



February 20, 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: Reply of The Pennsylvania State University to Mr. Bagwell's Opposition to  
its Request to Participate; Bagwell v. Pennsylvania Department of  
Education, Docket # AP 2014-0205**

Dear Appeals Officer Applegate:

On behalf of The Pennsylvania State University ("Penn State"), I am writing in reply to Mr. Bagwell's February 17, 2014, letter objecting to Penn State's request to participate in the above-referenced appeal. The arguments set forth in Mr. Bagwell's letter have no merit.

First, Mr. Bagwell incorrectly states that the Pennsylvania Department of Education ("Department") "made no attempt to locate the records sought in items 1 through 4" of his original request. To the contrary, the Department stated in its February 4, 2014 letter to Mr. Bagwell that it had searched for records responsive to the Department's interpretation of his insufficiently specific request and located at least two documents. The Department denied Mr. Bagwell's request with respect to the document that is subject to the attorney-client privilege and/or attorney work product doctrine. Penn State is the holder of this privilege and is in the best position to offer evidence and argument as to why this document and any other privileged information that may be later identified is not a public record under Pennsylvania's Right-to-Know Law ("RTKL"). Mr. Bagwell's statement that "[n]othing in the record suggests that [Penn State] has a direct interest in any of the records sought," ignores the Department's February 4, 2014 response.

Second, Mr. Bagwell contends that Penn State can provide “no probative information” with respect to his item 5 request to the Department. Item 5 is Mr. Bagwell’s request for Conflict of Interest forms submitted by certain Penn State trustees to the Penn State Board of Trustees (“Penn State Board”) in 2013. In his appeal, Mr. Bagwell asserts that, to the extent that the Department provided requested records to Penn State, but no longer possesses the records, former Department Secretaries, as former members of the Penn State Board, have some right or obligation to retrieve the records under the RTKL. To suggest that Penn State has no interest in this issue or probative information to provide is naïve, at best. Penn State has a direct interest in correcting Mr. Bagwell’s mistaken understanding of both statutory law and the rights and duties of Penn State Board members. Penn State respectfully requests that you grant its request to participate in the above-referenced appeal.

Respectfully submitted,



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Associate General Counsel

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