

REQUEST TO PARTICIPATE AS DIRECT INTEREST PARTY

Please accept this as a Request to participate as a 3rd party with a direct interest in a currently pending appeal before the Office of Open Records pursuant to 65 P.S. § 67.1101(c). I hereby make the following statements under penalty of perjury as more fully set forth in 18 Pa.C.S. § 4904.

Today's date: February 14, 2014

OOR Docket No: 2014 - 0205

Name of Direct Interest Participant Information: The Pennsylvania State University

Address/City/State/Zip The Office of General Counsel, 227 West Beaver Avenue, Suite 507, State College, PA 16801

Telephone/Fax Number: 814-867-4088 / 814-863-8469

E-mail kma13@psu.edu

Date you received actual notice of the appeal: February 10, 2014

Name of Requester: Ryan Bagwell

Address/City/State/Zip 5219 Shore Crest Drive, Middletown, WI 53562

Telephone/Fax Number: 608-466-6195 /

E-mail ryan@ryanbagwell.com

Name of Agency: Pennsylvania Department of Education

Address/City/State/Zip 333 Market Street, 15th Floor, Harrisburg, PA 17126

Telephone/Fax Number: (717) 787-5380 / (717) 772-2317

E-mail RA-RTK-Education@pa.gov; kfeuchtenb@pa.gov

Record at issue: See attached

Statement of Direct Interest:

I have a direct interest in the record(s) at issue as:

☐

employee of the agency

☐

containing confidential or proprietary information or trademarked records

☐

contractor or vendor

☒

Other: (attach additional pages if necessary) Please see attached

Explain how the information you will submit in this appeal is probative to the final determination in support of the Requester's or Agency's position (attach additional pages if necessary)

Please see attached

☐

I have attached a copy of my position statement to be included in the Office's final determination.

Respectfully submitted,

Katherine M. Allen

(must be signed)

Please submit this form the Appeals Officer assigned to the appeal. Remember to copy all parties on this correspondence. The Office of Open Records will not consider direct interest filings submitted after a Final Determination has been issued in the appeal.



February 14, 2014

**VIA ELECTRONIC MAIL
AND REGULAR MAIL**

Appeals Officer Kyle Applegate, Esquire
Commonwealth of Pennsylvania
Office of Open Records
Commonwealth Keystone Building
400 North Street, Plaza Level
Harrisburg, PA 17120-0225
(kyapplegat@pa.gov)

**Re: Request of The Pennsylvania State University to Participate in Appeal;
Bagwell v. Pennsylvania Department of Education, Docket # AP 2014-0205**

Dear Appeals Officer Applegate:

Pursuant to Section 1101(c) of the Pennsylvania Right-to-Know Law ("RTKL"), 65 P.S. § 67.1101(c), The Pennsylvania State University ("Penn State"), hereby requests to participate in the above-captioned appeal as a party with a direct interest. Penn State maintains that some or all of the records subject to this appeal must be withheld in their entirety pursuant to the attorney-client privilege and attorney work product doctrine and statutory exceptions including 65 P.S. §§ 67.102, 67.305(a), 67.708(b)(10)(i), and possibly others. As an interested party, Penn State further requests a brief period of time in which to file information and legal argument in support of its position.

On February 10, 2014, Penn State became aware of the above-docketed appeal when the Department of Education emailed a copy of Mr. Bagwell's appeal documents to Penn State's Office of General Counsel. Thus, Penn State's request to participate in the appeal and provide further information and legal argument is timely and appropriate. 65 P.S. § 1101(c)(2).

Penn State Has a Direct Interest in the Records Subject to Appeal

Section 1101 (c) of the RTKL provides that a person "with a direct interest in the record subject to an appeal" may request to participate in the appeal as a party. 65 P.S. § 67.1101(c). A "direct interest" is "an interest of a person other than the requester or agency that may be directly

affected and that is not adequately represented by existing parties.” Office of Open Records Appeal Process - Interim Guidelines Section I(A)(8).

The requests subject to this appeal appear to seek privileged communications between Penn State’s Board of Trustees and attorneys retained by the University. Disclosure of any such documents risks violation of the attorney/client privilege and/or the attorney work product privilege protecting Penn State.

As a result, Penn State has an interest that is directly affected by this appeal. Moreover, Penn State’s interest in preventing disclosure of its confidential and protected information cannot be adequately represented by the Department of Education. The Department of Education itself does not have a direct stake in such information and Penn State is the more appropriate party to explain how Penn State would be harmed if some or all of the records subject to this appeal were to be disclosed.

Penn State has not yet received or reviewed the documents that may be subject to the appeal, but bases this request to participate on the scope of the requests.

Conclusion

In light of the foregoing, Penn State respectfully requests that Appeals Officer Applegate (1) grant this request to participate as a party with a direct interest; and (2) provide a reasonable amount of time for Penn State to file a statement of information and legal arguments in support of its position.

Respectfully submitted,



Katherine M. Allen
Associate General Counsel

cc: Ryan Bagwell (ryan@ryanbagwell.com)
Karen S. Feuchtenberger, Senior Assistant Counsel, Pennsylvania Department
Of Education
Larry McComsey, Agency Open Records Officer, Pennsylvania Department of
Education