



COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF GENERAL COUNSEL  
333 MARKET STREET, 17TH FLOOR  
HARRISBURG, PENNSYLVANIA 17101  
(717) 783-6563  
FAX: (717) 787-1788

November 26, 2013

SENT VIA EMAIL ([ryan@ryanbagwell.com](mailto:ryan@ryanbagwell.com))  
AND REGULAR MAIL

Mr. Ryan Bagwell  
5219 Shorecrest Drive  
Middleton, WI 53562

Re: Right-to-Know Law Request

Dear Mr. Bagwell:

On October 22, 2013, the open records officer of the Office of General Counsel ("OGC") received your written request for information under the Pennsylvania Right-To-Know Law, 65 P.S. §§67.101, *et seq.* (RTKL) wherein you asked for the following:

*I hereby request copies of any and all emails, letters, memos, and reports sent or received by Stephen Aichle and/or James Schultz between October 1, 2011 and July 1, 2013 from the following people:*

1. *former secretary of education Ron Tomalis*
2. *former attorney general Linda Kelly*
3. *state Police Commissioner Frank Noonan*
4. *Frank Fina*
5. *Louis J. Freeh*
6. *Omar McNeil*
7. *Greg Paw*
8. *Patrick Meehan*
9. *Steve Dunham*
10. *Cynthia Baldwin*
11. *Mark Emmert*
12. *Donald Remy*

*I believe that your office will forthrightly provide the requested records in a manner that is consistent with the purpose of the RTKL. However, 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.*

November 26, 2013  
Page 2  
Mr. Ryan Bagwell

Your request is denied in part and granted in part. Specifically, in response to your request for the above-referenced information regarding Steve Aichele, OGC does not have the records that you requested in its possession, under its custody or its control. Pertaining to your request for the above-referenced information belonging to James Schultz, OGC has two emails which are enclosed with this correspondence. A third and final email denied under 65 P.S. § 67.708(b)(9) is referenced on the enclosed index.

Pursuant to the Office of Open Records Final Decision in *Jenkins vs. Pennsylvania Department of State*, OOR Dkt. AP 2009-065, it should be noted that: "It is not a denial of access when an agency does not possess records and [there is no] legal obligation to obtain them (see, e.g. Section 67.506 (d)(1))." Further, an agency is not required "to create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which the agency does not currently compile, maintain, format or organize the record." 65 P.S. § 67.705.

You have a right to appeal this response, in writing, to Terry Mutchler, Executive Director, Office of Open Records (OOR), Commonwealth Keystone Building, 400 North Street, 4<sup>th</sup> Floor, Harrisburg, Pennsylvania 17120. If you choose to file an appeal, you must do so within 15 business days of the mailing date of this response and send to the OOR:

- 1) this response;
- 2) your request; and
- 3) the reason why you think the record exists under the custody or control of the agency.

Also, the OOR has an appeal form available on the OOR website at: <https://www.dced.state.pa.us/public/oor/appealformgeneral.pdf>.

Sincerely,



Jo Reichard  
Agency Open Records Officer  
Office of General Counsel  
333 Market Street, 17<sup>th</sup> Floor  
Harrisburg, PA 17101  
Tel. # 717-783-6563  
Fax # 717-787-1448  
E-mail: [RA-RTK-ExecOff@pa.gov](mailto:RA-RTK-ExecOff@pa.gov)

Enclosures

RTKL Requester: Ryan Bagwell  
Date Received: October 22, 2013  
Date of Response: November 26, 2013

### **AFFIDAVIT OF JO REICHARD**

1. I, Jo Reichard, am the Agency Open Records Officer for The Office of General Counsel (OGC). I am responsible for discharging all of the duties of agency open records officers under the Right to Know Law, 65 P.S. 67.101 *et seq.* I am authorized, as the Agency Open Records Officer, to make this affidavit for The Office of General Counsel.
2. On October 22, 2013, OGC received a Right to Know Law request submitted by Ryan Bagwell for the following:

***I hereby request copies of any and all emails, letters, memos, and reports sent or received by Stephen Aichle and/or James Schultz between October 1, 2011 and July 1, 2013 from the following people:***

1. *former secretary of education Ron Tomalis*
2. *former attorney general Linda Kelly*
3. *state Police Commissioner Frank Noonan*
4. *Frank Fina*
5. *Louis J. Freeh*
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9. *Steve Dunham*
10. *Cynthia Baldwin*
11. *Mark Emmert*
12. *Donald Remy*

***I believe that your office will forthrightly provide the requested records in a manner that is consistent with the purpose of the RTKL. However, 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.***

3. I am to make a good faith effort to determine whether the agency has possession, custody or control of the record requested, pursuant to 65 P.S. § 67.901. I have made a thorough inquiry of any designated likely records custodians for the records requested including having OGC review its records.

