



December 5, 2013

**VIA ELECTRONIC MAIL
AND REGULAR MAIL**

Appeals Officer J. Chadwick Schnee, Esquire
Commonwealth of Pennsylvania
Office of Open Records
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225
jschnee@pa.gov

**Re: Bagwell v. Pennsylvania Department of Education, Docket #AP 2013-1753;
Response of The Pennsylvania State University**

Dear Appeals Officer Schnee:

Pursuant to your email dated November 12, 2013 and in response to Mr. Bagwell's additional evidence and argument submitted on November 22, 2013, The Pennsylvania State University ("Penn State" or "University"), hereby files the following additional evidence and arguments in the above-captioned appeal.

BACKGROUND

Pursuant to Section 1101(c) of the Pennsylvania Right-to-Know Law ("RTKL"), 65 P.S. § 67.1101(c), Penn State is a party with a direct interest. As set forth in its submission dated October 11, 2013, Penn State contends that most of the records subject to this appeal must be withheld in their entirety pursuant to statutory exceptions, including 65 P.S. §§ 67.102, 67.305, 67.708(b)(10)(i) and 67.708(b)(17). In that submission, including the affidavit of Frank Guadagnino and attached exhibits, the University specifically identifies which exceptions it believes apply to each of the documents at issue on appeal. Penn State fully incorporates its previously filed evidence and argument.

In his November 22, 2013 letter, Mr. Bagwell challenges the application of the attorney-client privilege and attorney-work product doctrine as well as the noncriminal investigation exception. In this submission, Penn State will only respond to Mr. Bagwell's most recent arguments.

ARGUMENT

Attorney-Client Privilege and Attorney-Work Product Doctrine

Mr. Bagwell asserts three reasons for why he contends that the attorney-client privilege or the attorney-work product doctrine does not apply to any documents at issue on appeal. All of Mr. Bagwell's arguments on this issue are meritless.

First, Mr. Bagwell contends that Penn State has not shown that it invoked the attorney-client privilege as to any particular document. To the contrary, Penn State provided a detailed index with its previous submission which identified each document for which it claimed the attorney-client privilege and/or attorney-work product privilege applies. *See* Appendix 1 to October 11, 2013 letter from Allen to Schnee ("Original Submission"). Penn State also provided an affidavit from Frank Guadagnino, legal counsel to the University, explaining the attorney-client relationship between Penn State and external legal counsel including the law firms of Reed Smith LLP, Lanny Davis and Associates and Freeh Sporkin & Sullivan LLP ("FSS") and attached a copy of the engagement letter between the University and FSS. *See* Affidavit of Frank Guadagnino dated October 11, 2013 ("Guadagnino Affidavit") and Exhibit 4 thereto. It is well established that that the right to assert the attorney-client privilege belongs to the client, but may be raised by the client's attorney. *See Fisher v. U.S.*, 425 U.S. 391, 402 n. 8 (1976) ("[I]t is universally accepted that the attorney-client privilege may be raised by the attorney.").

Penn State contends that it has already properly invoked the attorney-client privilege and attorney-work product doctrine in its Original Submission. However, to avoid any confusion, Penn State files the attached Index, which updates Appendix 1 attached to its Original Submission by adding bates numbers for each document. In the Index, Penn State identifies those documents at issue for which it claims the attorney-client privilege and/or attorney-work product apply. In addition, Penn State files the attached Affidavit of Janine S. Andrews, Director of the Office of the Board of Trustees and Associate Secretary to the University's Board. Based on her position as custodian of the minutes and records of the Board, Ms. Andrews confirms her understanding that the University, through the Board, hired a number of external law firms to serve as legal counsel and to provide legal advice to the University. Further, Ms. Andrews confirms her understanding that the University, through the Board, has taken no action to waive the privilege as to any of the documents on the attached Index.

Second, Mr. Bagwell contends that the communications contained in the documents subject to appeal were not made for the purpose of securing a legal opinion, legal services or legal assistance. He relies on a portion of the engagement letter between the University and FSS for this bald assertion. Contrary to Mr. Bagwell's position, the engagement letter

expressly provides that FSS is being engaged “as independent external legal counsel” and that the work and advice provided by FSS under the engagement “is subject to the confidentiality and privilege protection of the attorney-client and attorney work product privileges, unless appropriately waived by the parties or otherwise determined by law.” See Exhibit 4 to Original Submission at paragraph 6. Moreover, as part of the legal advice to be offered by FSS, the engagement letter states that “[t]he report will also provide recommendations to the Task Force and Trustees for actions to be taken to attempt to ensure that those and similar failures do not occur again.” *Id.* at paragraph 1. When read in its entirety, the engagement letter is very clear that FSS was engaged as counsel to provide legal advice and as counsel to conduct an independent investigation as part of providing that legal advice. Mr. Bagwell’s suggestion that FSS cannot perform both functions is erroneous. Courts recognize that investigations conducted by attorneys or their agents in order to provide informed legal advice is still protected by the attorney-client privilege. See e.g., *Com. v. Noll*, 443 Pa. Super. 602, 607-08, 662 A.2d 1123 (1995). Confidential communications between the attorney and client during the course of the investigation do not lose privileges simply because they consist of purely factual information. See *Gould v. City of Aliquippa*, 750 A.2d 934, 937-38 (Pa. Cmwlth. 2000) (written summaries of factual events produced by client’s attorney from witness interviews and interviews with city employees regarding factual events were all protected by attorney-client privilege) and *Upjohn Co. v. U.S.*, 449 U.S. 383 (1981) (questionnaires completed by employees at the request of corporate counsel during an internal investigation are privileged communications).

Third, Mr. Bagwell contends that the University somehow waived its attorney-client privilege regarding all communications with FSS because of a non-specific statement made by Gene Marsh, external legal counsel for Penn State with respect to matters involving the National Collegiate Athletic Association (“NCAA”). To the contrary, as set forth in Ms. Andrews’s affidavit, the University has not waived any privileges with respect to the documents identified on the attached Index. Moreover, it is the University’s understanding that the communications between FSS and representatives of the NCAA or the Big Ten Conference consisted of periodic updates related to the process and progress of the investigation by FSS or discussions of publicly available information and further, that FSS communicated no information, either verbal or written, to NCAA or Conference representatives that was or was intended to be protected by the attorney-client privilege or attorney-work product doctrine held by the University. See Supplemental Affidavit of Frank Guadagnino dated December 5, 2013, attached hereto. Neither the FSS communications to the NCAA nor any other evidence suggests or supports a conclusion that the University waived the attorney-client privilege as to the documents at issue. Further, as stated in the University’s Original Submission, the attorney-client privilege with respect to the documents at issue belongs to the University, not to any individual member of the Board or to the Pennsylvania Department of Education. Only the University may properly consent to a waiver of its attorney-client privilege. See Guadagnino Affidavit at ¶13 attached to Original Submission.

