to, Frank Fina, Linda Kelly, Joe McGettigan, and Randy Feathers, between November 1, 2011 and December 31, 2012, and were sent from or to the following individuals: Louis Freeh, an employee of The Freeh Group; Omar Y. McNeil, an employee of The Freeh Group; Thomas Cloud, an employee of The Freeh Group; Gregory Paw, an employee of The Freeh Group; any other employee of The Freeh Group

OAG response dated 6/12/13, in response to your RTKL request received on 5/6/13 — requested letters, emails and memos that were sent or received July 13, 2012 through December 31, 2012, between employees of the OAG and the following individuals: 1. Louis Freeh; 2. Omar Y. McNeill; 3. Thomas Cloud of Freeh International Solutions,

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LLC; 4. Gregory Paw of Freeh International Solutions, LLC; 5. Employees of Freeh, Sporkin & Sullivan, LLP; 6. Employees of Freeh International Solutions, LLC; 7. other individuals whose email addresses contain the freehgroup.com domain.

Your request was granted in part; providing three (3) emails from October 31, 2012 and November 2, 2012, as the only records that were public. To the limited extent that additional documents existed, your request was denied pursuant to the Investigating Grand Jury Act, 42 Pa.C.S.A. §4541 et seq. and the RTKL, 65 P.S. §67.101 et seq., further noting that the modification of certain individual recipients and/or a time frame does not alter the nature of a record that has been established as a record that is precluded from disclosure as asserted in our 3/7/13 response.

OAG response dated 1/9/13, in response to your RTKL request received on 1/2/13 – requested all emails, letters, notes, transcripts, audio recordings, memorandums, contracts and agreements provided to or received from the law firm of Freeh, Sporkin & Sullivan and/or Freeh International Solutions in regard to the ‘Report of the Special Investigative Counsel Regarding the Actions of The Pennsylvania State University Related to the Child Sexual Abuse Committed by Gerald A. Sandusky.

As you may recall, your request for records related to a criminal investigation was denied pursuant to the Investigating Grand Jury Act, 42 Pa.C.S.A. §4541 et seq. and the RTKL, 65 P.S. §67.101 et seq. Furthermore, to the extent that you were seeking contracts and agreements to retain the services of the law firm of Freeh, Sporkin & Sullivan and/or Freeh International Solutions to conduct the independent investigation related to the Sandusky matter, the OAG did not hire the Freeh law firm or Freeh International Solutions and documents did not exist as agency records. 65 P.S. §67.705.

OAG response dated 3/7/13, in response to your RTKL request received on 12/12/12, denied on 12/19/12; remanded for additional review – requested letters, emails and memos that were sent and/or received between November 5, 2011, and July 12, 2012, between employees of the OAG and the following individuals: 1. Louis Freeh 2. Omar Y. McNeill 3. Ronald Tomalis 4. Kenneth C. Frazier 5. other individuals whose email addresses contain the freehgroup.com domain (i.e. [stevesmith@freehgroup.com](mailto:stevesmith@freehgroup.com))

Your request was granted in part; providing several records from June 2012 and July 2012 as the only records that were public. The remainder of your request was denied pursuant to the Investigating Grand Jury Act, 42 Pa.C.S.A. §4541 et seq. and the RTKL, 65 P.S. §67.101 et seq., stating that the modification of certain individual recipients and/or a time frame does not alter the nature of a record that has been established as a record that is precluded from disclosure.

**CURRENT RESPONSE:** Based on previous requests as stated above, item number 1 has been determined to be repetitive and to the extent that you have modified a time frame, only the modified portion of the time frame has been applied to the parameters for searching of responsive records as it pertains to the current request. 65 P.S. §67.506(a)(1). As a result,

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agency records for the time frame of November 1, 2011 through November 4, 2011 were searched and it has been determined that documents do not exist as agency records and we are not required to create a record. 65 P.S. §67.705. Previous denials based on the Investigating Grand Jury Act, 42 Pa.C.S.A. §4541 et seq. and the RTKL, 65 P.S. §67.101 et seq., still remain in force, again asserting that the modification of certain individual recipients and/or a time frame does not alter the nature of a record that has been established as a record that is precluded from disclosure.

