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COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

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Re: Right to Know Appeal

Dear Mr. Bonn:

Your client, Ryan Bagwell, has appealed from the January 22, 2014 written denial by the Right to Know Law (RTKL) Officer at the Office of Attorney General (OAG) regarding Mr. Bagwell's December 14, 2013 request for certain records related to communications between OAG and the Special Investigative Counsel for Pennsylvania State University about Gerald Sandusky's child abuse crimes (Louis Freeh and the Freeh Group). Mr. Bagwell's appeal was received by the RTKL Appeals Officer at OAG on February 12, 2014.

Mr. Bagwell limited his appeal to one of his original nine requests for records. Specifically, that one request asked for:

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.

Prior related RTKL requests from Mr. Bagwell, all detailed in the RTKL Officer's January 22, 2014 letter, provided Mr. Bagwell with certain communications. Specifically, he received copies of three emails from October 31, 2012 and November 2, 2012, and several records from June 2012 and July 2012, as the only records that were public and relevant to his request for communications between OAG and the Freeh Group.

In addition, Mr. Bagwell was advised in his prior related RTKL requests that since the OAG did not hire the Freeh law firm or Freeh International Solutions, other requested records (such as payment records) did not exist as agency records and thus could not be provided.

In his January 22, 2014 letter, the RTKL Officer deemed Mr. Bagwell's current RTKL request as repetitive except for the time period of November 1, 2011 and November 4, 2011. That was a new and additional period of time not included in the prior RTKL requests. As a result, agency records for this time period were searched but no documents existed as agency records and since an agency is not required to create a record, 65 P.S. §67.705, no records were produced.¹

Among the many issues Mr. Bagwell raises in his instant appeal, one concerns a matter that post-dates the RTKL decision in the matter *sub judice* and that is the Attorney General's press release on February 15, 2014 which provided a status report on her review of the prior Attorney Generals' investigation of Gerald Sandusky. In that communication, Attorney General Kane disclosed that OAG had developed a process to recover OAG emails relevant to the period of the Sandusky investigation and prosecution. Previously it had been believed that OAG emails for this period of time had been permanently removed and were unrecoverable.

This process of email recovery is ongoing and is expected to be completed in six weeks time. Accordingly, with the consent of counsel, I will remand this matter to the RTKL Officer with instructions to search among the recovered computer records for emails between former and current OAG employees Frank Fina, Linda Kelly, Joe McGettigan, and Randy Feathers, and the Freeh Group employees Louis Freeh, Omar Y. McNeil, Thomas Cloud, and Gregory Paw for the period 11/1/2011 and 12/31/2012. This remand is made, however, with the express understanding that OAG retains the right to examine said emails to determine if exemptions under the RTKL apply to such records and to assert such exemptions if appropriate. The RTKL Officer shall disclose any records that are not exempt or issue an explanation why withheld records are exempt no later than April 23, 2014. Accordingly, and with the consent of counsel, my time to review this decision is extended to May 23, 2014.

Very truly yours,



LINDA DALE HOFFA
Senior Executive Deputy Attorney General
Right to Know Appeals Officer

¹ 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.*, were found by the RTKL Officer as remaining in force, asserting that the modification of certain individual recipients and/or a time frame did not alter the nature of a record that had been established as a record that is precluded from disclosure.