As the University argued in its Original Submission, the attorney-work product doctrine or privilege is closely related to the attorney-client privilege, but is broader and protects any material, regardless of whether it is confidential, prepared by the attorney in anticipation of litigation, as well as the mental impressions, conclusions, opinions, memoranda, notes, summaries, legal research or legal theories of a party's attorney. *Gillard v. AIG Insurance Co.*, 609 Pa. 65, 89, 15 A.3d 44, 59 n. 16 (2011), *citing* Pa.R.Civ.P. 4003.3 and *Nat'l R.R. Passenger Corp. v. Fowler*, 788 A.2d 1053, 1065 (Pa. Cmwlth. 2001). Mr. Bagwell does not address application of the attorney-work product doctrine in his November 22, 2013 submission. The attached Index identifies those documents which the University contends are protected by the attorney-client privilege and/or the attorney-work product privilege. As such, they are not public records under 65 P.S. § 67.305 and should not be disclosed under the RTKL.

Noncriminal Investigation Exception

Mr. Bagwell contends that the noncriminal investigation exception set forth in section 708(b)(17) of the RTKL does not apply to the documents at issue on appeal because the exception applies only to investigations conducted as part of an agency's official duties and Penn State is not an agency. As Penn State previously argued in its Original Submission, nothing in the plain language of the noncriminal investigation exception requires that the investigation be conducted by a Commonwealth agency. 65 P.S. § 67.708(b)(17). In addition, "the plain language of each section of a statute must be read in conjunction with one another, construed with reference to the entire statute." *Bowling v. Office of Open Records*, 75 A.3d 453, 466 (Pa. 2013). The presumption is that the legislature did not intend "a result that is absurd, impossible of execution, or unreasonable." *Id.* The RTKL specifically addresses the parameters of information that state-related institutions must publicly provide in Chapter 15 of the statute. To agree with Mr. Bagwell's position that Penn State's documents shared with its *ex officio* Board members who are agency Secretaries are public records, but that the exemptions in section 67.708 do not apply because Penn State is not an "agency," would allow an individual requester like Mr. Bagwell to make an end run around the statutory limitations on access to records of state-related institutions. The documents at issue are either agency records or they are not. To the extent that they are agency records, then the exceptions applied to agency records under the RTKL should apply. Any other reading of the RTKL leads to an absurd, and therefore impermissible, result.

Mr. Bagwell makes no attempt to address the rule of statutory construction set forth in *Bowling*. In addition, he mistakenly interprets Penn State's position as suggesting that it should be considered as an agency under the RTKL. To the contrary, Penn State is clearly defined as a state-related institution in Chapter 15 of the RTKL. However, to the extent that Penn State's confidential Board of Trustee documents become public records simply because they are in the possession of a Board member who also serves as Secretary to the

Appeals Officer J. Chadwick Schnee, Esquire
December 5, 2013
Page 5

Pennsylvania Department of Education, the noncriminal investigation exception should apply. Penn State's position is neither hypocritical nor in conflict with the intent and language of the RTKL.

Finally, Mr. Bagwell argues that the noncriminal investigation exemption does not apply to the documents at issue because conducting an investigation is not part of Penn State's official duties. That is an absurd proposition. The University's corporate charter provides that the institution "shall be under the management and government of the Board of Trustees." See Exhibit 1 to Original Submission, p. C-1. In addition, under the charter, the Board has the power to "pass all such bylaws, ordinances, and rules as the good government of the institution shall require . . . and perform all such administrative acts as are usually performed by and within the appropriate duty of a Board of Trustees." *Id.*, p. C-7. Organizations routinely perform investigations with respect to their own finances and operations, through internal and external auditors, consultants and in-house and external counsel, as a matter of good corporate practice pursuant to the general authority given to the managers of such organizations. It is simply wrong to suggest, as Mr. Bagwell does, that it is not within the scope of the Board of Trustees' oversight of the University to hire counsel to perform an internal legal investigation, particularly when the purpose of such legal investigation is to provide legal advice and uncover flaws in the University's policies, procedures and operations for the purpose of correcting any such flaws and thereby putting the University in a better position to pursue its mission of education, research and service.

CONCLUSION

Based on the evidence and the argument provided by Penn State in its Original Submission and in this response, Penn State respectfully requests that Mr. Bagwell's appeal be denied.

Respectfully submitted,



Katherine M. Allen
Associate General Counsel

Enclosure

cc: Karen S. Feuchtenberger, Pennsylvania Department of
Education (kfeuchtenb@pa.gov)
Ryan Bagwell (ryan@ryanbagwell.com)

INDEX

THE PENNSYLVANIA STATE UNIVERSITY REVIEW OF DOCUMENTS PROTECTED FROM DISCLOSURE BY THE DEPARTMENT OF EDUCATION PURSUANT TO REQUEST DATED JULY 19, 2013 BY REQUESTER RYAN BAGWELL DOCKET NUMBER AP #2013-1753

Counsel for The Pennsylvania State University reviewed the documents withheld by the Department of Education (PDE) and believes that, except as set forth below, such documents are exempt from disclosure for the reasons indicated in this chart.

The five columns on the right of each page indicate the exception that Penn State believes to be applicable.

AC means the record is subject to the attorney client privilege and/or the attorney work product doctrine and is not a "public record" pursuant to 65 P.S. §67.702.

PD means the record falls within the pre-decisional deliberation exception set forth in 65 P.S. §67.708(b)(10)(i).

NCI means the record falls within the noncriminal investigation exception set forth in 65 P.S. §67.708(b)(17).

CP means the record falls within the trade secret or confidential proprietary information exception set forth in 65 P.S. §67.708(b)(11).

CI means the record falls within the criminal investigation exception set forth in 65 P.S. §67.708(b)(16).

Additional notes:

The University does not believe that the documents with Bates numbers 378, 424-426, 458-459 and 527 fall within any of the exceptions set forth in the RTKL.

<u>BATES NUMBER</u>	<u>DATE/TIME</u>	<u>PARTICIPANT(S)</u>	<u>SUBJECT</u>	<u>RTKL EXEMPTION CITED BY PDE</u>	<u>AC</u>	<u>PD</u>	<u>NCI</u>	<u>CP</u>	<u>CI</u>
1-5	07/25/12 12:33 - 12:43 PM	Ammerman, P Members of the Board of Trustees Guadagnino, F Dunham, S	Privileged and Confidential	42 Pa.C.S. § 5928 Pa.R.C.P. 4003.3	X				
6	05/17/12 5:18 PM	Ammerman, P Members of the Board of Trustees	FW: New Civil Filing	42 Pa.C.S. § 5928 Pa.R.C.P. 4003.3	X				

<u>BATES NUMBER</u>	<u>DATE/TIME</u>	<u>PARTICIPANT(S)</u>	<u>SUBJECT</u>	<u>RTKL EXEMPTION CITED BY PDE</u>	<u>AC</u>	<u>PD</u>	<u>NCI</u>	<u>CP</u>	<u>CI</u>
7-9	04/09/12 12:39 - 1:24 PM	McNeill, O Tomalis, R Frazier, K Freeh, L	Re: Judge severely restricts what lawyers can say in ex-Penn State coach Sandusky's sex abuse case	42 Pa.C.S. § 5928 Pa.R.C.P. 4003.3	X		X		
10-14	04/07/12 7:40 AM - 2:29 PM	McNeill, O Tomalis, R Frazier, K Freeh, L	RE: Please set up a call for all trustees on Monday night, April 9th at 5:30 pm	42 Pa.C.S. § 5928 Pa.R.C.P. 4003.3	X		X		
15-18	03/17/12 10:20 AM - 03/18/12 6:56 PM	McNeill, O Tomalis, R Frazier, K Freeh, L	Re: Legal Conference Call	42 Pa.C.S. § 5928 Pa.R.C.P. 4003.3	X				X
19-30	03/10/2012 10:53 AM - 03/15/12 5:14 PM	McNeill, O Frazier, K Tomalis, R	Re: Report on Freeh Recommendations	42 Pa.C.S. § 5928 Pa.R.C.P. 4003.3	X	X	X		
31-37	03/10/2012 10:53 AM -- 03/13/12 2:24 PM	McNeill, O Frazier, K Tomalis, R	RE: Report on Freeh Recommendations	42 Pa.C.S. § 5928 Pa.R.C.P. 4003.3	X	X	X		
38-39	02/17/12 6:02 PM	Ammerman, P Members of the Board of Trustees	FW: Attorney - Client Privileged -- (1) Narrative re Nov 9 decision; (2) possible op-ed for Centre Daily Times or to be posted; (3) memo re: Paterno re-naming	42 Pa.C.S. § 5928 Pa.R.C.P. 4003.3	X	X			