2. all contracts, memorandums of understanding, engagement letters and agreements by any other nomenclature between the OAG and the Pennsylvania State University, its Board of Trustees and/or The Freeh Group that were signed between November 1, 2011, and December 31, 2013.

OAG response dated 8/14/13, in response to your RTKL request received on 7/8/13 – requested records that were sent to or received by the OAG between November 1, 2011, and July 6, 2013, to include all contracts, memorandums of understanding, engagement letters and other agreements with the Pennsylvania State University or its Board of Trustees, the law firm of Freeh, Sporkin & Sullivan and the private investigation firm Freeh International Solutions

Your request was denied pursuant to 65 P.S. §67.705; stating that the OAG had not entered into any type of agreement with the aforementioned entities and that records did not exist as records of this agency.

CURRENT RESPONSE: Based on the previous request as stated above, item number 2 has been determined to be a repetitive request and to the extent that you have modified a time frame, only the modified portion of the time frame has been applied to the parameters for searching of responsive records as it pertains to the current request. 65 P.S. §67.506(a)(1). As a result, agency records for the time frame of July 7, 2013 through December 31, 2013 were searched and it has been determined that records do not exist as agency records and we are not required to create a record. 65 P.S. §67.705.

As previously stated, the Office of Attorney General has not entered into an agreement with the aforementioned entities and therefore, records do not exist as records of this agency and we have no obligation to create any such records. This portion of your request is likewise denied pursuant to 65 P.S. §67.705.

3. all records of payments from the OAG to The Pennsylvania State University, its Board of Trustees and/or The Freeh Group between November 1, 2011, and December 31, 2013.

OAG response dated 8/14/13, in response to your RTKL request received on 7/8/13 – requested all records of monetary payments to: a. The Pennsylvania State University or

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its Board of Trustees; b. Freeh, Sporkin & Sullivan; Freeh International Solutions between November 1, 2011, and July 6, 2013

Your request was denied pursuant to 65 P.S. §67.705; stating that the OAG had not entered into any type of agreement with the aforementioned entities and that records did not exist as records of this agency.

**CURRENT RESPONSE:** Item number 3 has been determined to be insufficiently specific and is denied pursuant to 65 P.S. §67.703. Your request using the terms "all records of payments from the OAG" made to "Pennsylvania State University, its Board of Trustees and/or The Freeh Group" does not adequately describe a particular record, is lacking context and the OAG is precluded from narrowing a request in order to establish what records you are trying to obtain. Rather than guessing everything a request might conceivably encompass, the context of a request is a vital element in establishing specificity. *Montgomery County v. Iverson*, 50 A.3d 281 (Pa. Cmwlth. 2012). The purpose of the RTKL is for a requester to ask for a record that is clearly defined and easily identified allowing an agency to determine if the record sought is publicly available. *Pennsylvania State Police v. Office of Open Records*, 995 A.2d 515 (Pa. Cmwlth. 2010).

This part of your request has also been determined to be repetitive based on your previous request as stated above and is likewise denied pursuant to 65 P.S. §67.506(a)(1), in addition to 65 P.S. §67.705 as indicated in our 8/14/13 response.

4. all letters, memos, and e-mails sent to the OAG from The Freeh Group between November 1, 2011, and July 31, 2012 requesting information from the OAG.

OAG response dated 8/14/13, in response to your RTKL request received on 7/8/13 – requested all official requests for information from Freeh, Sporkin & Sullivan or Freeh International Solutions between November 1, 2011, and July 6, 2013

Your request was denied pursuant to 65 P.S. §67.705; stating that records did not exist as records of this agency.

OAG response dated 6/12/13, in response to your RTKL request received on 5/6/13 – requested letters, emails and memos that were sent or received July 13, 2012 through December 31, 2012, between employees of the OAG and the following individuals: 1. Louis Freeh; 2. Omar Y. McNeill; 3. Thomas Cloud of Freeh International Solutions, LLC; 4. Gregory Paw of Freeh International Solutions, LLC; 5. Employees of Freeh, Sporkin & Sullivan, LLP; 6. Employees of Freeh International Solutions, LLC; 7. other individuals whose email addresses contain the freehgroup.com domain.

Your request was granted in part; providing three (3) emails from October 31, 2012 and November 2, 2012, as the only records that were public. To the limited extent that additional documents existed, your request was denied pursuant to the Investigating Grand Jury Act, 42

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Pa.C.S.A. §4541 et seq. and the RTKL, 65 P.S. §67.101 et seq., further noting that the modification of certain individual recipients and/or a time frame does not alter the nature of a record that has been established as a record that is precluded from disclosure as asserted in our 3/7/13 response.

OAG response dated 1/9/13, in response to your RTKL request received on 1/2/13 – requested all emails, letters, notes, transcripts, audio recordings, memorandums, contracts and agreements provided to or received from the law firm of Freeh, Sporkin & Sullivan and/or Freeh International Solutions in regard to the ‘Report of the Special Investigative Counsel Regarding the Actions of The Pennsylvania State University Related to the Child Sexual Abuse Committed by Gerald A. Sandusky.

Your request for records related to a criminal investigation was denied pursuant to the Investigating Grand Jury Act, 42 Pa.C.S.A. §4541 et seq. and the RTKL, 65 P.S. §67.101 et seq. Furthermore, to the extent that you were seeking contracts and agreements to retain the services of the law firm of Freeh, Sporkin & Sullivan and/or Freeh International Solutions to conduct the independent investigation related to the Sandusky matter, the OAG did not hire the Freeh law firm or Freeh International Solutions and documents did not exist as agency records. 65 P.S. §67.705.

OAG response dated 3/7/13, in response to your RTKL request received on 12/12/12, denied on 12/19/12; remanded for additional review – requested letters, emails and memos that were sent and/or received between November 5, 2011, and July 12, 2012, between employees of the OAG and the following individuals: 1. Louis Freeh 2. Omar Y. McNeill 3. Ronald Tomalis 4. Kenneth C. Frazier 5. other individuals whose email addresses contain the freehgroup.com domain (i.e. [stevesmith@freehgroup.com](mailto:stevesmith@freehgroup.com))

Your request was granted in part; providing several records from June 2012 and July 2012 as the only records that were public. The remainder of your request was denied pursuant to the Investigating Grand Jury Act, 42 Pa.C.S.A. §4541 et seq. and the RTKL, 65 P.S. §67.101 et seq., stating that the modification of certain individual recipients and/or a time frame does not alter the nature of a record that has been established as a record that is precluded from disclosure.

CURRENT RESPONSE: Item number 4 has been determined to be insufficiently specific and is denied pursuant to 65 P.S. §67.703. Your request using the terms “all letters, memos, and e-mails sent to the OAG from The Freeh Group...requesting information from the OAG” does not adequately describe a particular record, lacking context. Likewise, the phrasing of the request lacks specificity because it is overly broad in the scope of documents sought, and is subject to multiple interpretations as to what you are asking for and the OAG is precluded from narrowing a request in order to establish what you are seeking. Rather than guessing everything a request might conceivably encompass, the context of a request is a vital element in establishing specificity. *Montgomery County v. Iverson*, 50 A.3d 281 (Pa. Cmwlth. 2012). The purpose of the RTKL is for a requester to ask for a record that is clearly defined and easily identified

January 22, 2014

allowing an agency to determine if the record sought is publicly available. *Pennsylvania State Police v. Office of Open Records*, 995 A.2d 515 (Pa. Cmwlth. 2010).