<u>BATES NUMBER</u>	<u>DATE/TIME</u>	<u>PARTICIPANT(S)</u>	<u>SUBJECT</u>	<u>RTKL EXEMPTION CITED BY PDE</u>	<u>AC</u>	<u>PD</u>	<u>NCI</u>	<u>CP</u>	<u>CI</u>
40-54	02/17/12 8:28 AM	Ammerman, P Members of the Board of Trustees	Attorney - Client Privileged -- (1) Narrative re Nov 9 decision; (2) possible op-ed for Centre Daily Times or to be posted; (3) memo re: Paterno re-naming	42 Pa.C.S. § 5928 Pa.R.C.P. 4003.3	X	X	X		
55-56	02/11/12 6:29 - 6:46 PM	Frazier, K McNeill, O Tomalis, R Freeh, L	RE: Investigation	42 Pa.C.S. § 5928 Pa.R.C.P. 4003.3	X	X			
57-58	02/11/12 6:29 - 6:43 PM	Frazier, K McNeill, O Tomalis, R Freeh, L	RE: Investigation	42 Pa.C.S. § 5928 Pa.R.C.P. 4003.3	X				
59-61	01/20/12 8:33 PM — 01/21/12 5:52 PM	Frazier, K McNeill, O Tomalis, R Freeh, L	RE: follow-up about Senate meeting	42 Pa.C.S. § 5928 Pa.R.C.P. 4003.3	X	X			
62-64	01/20/12 8:33 PM — 01/21/12 5:50 PM	Frazier, K McNeill, O Tomalis, R Freeh, L	RE: follow-up about Senate meeting	42 Pa.C.S. § 5928 Pa.R.C.P. 4003.3	X	X			
65-67	01/16/12 10:40 AM	Frazier, K McNeill, O Tomalis, R Freeh, L	PSU -- Special Investigations Task Force/Board of Trustees Meetings	42 Pa.C.S. § 5928 Pa.R.C.P. 4003.3	X	X	X		

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68-69	12/19/11 5:46 PM — 12/20/11 9:00 AM	Tomalis, R Erickson, R Guadagnino, F Baldwin, C Garban, S Surina, J Frazier, K	RE: RE: Grand Jury Subpoena Compliance	42 Pa.C.S. § 5928 Pa.R.C.P. 4003.3	X				X
70-78	12/19/11 6:57 PM	McNeill, O Frazier, K Tomalis, R	PSU	42 Pa.C.S. § 5928 Pa.R.C.P. 4003.3	X		X		
79-81	12/10/11 10:39 AM — 12/14/11 9:47 PM	Frazier, K Ammerman, P Tomalis, R Garban, S Surina, S Erickson, R Baldwin, C	RE: Big 10 Letter	42 Pa.C.S. § 5928 Pa.R.C.P. 4003.3	X		X		
82-85	12/06/2011 11:39 AM	Ammerman, P Members of the Board of Trustees	Communication from Frank Guadagnino	42 Pa.C.S. § 5928 Pa.R.C.P. 4003.3	X				
86-89	11/28/11 1:51 PM — 12/02/11 5:11 PM	Ammerman, P Frazier, K Hagan, D Bluford, G Peetz, K Eckel, K Dambly, M Hughes, R Tomalis, R	FW: NCAA/Big Ten	42 Pa.C.S. § 5928 Pa.R.C.P. 4003.3	X	X	X		

<u>BATES NUMBER</u>	<u>DATE/TIME</u>	<u>PARTICIPANT(S)</u>	<u>SUBJECT</u>	<u>RTKL EXEMPTION CITED BY PDE</u>	<u>AC</u>	<u>PD</u>	<u>NCI</u>	<u>CP</u>	<u>CI</u>
90-93	11/28/11 1:51 PM— 12/02/2011 11:10 AM	Frazier, K Tomalis, R McNeill, O Freeh, L	RE: NCAA/Big Ten	42 Pa.C.S. § 5928 Pa.R.C.P. 4003.3	X	X	X		
94-96	11/28/11 1:51 PM— 12/02/11 9:59 AM	Frazier, K Tomalis, R McNeill, O Freeh, L	RE: NCAA/Big Ten	42 Pa.C.S. § 5928 Pa.R.C.P. 4003.3	X	X	X		
97-100	11/28/11 1:51 PM— 12/02/11 9:58 AM	Frazier, K Tomalis, R McNeill, O Freeh, L	RE: NCAA/Big Ten	42 Pa.C.S. § 5928 Pa.R.C.P. 4003.3	X	X	X		
101-102 (inadvertent duplicate 105- 106)	11/30/11 4:21 — 9:51 PM	Ammerman, P Frazier, K Tomalis, R Dambly, M Peetz, K Guadagnino, F	BOT Communication	42 Pa.C.S. § 5928 Pa.R.C.P. 4003.3	X		X		
103-104 (inadvertent duplicate 107- 108)	11/30/11 3:29 PM	Ammerman, P Members of the Board of Trustees	Communication from Counsel Guadagnino regarding Trustee interview and document production protocol	42 Pa.C.S. § 5928 Pa.R.C.P. 4003.3	X		X		
109-111	07/06/12 3:24 — 4:01 PM	Frazier, K McNeill, O Tomalis, R	RE: Briefing for new board members	65 P.S. sec. 67.708(b)(17)	X	X	X		

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112	06/25/12 7:27 — 7:46 PM	Frazier, K McNeill, O Tomalis, R Freeh, L	Re: Update	65 P.S. sec. 67.708(b)(17)	X	X	X		
113-122	06/10/12 9:33 PM — 06/11/12 7:17 AM	Frazier, K Tomalis, R	Fwd: Leak	65 P.S. sec. 67.708(b)(17)	X	X	X		
123-124	06/11/12 6:30 — 6:42 AM	Frazier, K Thompson, J	Re: Possible Leaks	65 P.S. sec. 67.708(b)(17)	X		X		
125-126	11/11/11 8:14 PM — 11/14/11 6:37 AM	Frazier, K Tomalis, R	Re: Gov	65 P.S. sec. 67.708(b)(17)			X		
127-130	07/31/12 7:55 - 11:55 AM	Frazier, K Tomalis, R	RE: PS4RS DEMANDS FREER CONTRACTS AND DETAILS BE MADE PUBLIC	65 P.S. 67.708(b)(10)(i)	X	X	X		
131-136	07/29/12 7:26 AM	Ammerman, P Members of the Board of Trustees	Agenda for Briefing Call Sunday, July 29; 5 PM Eastern	65 P.S. 67.708(b)(10)(i)		X			
137-139	07/27/12 10:37 AM	Ammerman, P Members of the Board of Trustees	Briefing Call Planned for Sunday, July 29, 5 pm EASTERN; Paula Cell	65 P.S. 67.708(b)(10)(i)		X			

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140-155	06/07/12 3:37 PM— 06/08/12 6:34 PM	Frazier, K Tomalis, R McNeill, O Freeh, L	Re: Checking in	65 P.S. 67.708(b)(10)(i)	X	X	X		
156-160	06/07/12 3:37 — 8:31 PM	Frazier, K Tomalis, R McNeill, O Freeh, L	Re: Checking in	65 P.S. 67.708(b)(10)(i)	X	X	X		
161-164	06/06/12 8:21 AM— 12:35 PM	Frazier, K Tomalis, R McNeill, O Freeh, L	RE: Core Team Call Questions	65 P.S. 67.708(b)(10)(i)	X	X	X		
165-167	06/06/12 8:21 — 10:52 AM	Frazier, K Tomalis, R McNeill, O Freeh, L	FW: Core Team Call Questions	65 P.S. 67.708(b)(10)(i)	X	X	X		
168-170	06/06/12 8:21 — 8:55 AM	Frazier, K Tomalis, R McNeill, O Freeh, L	RE: Core Team Call Questions	65 P.S. 67.708(b)(10)(i)	X	X	X		
171-172	06/06/12 8:21 — 8:49 AM	Frazier, K Tomalis, R McNeill, O Freeh, L	RE: Core Team Call Questions	65 P.S. 67.708(b)(10)(i)	X	X	X		
173-175	05/03/12 10:26 PM— 05/08/12 11:44 AM	Frazier, K Tomalis, R McNeill, O Freeh, L	Fwd: Thanks	65 P.S. 67.708(b)(10)(i)	X	X	X		

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176-178	05/05/12 7:23 PM — 05/06/12 10:31 AM	Frazier, K Tomalis, R McNeill, O Freeh, L	Re: New Trustees	65 P.S. 67.708(b)(10)(i)	X	X	X		
179-180	05/05/12 7:23 PM — 05/06/12 7:48 AM	Frazier, K Tomalis, R McNeill, O Freeh, L	FW: New Trustees	65 P.S. 67.708(b)(10)(i)	X	X	X		
181-217	04/20/12 8:45 AM — 04/26/12 11:01 AM	Frazier, K Tomalis, R	FW: Committee on Audit, Risk, Legal and Compliance	65 P.S. 67.708(b)(10)(i)	X	X	X		
218-219	02/26/12 11:16 PM — 02/27/12 8:02 AM	Frazier, K Tomalis, R	RE: CONFIDENTIAL Revised Statements	65 P.S. 67.708(b)(10)(i)		X			
220-227	02/26/12 11:16 PM	Ammerman, P Members of the Board of Trustees	CONFIDENTIAL Revised Statements	65 P.S. 67.708(b)(10)(i)		X			
228-237	02/25/12 5:44 PM — 02/26/12 9:05 AM	Ammerman, P Members of the Board of Trustees	CONFIDENTIAL Feb 25 Final Version -- Report of the Board of Trustees on November 9 Decisions and Op Ed on Coach Paterno	65 P.S. 67.708(b)(10)(i)	X	X			
238-247	02/20/12 7:58 PM — 02/22/12	Ammerman, P Members of the Board of Trustees	FW: Attorney-Client Privilege; PRA Cell	65 P.S. 67.708(b)(10)(i)	X	X			

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	10:26 AM								
248-252	02/01/12 5:01 AM	Ammerman, P Members of the Board of Trustees	Briefing Call Planned for February 4; 12 noon	65 P.S. 67.708(b)(10)(i)		X			
253-254	01/25/12 6:46 PM	Ammerman, P Board Members	JVP statement/attorney- client privilege	65 P.S. 67.708(b)(10)(i)		X			
255-257	01/16/12 10:40 AM— 1:42 PM	Frazier, K Tomalis, R McNeil, O Freeh, L	Re: PSU -- Special Investigations Task Force/Board of Trustees Meetings	65 P.S. 67.708(b)(10)(i)	X	X			
258-259	12/21/11 3:05 PM— 12/22/11 6:55 AM	Frazier, K Tomalis, R	FW: Call	65 P.S. 67.708(b)(10)(i)	X	X			
260-263	12/19/11 7:19 — 8:31 PM	Garban, S Frazier, K Surma, J Tomalis, R	RE: The call will be held at 7:45 pm.	65 P.S. 67.708(b)(10)(i)		X			X
264-265	12/19/11 7:19 — 7:31 PM	Garban, S Frazier, K Surma, J Tomalis, R	Re: The call will be held at 7:45 pm	65 P.S. 67.708(b)(10)(i)		X			X

<u>BATES NUMBER</u>	<u>DATE/TIME</u>	<u>PARTICIPANT(S)</u>	<u>SUBJECT</u>	<u>RTKL EXEMPTION CITED BY PDE</u>	<u>AC</u>	<u>PD</u>	<u>NCI</u>	<u>CP</u>	<u>CI</u>
266-267	12/10/11 10:39 AM— 12/14/11 2:30 PM	Ammerman, P Frazier, K Tomalis, R Garban, S Surma, J Erickson, R	RE: Big 10 Letter	65 P.S. 67.708(b)(10)(i)		X			
268-270	11/18/11 12:59—5:56 PM	Frazier, K Tomalis, R	RE: Monday Press Briefing Memo	65 P.S. 67.708(b)(10)(i)		X	X		
271-272	11/18/11 12:59—4:25 PM	Garban, S Frazier, K Surma, J Tomalis, R	RE: Monday Press Briefing Memo	65 P.S. 67.708(b)(10)(i)		X	X		
273-274	11/18/11 12:59—1:21 PM	Garban, S Frazier, K Surma, J Tomalis, R	FW: Monday Press Briefing Memo	65 P.S. 67.708(b)(10)(i)		X			
275-277	11/17/11 11:47 AM— 11/18/11 12:46 PM	Frazier, K Tomalis, R	RE: Investigation Counsel.	65 P.S. 67.708(b)(10)(i)		X	X		
278-279	11/17/11 8:59—10:12 PM	Frazier, K Tomalis, R	RE: Guion Bluford	65 P.S. 67.708(b)(10)(i)		X	X		
280-282	11/17/11 3:21- 8:58 PM	Frazier, K Tomalis, R	Fwd: Special Committee	65 P.S. 67.708(b)(10)(i)		X	X		