Moreover, in order to determine what you are seeking, this agency would have to perform a considerable amount of research and analysis to locate and identify legal documents that are responsive to your request, which we have no obligation to perform in order to respond to a RTKL request. Your request lacks specificity on the additional basis that it necessitates research and analysis to ascertain what documents are being requested in addition to determining whether a particular document is responsive to the request. This portion of your request is also denied pursuant to 65 P.S. §67.703. *Askew v. Pa. Office of Governor*, 65 A.3d 989 (Pa. Cmwlth. 2013).

This part of your request has also been determined to be repetitive based on previous requests as stated above and is denied pursuant to 65 P.S. §67.506(a)(1), in addition to 65 P.S. §67.705, the Investigating Grand Jury Act, 42 Pa.C.S.A. §4541 et seq. and the RTKL, 65 P.S. §67.101 et seq., based upon prior responses.

5. any replies to requests for information as described in item no. 4 (above), and all internal correspondence concerning the fulfillment of such requests.

OAG response dated 8/14/13, in response to your RTKL request received on 7/8/13 – requested all official requests for information from Freeh, Sporkin & Sullivan or Freeh International Solutions between November 1, 2011, and July 6, 2013

Your request was denied pursuant to 65 P.S. §67.705; stating that records did not exist as records of this agency.

OAG response dated 6/12/13, in response to your RTKL request received on 5/6/13 – requested letters, emails and memos that were sent or received July 13, 2012 through December 31, 2012, between employees of the OAG and the following individuals; 1. Louis Freeh; 2. Omar Y. McNeill; 3. Thomas Cloud of Freeh International Solutions, LLC; 4. Gregory Paw of Freeh International Solutions, LLC; 5. Employees of Freeh, Sporkin & Sullivan, LLP; 6. Employees of Freeh International Solutions, LLC; 7. other individuals whose email addresses contain the freehgroup.com domain.

Your request was granted in part; providing three (3) emails from October 31, 2012 and November 2, 2012, as the only records that were public. To the limited extent that additional documents existed, your request was denied pursuant to the Investigating Grand Jury Act, 42 Pa.C.S.A. §4541 et seq. and the RTKL, 65 P.S. §67.101 et seq., further noting that the modification of certain individual recipients and/or a time frame does not alter the nature of a record that has been established as a record that is precluded from disclosure as asserted in our 3/7/13 response.

January 22, 2014

OAG response dated 1/9/13, in response to your RTKL request received on 1/2/13 – requested all emails, letters, notes, transcripts, audio recordings, memorandums, contracts and agreements provided to or received from the law firm of Freeh, Sporkin & Sullivan and/or Freeh International Solutions in regard to the 'Report of the Special Investigative Counsel Regarding the Actions of The Pennsylvania State University Related to the Child Sexual Abuse Committed by Gerald A. Sandusky.

Your request for records related to a criminal investigation was denied pursuant to the Investigating Grand Jury Act, 42 Pa.C.S.A. §4541 *et seq.* and the RTKL, 65 P.S. §67.101 *et seq.* Furthermore, to the extent that you were seeking contracts and agreements to retain the services of the law firm of Freeh, Sporkin & Sullivan and/or Freeh International Solutions to conduct the independent investigation related to the Sandusky matter, the OAG did not hire the Freeh law firm or Freeh International Solutions and documents did not exist as agency records. 65 P.S. §67.705.

OAG response dated 3/7/13, in response to your RTKL request received on 12/12/12, denied on 12/19/12; remanded for additional review – requested letters, emails and memos that were sent and/or received between November 5, 2011, and July 12, 2012, between employees of the OAG and the following individuals: 1. Louis Freeh 2. Omar Y. McNeill 3. Ronald Tomalis 4. Kenneth C. Frazier 5. other individuals whose email addresses contain the freehgroup.com domain (i.e. [stevesmith@freehgroup.com](mailto:stevesmith@freehgroup.com))

Your request was granted in part; providing several records from June 2012 and July 2012 as the only records that were public. The remainder of your request was denied pursuant to the Investigating Grand Jury Act, 42 Pa.C.S.A. §4541 *et seq.* and the RTKL, 65 P.S. §67.101 *et seq.*, stating that the modification of certain individual recipients and/or a time frame does not alter the nature of a record that has been established as a record that is precluded from disclosure.