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283-284	11/17/11 3:21 — 8:57 PM	Frazier, K Tomalis, R	Fwd: Special Committee	65 P.S. 67.708(b)(10)(i)		X	X		
285-286	11/17/11 3:21 — 4:00 PM	Ammerman, P Members of the Special Investigations Committee	Special Committee	65 P.S. 67.708(b)(10)(i)		X	X		
287-288	11/17/11 11:48 AM— 1:59 PM	Frazier, K Tomalis, R	Re: Investigation Counsel.	65 P.S. 67.708(b)(10)(i)		X	X		
289-291	11/17/11 11:48 AM— 1:57 PM	Frazier, K Tomalis, R	Re: Investigation Counsel.	65 P.S. 67.708(b)(10)(i)		X	X		
292-293	11/17/11 11:47 AM— 12:31 PM	Garban, S Baldwin, C Frazier, K Surma, J Tomalis, R	Re: Investigation Counsel.	65 P.S. 67.708(b)(10)(i)		X	X		
294-297	11/17/11 11:56 AM	Baldwin, C Guadagnino, F Garban, S Surma, J Frazier, K Tomalis, R Ammerman, P	Guy Bluford	65 P.S. 67.708(b)(10)(i)		X	X		
298-299	11/15/11 2:14 PM— 11/16/11 8:44 AM	Ammerman, P Surma, J Garban, S Frazier, K Tomalis, R	RE: Alumni Representation	65 P.S. 67.708(b)(10)(i)		X	X		

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300-312	11/15/11 11:47 AM— 1:00 PM	Ammerman, P Surma, J Garban, S Frazier, K Tomalis, R	Alumni Representation	65 P.S. 67.708(b)(10)(i)		X	X		
313-316	11/14/11 5:41 PM	Ammerman, P Surma, J Garban, S Frazier, K Tomalis, R	Distinguished Alumni	65 P.S. 67.708(b)(10)(i)		X	X		
317-318	07/08/12 10:38 PM- 07/09/12 8:04 AM	Frazier, K McNeill, O Freeh, L Tomalis, R Paw, G Disney, K Sheehan, J	Re: Penn State investigator is ex-exec at firm with PSU ties	42 Pa.C.S. § 5928	X		X		
319-320	07/06/12 8:12 PM-8:34 PM	Freeh, L Frazier, K McNeill, O Tomalis, R	Re: ESPN Report to shed light on PSU scandal	42 Pa.C.S. § 5928 Pa.R.C.P. 4003.3	X		X		
321-322	07/06/12 4:36-4:40 PM	Frazier, K Tomalis, R Guadagnino, F	RE: Re:	42 Pa.C.S. § 5928 Pa.R.C.P. 4003.3	X				
323	06/07/12 6:44 PM	Ammerman, P Guadagnino, F Members of the Board of	RW: Note to trustees	42 Pa.C.S. § 5928 Pa.R.C.P. 4003.3	X				

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		Trustees							
324-326	05/25/12 3:55 PM- 05/29/12 12:00 PM	Frazier, K Freeh, L McNeill, O Tomalis, R Paw, G Disney, K Sheehan, J	RE: PRIVILEGED AND CONFIDENTIAL	49 Pa.C.S. § 5928 Pa.R.C.P. 4003.3	X		X		
327-350	05/25/12 3:55 PM- 5/29/12 8:01 AM	Frazier, K Freeh, L McNeill, O Tomalis, R	RE: PRIVILEGED AND CONFIDENTIAL	49 Pa. C.S. § 5928 Pa.R.C.P. 4003.3	X				
351-354	05/05/12 6:49 AM- 05/05/12 10:30 AM	Frazier, K Freeh, L McNeill, O Tomalis, R	Re: Meeting with Dan McGinn	49 Pa.C.S. § 5928 Pa.R.C.P. 4003.3	X		X		
355-357	05/05/12 6:49 AM- 05/05/12 9:54 AM	McNeill, O Frazier, K Freeh, L Tomalis, R	Re: Meeting with Dan McGinn	49 Pa.C.S. § 5928 Pa.R.C.P. 4003.3	X		X		
358	04/09/12 3:45 PM	Frazier, K Guadagnino, F Tomalis, R Freeh McNeill	Re: Tonight's Call	49 Pa. C.S. §5928 Pa.R.C.P. 4003.3	X				

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359-361	04/09/12 12:39 PM- 04/09/12 3:42 PM	Frazier, K Tomalis, R McNeill Freeh	Re: Judge severely restricts what lawyers can say in ex- Penn State coach Sandusky's sex abuse case	49 Pa.C.S. § 5928 Pa.R.C.P. 4003.3	X				
362-366	04/06/12 7:40 AM- 04/07/12 6:48 PM	Frazier, K Freeh, L Tomalis, R McNeill, O	Re: Please set up a call for all trustees on Monday night, April 9 th at 5:30 pm	49 Pa.C.S. § 5928 Pa.R.C.P. 4003.3	X	X	X		
367-368	03/19/12 1:40 PM- 03/20/12 6:35 AM	McNeil, O Frazier, K Freeh, L Tomalis, R	RE: Freeh Group statement	49 Pa.C.S. § 5928 Pa.R.C.P. 4003.3	X		X		
369-370	02/25/12 5:59 PM	Ammerman, P Guadagnino, F Members of the Board of Trustees	Freeh Group Request- PRIVILEGED AND CONFIDENTIAL	49 Pa.C.S. § 5928 Pa.R.C.P. 4003.3	X		X		
371-372	02/17/12 10:43 AM- 7:06 PM	Ammerman, P Members of the Board of Trustees	CONFIDENTIAL/ATTOR- NEY-CLIENT PRIVILEGED COMMUNICATION/ATT- ORNEY WORK PRODUCT	49 Pa.C.S. § 5928 Pa.R.C.P. 4003.3	X		X		
373-376	02/17/12 11:43 AM- 12:48 PM	Frazier, K Tomalis, R McNeill, O	Re: PSU	49 Pa.C.S. § 5928 Pa.R.C.P. 4003.3	X				

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377	02/02/12 10:22 AM- 11:13 AM	Frazier, K Freeh, L Tomalis, R McNeill, O	RE: Baldwin	49 Pa. C.S. § 5928 Pa.R.C.P. 4003.3	X				
378	01/26/12 4:03 AM	Ammerman, P Members of the Board of Trustees	JVP statement/attorney- client privilege	49 Pa.C.S. § 5928 Pa.R.C.P. 4003.3					
379-384	01/16/12 10:40 AM-4:26 PM	McNeill, O Frazier, K Freeh, L Tomalis, R	RE: PSU — Special Investigations Task Force/Board of Trustees Meetings	49 Pa. C.S. § 5928 Pa.R.C.P. 4003.3	X		X		
385-388	01/16/12 10:40 AM-2:03 PM	McNeill, O Freeh, L Frazier, K Tomalis, R	RE: PSU — Special Investigations Task Force/Board of Trustees Meetings	49 Pa. C.S. § 5928 Pa.R.C.P. 4003.3	X	X	X		
389-394	01/16/12 10:40 AM-7:53 PM	Frazier, K McNeill, O Tomalis, R Freeh, L	RE: PSU — Special Investigations Task Force/Board of Trustees Meetings	42 Pa.C.S § 5928 Pa.R.C.P. 4003.3	X		X		
395-401	01/16/12 10:40 AM-4:40 PM	Frazier, K McNeill, O Tomalis, R Freeh, L	RE: PSU — Special Investigations Task Force/Board of Trustees Meetings	42 Pa.C.S. § 5928 Pa.R.C.P. 4003.3	X		X		