CURRENT RESPONSE: Item number 5 has been determined to be insufficiently specific and is denied pursuant to 65 P.S. §67.703. Your request using the terms "any replies to requests for information as described in item no. 4 (above), and all internal correspondence concerning the fulfillment of such requests" does not adequately describe a particular record, lacking context. Likewise, the phrasing of the request lacks specificity because it is overly broad in the scope of documents sought, and is subject to multiple interpretations as to what you are asking for and the OAG is precluded from narrowing a request in order to establish what you are seeking. Rather than guessing everything a request might conceivably encompass, the context of a request is a vital element in establishing specificity. *Montgomery County v. Iverson*, 50 A.3d 281 (Pa. Cmwlth. 2012). The purpose of the RTKL is for a requester to ask for a record that is clearly defined and easily identified allowing an agency to determine if the record sought is publicly available. *Pennsylvania State Police v. Office of Open Records*, 995 A.2d 515 (Pa. Cmwlth. 2010).

January 22, 2014

Moreover, in order to determine what you are seeking, this agency would have to perform a considerable amount of research and analysis to locate and identify legal documents that are responsive to your request, which we have no obligation to perform in order to respond to a RTKL request. Your request lacks specificity on the additional basis that it necessitates research and analysis to ascertain what documents are being requested in addition to determining whether a particular document is responsive to the request. This portion of your request is also denied pursuant to 65 P.S. §67.703. *Askew v. Pa. Office of Governor*, 65 A.3d 989 (Pa. Cmwlth. 2013).

This part of your request has also been determined to be repetitive based on previous requests as stated above and is denied pursuant to 65 P.S. §67.506(a)(1), in addition to 65 P.S. §67.705, the Investigating Grand Jury Act, 42 Pa.C.S.A. §4541 et seq. and the RTKL, 65 P.S. §67.101 et seq., based upon prior responses.

Furthermore, to the extent internal correspondence exists, this portion of your request is also denied pursuant to section 708(b) of the RTKL, which states "[a] record that reflects the internal, predecisional deliberations of an agency, its members, employees or officials or predecisional deliberations between agency members, employees or officials and members, employees or officials of another agency, including predecisional deliberations relating to a...[c]ontemplated or proposed policy or course of action or any research, memos or other documents used in the predecisional deliberations" are precluded from disclosure. 65 P.S. §67.708(b)(10)(i)(A).

6. all letters, memos, e-mails, reports and other correspondence between OAG employees and employees of the National Collegiate Athletic Association and/or the Big Ten Conference between November 1, 2011, and December 31, 2012.

OAG response dated 8/14/13, in response to your RTKL request received on 7/8/13 – requested all letters, memos, e-mails and other correspondence between OAG employees and employees of the National Collegiate Athletic Association (the "NCAA") regarding investigations of child sexual abuse or the failure to report allegations of sexual abuse to appropriate law enforcement agencies between November 1, 2011, and July 6, 2013

Your request was denied pursuant to 65 P.S. §67.705; having determined that records did not exist as records of this agency, having no obligation to create any such records.

CURRENT RESPONSE: Item number 6 has been determined to be insufficiently specific and is denied pursuant to 65 P.S. §67.703. Your request for "all letters, memos, e-mails, reports and other correspondence between OAG employees and employees of the National Collegiate Athletic Association and/or the Big Ten Conference" does not effectively describe a particular record. Likewise, the phrasing of the request lacks specificity because it is overly broad in the scope of documents sought, lacking identified recipients and context, and is subject to multiple interpretations as to what you are asking for and the OAG is precluded from narrowing a request in order to establish what you are seeking. Rather than guessing everything a request might



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conceivably encompass, the context of a request is a vital element in establishing specificity. *Montgomery County v. Iverson*, 50 A.3d 281 (Pa. Cmwlth. 2012). The purpose of the RTKL is for a requester to ask for a record that is clearly defined and easily identified allowing an agency to determine if the record sought is publicly available. *Pennsylvania State Police v. Office of Open Records*, 995 A.2d 515 (Pa. Cmwlth. 2010).