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402	04/20/12 9:37 AM-9:39 AM	Ammerman, P Tomalis, R Shoop, J	Re: Request for A Meeting	65 P.S. § 67.708(b)(17)		X	X		
403-404	07/03/12 10:26 AM- 10:48 AM	Frazier, K Tomalis, R	FW: Briefing the newest board members	65 P.S. § 67.708(b)(17)	X		X		
405-406	05/18/12 11:53 AM- 05/21/2012 6:23 AM	Frazier, K Freeh, L McNeill, O Tomalis, R	FW: Questions	65 P.S. § 67.708(b)(17)	X		X		
407-409	05/04/12 5:48 PM- 05/05/12 3:31 PM	Frazier, K Freeh, L McNeill, O Tomalis, R	FW: An Introduction to Dr. David Roselle	65 P.S. § 67.708(b)(17)			X		
410-416	05/04/12 1:07 PM 05/05/12 10:41 AM	Frazier, K McNeill, O Tomalis, R	RE: An Introduction to Dr. David Roselle	65 P.S. § 67.708(b)(17)			X		
417-418	06/25/12 7:28 PM- 06/26/12 12:04 PM	Freeh, L Tomalis, R Frazier, K McNeill, O	Re: Update	65 P.S. § 67.708(b)(17)	X		X		

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419	12/19/11 8:10 PM-9:44 PM	Freeh, L Frazier, K McNeill, O Tomalis, R Surma	Re: Document Production	65 P.S. § 67.708(b)(17)	X		X		
420-423	03/22/12 3:58 PM-4:14 PM	McNeill, O Frazier, K Tomalis, R Freeh, L	RW: Chronicle Conversation	65 P.S. § 67.708(b)(17)	X		X		
424-426	07/23/12 10:03 AM	Ammerman, P Members of the Board of Trustees	Statement from President Erickson	65 P.S. §67.708(b)(10)(i)					
427-442	06/02/12 12:21 PM	Ammerman, P Voting Members Attending Retreat on Sunday, June 3	Retreat, Sunday June 3	65 P.S. §67.708(b)(10)(i)		X		X	
443-457	05/19/12 2:10 PM	Ammerman, P Voting Members of the Board of Trustees	Briefing Call for Sunday, May 20; Paula Cell	65 P.S. §67.708(b)(10)(i)		X		X	
458-459	05/17/12 10:44 AM	Ammerman, P Members, Board of Trustees	1 st Qtr. Endowment Investment Summary	65 P.S. §67.708(b)(10)(i)					

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460-484	05/04/12 10:50 AM- 05/07/12 9:46 AM	Ammerman, P Members of the Board of Trustees	RE: Edelman Presentation and Contact	65 P.S. §67.708(b)(10)(i)		X		X	
485-486	05/04/12 10:50 AM- 11:28 AM	Ammerman, P Members of the Board of Trustees	Edelman Presentation and Contact	65 P.S. §67.708(b)(10)(i)		X			
487-488	05/03/12 7:24 AM-7:26 AM	Ammerman, P Members of the Board of Trustees	RE: CONFIDENTIAL Trustee Discussion Items	65 P.S. §67.708(b)(10)(i)		X			
489-496	05/02/12 9:37 AM	Ammerman, P Members of the Board of Trustees	Recommendation from Selection Group on Business & Industry	65 P.S. §67.708(b)(10)(i)		X			
497-504	02/28/12 3:06 PM	Ammerman, P Members of the Board of Trustees	Briefing Call Scheduled for TODAY, Tuesday, February 28	65 P.S. §67.708(b)(10)(i)		X			
505-526	02/26/12 9:01 AM	Ammerman, P Members of the Board of Trustees	Information for Today's Call	65 P.S. §67.708(b)(10)(i)		X			
527	02/01/12 11:50 AM	Ammerman, P Members of the Board of Trustees	Communication re Insurance	65 P.S. §67.708(b)(10)(i)					
528-545	12/09/11 9:50 AM-	Ammerman, P Members of the Board of	RE: Communication from President Erickson	65 P.S. §67.708(b)(10)(i)			X		

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	10:00 AM	Trustees							
546-547	12/04/11 3:38 PM-5:46 PM	Ammerman, P Tomalis, R	RE: Info for Call at 5	65 P.S. §67.708(b)(10)(i)		X	X		
548-559	11/22/11 5:34 PM	Ammerman, P Members of the Board of Trustees	Update 4 from President Erickson	65 P.S. §67.708(b)(10)(i)		X	X		
560	11/21/11 6:59 PM	Ammerman, P Tomalis, R Surma, J Garban Baldwin, C Guadagnino, F Frazier, K Erickson, R	Statements	65 P.S. §67.708(b)(10)(i)		X			
561-562	11/21/11 5:33 PM	Ammerman, P Members of the Board of Trustees	Communication from Chair Garban and Vice Chair Surma	65 P.S. §67.708(b)(10)(i)		X			
563-566	11/20/11 6:59 PM	Ammerman, P Members of the Board of Trustees	Media Inquiries	65 P.S. §67.708(b)(10)(i)		X			
567-572	11/18/11 8:20 PM	Ammerman, P Members of the Board of Trustees	Update 3	65 P.S. §67.708(b)(10)(i)		X			

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573-577	11/18/11 4:29 PM	Ammerman, P Select Members of the Board of Trustees	Confidentiality Agreement	65 P.S. §67.708(b)(10)(i)	X	X			
578-580	11/17/11 4:51 PM	Ammerman, P Members of the Board of Trustees	Confidentiality Agreement	65 P.S. §67.708(b)(10)(i)	X	X			
581-583	11/16/11 10:27 PM- 11/17/11 9:40 AM	Ammerman, P Frazier, K Tomalis, R Garban, Surma, J Guadagnino, F Baldwin, C	FW: Trustee Speaks Out	65 P.S. §67.708(b)(10)(i)	X	X			
584-585	11/15/11 12:47 PM	Ammerman, P Members of the Board of Trustees	Communication from Chair and Vice Chair of the Board of Trustees	65 P.S. §67.708(b)(10)(i)		X			
586	11/7/11 2:41 PM	Ammerman, P Members of the Board of Trustees	IMPORTANT Message Re Transmitted Email	65 P.S. §67.708(b)(10)(i)		X			
587	6/3/12 9:11 AM-10:20 AM	Frazier, K Tomalis, R	Re: Today	65 P.S. §67.708(b)(10)(i)			X		
588-591	04/20/12 8:45 AM- 04/27/12 11:48 AM	Frazier, K Tomalis, R McNeil, O	RE: Committee on Audit, Risk, Legal and Compliance	65 P.S. §67.708(b)(10)(i)	X	X	X		

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592-594	02/26/12 5:51 PM-6:52 PM	Frazier, K Tomalis, R	Re: are you on the call?	65 P.S. §67.708(b)(10)(i)		X	X		
595-596	02/24/12 6:04 PM-6:10 PM	Frazier, K Tomalis, R	Re: Pitt trustees decry proposed state cuts in higher ed funding	65 P.S. §67.708(b)(10)(i)		X			
597-601	11/22/11 11:55 AM-12:05 PM	Frazier, K Tomalis, R	Fw: Process and Timeline for Announcing Candidates for Officers	65 P.S. §67.708(b)(10)(i)		X			
602-603	11/18/11 12:14 PM-12:35 PM	Frazier, K Tomalis, R Baldwin, C Ammerman, P	RE: perm state	65 P.S. §67.708(b)(10)(i)		X	X		
604-607	11/17/11 11:56 AM-12:00	Frazier, K Ammerman, P Garban Surma, J Tomalis, R Baldwin, C Guadagnino, F	RE: Guy Bluford	65 P.S. §67.708(b)(10)(i)		X	X		
608	11/15/11 2:14 PM-2:38 PM	Frazier, K Surma, J Ammerman, P Tomalis, R Garban	RE: Alumni Representation	65 P.S. §67.708(b)(10)(i)		X	X		

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609	11/14/11 10:33 AM-10:56 AM	Frazier, K Garban, S Surma, J Tomalis, R	RE:	65 P.S. §67.708(b)(10)(i)		X	X		
610-611	11/11/11 4:38 PM-10:03 PM	Frazier, K Tomalis, R	Re: Pat Meehan	65 P.S. §67.708(b)(10)(i)		X	X		
612-613	01/05/12 8:59 AM-4:20 PM	McNeill, O Tomalis, R	RE: follow-up on next week's Senate Council meeting	65 P.S. §67.708(b)(10)(i)	X	X	X		
614-615	12/10/11 10:39 AM-7:06 PM	Garban, S Frazier, K Ammerman, P Tomalis, R Surma, J Erickson, R	RE: Big 10 Letter	65 P.S. §67.708(b)(10)(i)		X	X		
616-617	11/11/11 4:38 PM-7:39 PM	Garban, S Frazier, K Tomalis, R Surma, J	FW: Pat Meehan	65 P.S. §67.708(b)(10)(i)		X	X		
618	07/24/12 11:05 AM-5:26 PM	Ammerman, P Tomalis, R Members of the Board of Trustees	RE: Special Briefing Session Announcement	65 P.S. §67.708(b)(10)(i)		X			

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619	07/06/12 11:10 AM	Ammerman, P Trustees Cotner, Frazier, Lubrano, McCombie, Taliaferro, and Tomalis	Confirming Briefing Date	65 P.S. §67.708(b)(10)(i)		X			
620-622	7/03/12 10:26 AM-10:54 AM	Ammerman, P Tomalis, R Frazier, K	RE: Briefing the newest board members	65 P.S. §67.708(b)(17)		X	X		
623-625	06/29/12 3:21 PM	DeRose, A Frazier, K Freeh, L McNeill, O Hagan, D Bluford, G Peetz, K Eckel, K Dambly, M Hughes, R Tomalis, R Ammerman, P Crouse, M Shoop, J	RE: Special Investigative Task Force Briefing Call	65 P.S. § 67.708(b)(17)		X	X		
626	04/24/12 4:29 PM	DeRose, A Frazier, K McNeill, O Freeh Group Hagan, D Bluford, G Peetz, K Eckel, K Dambly, M	Special Investigative Task Force Briefing Call, May 2, 2012	65 P.S. § 67.708(b)(17)		X	X		

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		Hughes, R Tomalis, R Ammerman, P Shoop, J							
627	04/2/2012 1:39 PM	DeRose, A Frazier, K McNeill, O Hagan, D Bluford, G Peetz, K Eckel, K Dambly, M Hughes, R Tomalis, R Ammerman, P Shoop, J	Special. Investigative Task Force Briefing Call, April 4, 2012	65 P.S. § 67.708(b)(17)			X		
628-639	02/11/12 1:46	Ammerman, P Members of the Board of Trustees	Alert-CHANGE IN PLANS; Briefing Update is Scheduled for Tonight	65 P.S. § 67.708(b)(10)(i)		X			
640-641	02/09/12 3:02 PM-7:47 PM	McNeill, O Frazier, K Freeh Group Tomalis, R DeRose, A	Re: Briefing	65 P.S. § 67.708(b)(17)	X	X	X		

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642-643	01/09/12 3:35 PM- 01/16/12 1:40 PM	Ammerman, P Frazier, K Freeh, L McNeill, O Hagan, D Bluford, G Peetz, K Eckel, K Dambly, M Hughes, R Tomalis, R Shoop, I	RE: Special Investigative Task Force Briefing Call- January 16	65 P.S. § 67.708(b)(17)	X	X	X		
644-647	12/29/11 10:25 AM-1:02 PM	Frazier, K Tomalis, R	Fw: January Board Meeting	65 P.S. § 67.708(b)(10)(i)	X	X	X		
648-650	12/19/11 4:42 PM-6:28 PM	Frazier, K Tomalis, R	RE: Urgent Call	65 P.S. § 67.708(b)(10)(i)	X	X	X		
651-652	12/19/11 4:42 PM-5:21 PM	Frazier, K Garban, S Surma, J Ammerman, P Tomalis, R Freeh, L McNeill, O	RE: Urgent Call	65 P.S. § 67.708(b)(10)(i)	X	X	X		
653-654	12/19/11 3:51 PM-4:01 PM	McNeill, O Frazier, K Tomalis, R	RE: Special Investigation Task Force Call	65 P.S. § 67.708(b)(17)	X	X	X		

<u>BATES NUMBER</u>	<u>DATE/TIME</u>	<u>PARTICIPANT(S)</u>	<u>SUBJECT</u>	<u>RTKL EXEMPTION CITED BY PDE</u>	<u>AC</u>	<u>PD</u>	<u>NCI</u>	<u>CP</u>	<u>CI</u>
655-657	12/09/11 12:40 PM- 12/10/11 12:35 PM	Frazier, K McNeill, O Tomalis, R DeRose, A Freeh Group	RE: Update	65 P.S. § 67.708(b)(10)(i)	X	X	X		
658-659	11/23/11 1:16 PM- 11/27/11 4:30 PM	Ammerman, P Tomalis, R	RE: Briefing Call on Sunday, November 27	65 P.S. § 67.708(b)(10)(i)		X	X		
660	11/19/11 1:43 PM	Ammerman, P Members of the Board of Trustees	Briefing Call on Sunday, November 20	65 P.S. § 67.708(b)(10)(i)		X	X		
661	11/8/11 11:59 AM	Ammerman, P Members of the Board of Trustees	CONFIDENTIAL-Briefing Scheduled for Today, November 8	65 P.S. § 67.708(b)(10)(i)		X			
662-664	11/05/11 7:58 PM- 11/06/11 5:10 PM	Ammerman, P Tomalis, R	RE: CONFIDENTIAL Board of Trustees Executive Session Notification	65 P.S. § 67.708(b)(10)(i)		X			
665-666	11/05/11 7:59	Ammerman, P Members of the Board of Trustees	RE: CONFIDENTIAL Board of Trustees Executive Session Notification	65 P.S. § 67.708(b)(10)(i)		X			

<u>BATES NUMBER</u>	<u>DATE/TIME</u>	<u>PARTICIPANT(S)</u>	<u>SUBJECT</u>	<u>RTKL EXEMPTION CITED BY PDE</u>	<u>AC</u>	<u>PD</u>	<u>NCI</u>	<u>CP</u>	<u>CI</u>
667	11/05/11 3:11	Ammerman, P Members of the Board of Trustees	CONFIDENTIAL- Conference Call Invitation for Today, November 5	65 P.S. § 67.708(b)(10)(i)		X			
668-670	06/09/11 11:14 AM-1:12 PM	Frazier, K Peetz, K Tomalis, R	FW: Please review my proposed agenda	65 P.S. § 67.708(b)(10)(i)		X			
671-672	04/06/12 7:39 AM- 04/09/12 10:13 AM	Ammerman, P Tomalis, R	RE: Please set up a call for all trustees on Monday night, April 9 th at 5:30 pm	65 P.S. §67.708(b)(10)(i)		X			
673	04/06/12 3:54 PM	Ammerman, P Members of the Board of Trustees	Privileged and Confidential- Briefing Call Scheduled for Monday, April 9	65 P.S. §67.708(b)(10)(i)		X			