Moreover, in order to determine what you are seeking, this agency would have to perform a considerable amount of research and analysis to locate and identify legal documents that are responsive to your request, which we have no obligation to perform in order to respond to a RTKL request. Your request lacks specificity on the additional basis that it necessitates research and analysis to ascertain what documents are being requested in addition to determining whether a particular document is responsive to the request. This portion of your request is also denied pursuant to 65 P.S. §67.703. *Askew v. Pa. Office of Governor*, 65 A.3d 989 (Pa. Cmwlth. 2013).

This part of your request has also been determined to be repetitive based on your previous request as stated above and is likewise denied pursuant to 65 P.S. §67.506(a)(1), in addition to 65 P.S. §67.705 as indicated in our 8/14/13 response.

7. all e-mails between former prosecutor Frank Fina and former supervising grand jury judge Barry Feudale sent or received between January 1, 2011, and December 31, 2012.

CURRENT RESPONSE: Item number 7 has been determined to be insufficiently specific and is denied pursuant to 65 P.S. §67.703. Your request for "all e-mails...sent or received between January 1, 2011 and December 31, 2012" does not adequately describe a particular record. The request lacks specificity because it is overly broad in the scope of documents sought, without a subject matter or specified context, and is open to multiple interpretations as to what you are asking for and the OAG is precluded from narrowing a request in order to establish what you are seeking. Rather than guessing everything a request might conceivably encompass, the context of a request is a vital element in establishing specificity. *Montgomery County v. Iverson*, 50 A.3d 281 (Pa. Cmwlth. 2012). The purpose of the RTKL is for a requester to ask for a record that is clearly defined and easily identified allowing an agency to determine if the record sought is publicly available. *Pennsylvania State Police v. Office of Open Records*, 995 A.2d 515 (Pa. Cmwlth. 2010).

Despite that item number 7 of your request has been considered insufficiently specific, making an effective search for responsive emails challenging without having a subject matter in which to focus a search, one (1) email from former supervising grand jury judge Barry Feudale to former prosecutor Frank Fina dated May 19, 2012, has been located and deemed responsive. Therefore, this part of your request is partially granted. Attached to this response is a copy of the aforementioned email wherein former supervising grand jury Judge Feudale's personal email address has been redacted as allowed pursuant to section 708(b) which states the following

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personal identification information including, but not limited to, "[a] record containing...[p]ersonal email addresses..." is precluded from disclosure. 65 P.S. §67.708(b)(6)(i)(A).

Also, the transcript attachment has not been provided, which is protected from disclosure pursuant to the Investigating Grand Jury Act, 42 Pa.C.S.A. §4541 *et seq.* and the RTKL, 65 P.S. §67.101 *et seq.* The Investigating Grand Jury Act states "[d]isclosure of matters occurring before the grand jury other than its deliberations and the vote of any juror may be made to the attorneys for the Commonwealth for use in the performance of their duties. The attorneys for the Commonwealth may with the approval of the supervising judge disclose matters occurring before the investigating grand jury including transcripts of testimony to local, State, other state or Federal law enforcement or investigating agencies to assist them in investigating crimes under their investigative jurisdiction. Otherwise a juror, attorney, interpreter, stenographer, operator of a recording device, or any typist who transcribes recorded testimony may disclose matters occurring before the grand jury only when so directed by the court. All such persons shall be sworn to secrecy, and shall be in contempt of court if they reveal any information which they are sworn to keep secret." 42 Pa.C.S.A. §4549(b).

Equally excluded from disclosure is "[a] record of an agency relating to or resulting in a criminal investigation, including complaints of potential criminal conduct other than a private criminal complaint; investigative materials, notes, correspondence, videos and reports . . . [a] record that includes information made confidential by law or court order or . . . [a] record that, if disclosed, would . . . [r]eveal the institution, progress or result of a criminal investigation, except the filing of criminal charges . . ." 65 P.S. §67.708(b)(16)(i), (ii), (iv) and (vi)(A). *Galloway v. Office of Pennsylvania Attorney General*, 63 A.3d 485 (Pa. Cmwlth. 2013); *Pennsylvania State Police v. Office of Open Records*, 5 A.3d 473 (Pa. Cmwlth. 2010).

8. a letter sent to former attorney general Linda Kelly from John A. Askew on or about January 13, 2012 concerning Louis Freeh. This letter was carbon copied to the state police commissioner and recorded in the commissioner's office correspondence log under #41482.

CURRENT RESPONSE: Item number 8 is denied pursuant to 65 P.S. §67.705. A search for a letter from John A. Askew to former Attorney General Linda Kelly on or about January 13, 2012 concerning Louis Freeh was conducted and we do not have record of receiving this communication. As we are unable to ascertain the location of any such letter, we cannot provide a record that, to the best of our knowledge, does not exist as a record of this agency.

9. all e-mails sent or received between January 1, 2011, and December 31, 2012, concerning the attorney general's investigation into child sexual abuse by Jerry Sandusky that were sent to or by the following individuals who were not employed by the OAG: James Schultz, Brian Nutt, Todd

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Shamash, Steven Aichele, Jennifer Branstetter, Kathleen Duffy Bruder, Christopher Abruzzo, William Ward [and] Kevin Harley"

CURRENT RESPONSE: Item number 9 is denied pursuant to 65 P.S. §67.705. A search for documents as described above was conducted and it has been determined that emails responsive to the above-referenced request do not exist as agency records and we are not required to create a record.

**RIGHT TO APPEAL**

YOU HAVE THE RIGHT TO CHALLENGE THIS RESPONSE TO YOUR REQUEST. IN ORDER TO DO SO, YOU MUST FILE YOUR APPEAL WITH THE RIGHT TO KNOW APPEALS OFFICER, OFFICE OF ATTORNEY GENERAL WITHIN FIFTEEN (15) BUSINESS DAYS OF THE MAILING DATE OF THIS LETTER. YOUR APPEAL SHALL INCLUDE A COPY OF YOUR REQUEST, A COPY OF THIS AGENCY'S RESPONSE, STATE THE GROUNDS UPON WHICH YOU CLAIM THAT YOUR REQUEST SHOULD NOT HAVE BEEN DENIED IN PART AND SHALL ADDRESS ANY REASON STATED BY THIS AGENCY FOR PARTIALLY DENYING THE REQUEST. YOUR APPEAL MUST BE ADDRESSED TO THE FOLLOWING:

RIGHT TO KNOW APPEALS OFFICER  
OFFICE OF ATTORNEY GENERAL  
16<sup>TH</sup> FLOOR STRAWBERRY SQUARE  
HARRISBURG, PA 17120

Please note that this response is being sent from an unmonitored site. Do not reply to this email. By providing the above response to you, the Office of Attorney General has satisfied its obligation to respond under the statutory requirements of the RTKL.

Sincerely,



Robert A. Mülle  
Chief Deputy Attorney General  
Right to Know Officer

RAM:mlm  
SR-53877-DHKS  
Attachment

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**From:** Barry F Feudale  
**Sent:** Saturday, May 19, 2012 10:06 AM  
**To:** Fina, Frank G.  
**Subject:** Fw: Transcript  
**Attachments:** 051812GJ.PRN; 051812GJ.docx

Here you go Frank. Will you forward it to Rominger and Amendola since I dont have their e mail. Barry

----- Original Message -----

**From:** Shannon Manderbach

**To:** Judge Feudale

**Sent:** Saturday, May 19, 2012 1:40 AM

**Subject:** Transcript

Hi Judge,

Here is the transcript.

I'm sending it in prn format and also Word, just in case you have any trouble opening the prn.

See you Monday,  
Shannon