OFFICE OF OPEN RECORDS,
COMMONWEALTH OF PENNSYLVANIA

RYAN BAGWELL,	:	Appeal Docket #AP 2013-1753
Requester,	:	
v.	:	
	:	Appeals Officer J. Chadwick Schnee
THE COMMONWEALTH OF	:	
PENNSYLVANIA, DEPARTMENT OF	:	
EDUCATION,	:	
	:	
Respondant.	:	<i>Electronically Filed</i>

AFFIDAVIT OF JANINE S. ANDREWS

The undersigned, Janine S. Andrews, having been duly sworn according to law, hereby states that the following is true and correct to the best of her knowledge and information.

1. I am the Director of the Office of the Board of Trustees of The Pennsylvania State University (the "University") and an Associate Secretary of the Board of Trustees of the University.

2. In my role as Associate Secretary of the Board of Trustees, my duties include, among other things, maintaining an official or duplicate record of the proceedings of the Board of Trustees and serving as the custodian of the University's books and records. I make the following statements based on my knowledge of such records and, since July 1, 2013, my participation in Board

meetings.

3. Since November 2011, the University and the Board of Trustees have engaged external legal counsel to represent the University and the Board of Trustees on a variety of legal matters. Such external legal counsel have included, without limitation, the law firms of Reed Smith LLP, Lanny Davis and Associates, and Freeh Sporkin & Sullivan, LLP. I have no reason to believe that any of the lawyers from such firms who acted on behalf of the University is not a member of the bar of courts in their respective jurisdictions.

4. In each case, the law firms identified in paragraph 3 above were retained to represent the University.

5. The University intended and intends that communications between its representatives, including members of its Board of Trustees, and the lawyers, legal assistants and other representatives of the law firms identified in paragraph 3 above, with respect to matters as to which such law firms are providing legal services, are attorney-client privileged and protected by the related "work product doctrine". In the Index attached as Exhibit 1 hereto, the University identifies those documents at issue on appeal as to which it claims the attorney-client privilege and/or the work product privilege applies. To the best of my knowledge, information and understanding, the University has not disclosed to third parties any of the documents for which the University is seeking protection

under the attorney-client or attorney-work product privileges.

6. To the best of my knowledge, information and understanding, neither the University nor the Board of Trustees has taken any action to waive the attorney-client privilege or the application of the work product doctrine with respect to any of the documents identified as privileged on the Index attached as Exhibit 1 hereto.

DATE December 5, 2013

DATE _____

Janine S. Andrews
JANINE S. ANDREWS

JANINE S. ANDREWS

COMMONWEALTH OF PENNSYLVANIA

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} SS.

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COUNTY OF CENTRE

On this 5th day of December, 2013, before me, the undersigned notary public, JANINE S. ANDREWS personally appeared, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

Donna J. Newburg

Notary Public

[SEAL]

COMMONWEALTH OF PENNSYLVANIA

Notarial Seal

Donna J. Newburg, Notary Public

State College Boro, Centre County

My Commission Expires May 27, 2015

MEMBER PENNSYLVANIA ASSOCIATION OF NOTARIES

OFFICE OF OPEN RECORDS,
COMMONWEALTH OF PENNSYLVANIA

RYAN BAGWELL,	:	Appeal Docket #AP 2013-1753
v.	:	
	:	
	:	Appeals Officer J. Chadwick Schnee
THE COMMONWEALTH OF	:	
PENNSYLVANIA, DEPARTMENT OF	:	
EDUCATION,	:	
	:	
Respondant.	:	<i>Electronically Filed</i>

SUPPLEMENTAL AFFIDAVIT OF FRANK T. GUADAGNINO

The undersigned, Frank T. Guadagnino, having been duly sworn according to law, hereby states that the following is true and correct to the best of his knowledge and information.

1. I am a practicing attorney and a partner in the law firm of Reed Smith, LLP, 225 Fifth Avenue, Pittsburgh, PA 15222.

2. Since November 7, 2011, I have been engaged by The Pennsylvania State University ("Penn State") to represent Penn State as legal counsel on a variety of matters, including among other things, corporate governance issues and issues arising out of the allegations against former assistant football coach Gerald Sandusky.

3. In that capacity, I have provided and continue to provide legal advice

to the University through its Board of Trustees (the “Board”), officers and other senior administrators.

4. In November 2011, Freeh Sporkin & Sullivan LLP (“Freeh”) was engaged as counsel to the Board and the Special Investigative Task Force of the Board (the “Task Force”). A redacted copy of the engagement letter creating the attorney client relationship between the Board (acting on behalf of the University) and Freeh was attached as Exhibit 4 to my previous affidavit in this matter dated October 11, 2013. Requester Ryan Bagwell also attached a copy of the same document to his letter to Appeals Officer J. Chadwick Schnee dated November 22, 2013.

5. Section 6 of the Freeh engagement letter expressly provides that the work and advice which is provided to the Task Force under the engagement, and any third party working on behalf of Freeh to perform services in connection with the engagement, is subject to the confidentiality and privilege protection of the attorney client and attorney work product privileges, unless appropriately waived by the parties or as otherwise determined by law.

6. As set forth in the Freeh engagement letter, the Board asked Judge Freeh to “perform an independent, full and complete investigation of the recently publicized allegations of sexual abuse at the facilities and the alleged failure of The Pennsylvania State University (“PSU) personnel to report such sexual abuse

to appropriate police and governmental authorities”. The engagement letter further provided that the results of this investigation would be provided in a report that would contain Freeh’s findings concerning “(i) failures that occurred in the reporting process, (ii) the cause for those failures, (iii) who had knowledge of the allegations of sexual abuse and (iv) how the allegations were handled by the Trustees, PSU administrators, coaches and other staff”. In addition, the Board asked for recommendations to attempt to ensure that those and similar failures do not occur again.

7. The University requested that FSS provide periodic updates on the status of the investigation to the representatives of the National Collegiate Athletic Association (“NCAA”) and the Big Ten Conference (“Conference”). Based on discussions that I have had with Omar McNeill, Esq., then a partner of FSS, it is my understanding that FSS provided such updates on a periodic basis throughout the course of the investigation, that such updates related primarily to the process and progress of the investigation and discussions of publicly available information, and that FSS communicated no information, orally or in writing, that was or was intended to be attorney-client privileged and/or protected by the related “work product doctrine” pursuant to privileges and protections held by the University, to either the NCAA or the Conference either orally or in writing.

12/5/13
DATE

Frank T. Guadagnino
FRANK T. GUADAGNINO

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF CENTRE } ss.
}

On this 5th day of December, 2013, before me, the undersigned notary public, FRANK T. GUADAGNINO personally appeared, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

Elizabeth P. Saupp
Notary Public
[SEAL]