Based on the information provided to me, I do hereby affirm that to the best of my knowledge, information and belief, OGC does not have any records in its possession, custody, or control regarding the above-referenced request for Steve Aichele.

Pertaining to the above-referenced request for James Schultz, OGC has two emails which are enclosed with this correspondence. A third and final email denied under 65 P.S. § 67.708(b)(9) is referenced on the enclosed index.

4. This affidavit is true and correct to the best of my knowledge, information, and belief. I understand that any false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

DATED: 11-26-13

Jo Reichard  
Jo Reichard

<b><u>RECORD INDEX</u></b>			
<b><u>DATE/TIME</u></b>	<b><u>PARTICIPANT(S)</u></b>	<b><u>SUBJECT</u></b>	<b><u>RTKL EXEMPTION</u></b>
1/17/12 7:31 PM	Schultz, J Magnatta, M	Draft Letter	65 P.S. § 67.708(b)(9)

## **Magnatta, Michael**

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**From:** Schultz, James D.  
**Sent:** Saturday, December 22, 2012 10:40 PM  
**To:** Magnatta, Michael  
**Subject:** FW: Request for Delegation  
**Attachments:** im4511\_20121214\_100446.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

File in psu.

James D. Schultz  
General Counsel  
Office of the Governor  
[REDACTED]

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

**From:** Schultz, James D.  
**Sent:** Friday, December 14, 2012 09:53 AM Eastern Standard Time  
[REDACTED]  
**Subject:** Request for Delegation

General Kelly:

Attached please find a memo requesting delegation relative to a potential cause of action against the NCAA.

Best,

Jim

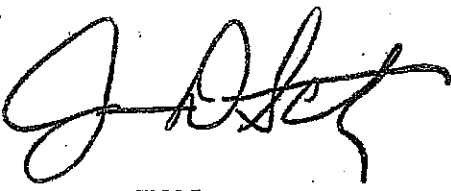
**James D. Schultz** | General Counsel  
Office of the Governor  
Commonwealth of Pennsylvania  
225 Main Capitol Building  
Harrisburg, PA 17120  
[REDACTED]  
[REDACTED]

**PRIVILEGED AND CONFIDENTIAL  
ATTORNEY WORK PRODUCT**

**COMMONWEALTH OF PENNSYLVANIA  
Office of General Counsel**

**DATE:** December 14, 2012

**TO:** The Honorable Linda L. Kelly  
Attorney General

**FROM:** James D. Schultz  
General Counsel 

**RE:** REQUEST FOR DELEGATION

*Commonwealth of Pa. and Tom Corbett v. NCAA*  
U.S. District Court for the Middle District of Pa.

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The Office of General Counsel ("OGC") hereby requests delegation from the Office of Attorney General ("OAG") to initiate on behalf of the Commonwealth of Pennsylvania and the Governor an antitrust action and/or other potential causes of action against the National Collegiate Athletic Association ("NCAA"). Specifically, OGC asks OAG to act under section 204(c) of the Commonwealth Attorneys Act (71 P.S. § 732-204(c)) to authorize OGC to represent the Commonwealth (including the Governor) and its citizens in this proposed action under the federal antitrust laws, as briefly described below:

Nature of Action: The Commonwealth of Pennsylvania and the Governor (acting as *parens patriae*) would commence an action in equity against the NCAA alleging violations of federal antitrust law in relation to the purported disciplinary action (labeled a "consent decree") that was taken earlier this year by the NCAA against the Pennsylvania State University ("PSU") arising out of the Sandusky matter. The Commonwealth would ask the court (1) to issue a permanent injunction preventing the NCAA from imposing the sanctions set forth in the consent decree; (2) to declare the sanctions to be in violation of section 1 of the Sherman Act; and (3) to award costs, including attorneys' fees.

Procedural Status: A complaint prepared by the Office of General Counsel, assisted by outside counsel specializing in antitrust matters, is being prepared for filing in the U.S. District Court for the Middle District of Pennsylvania.

Summary of Allegations: The Commonwealth and the Governor, acting as *parens patriae*, would allege that the NCAA violated section 1 of the Sherman Act (15 U.S.C. § 1) in imposing sanctions (purportedly disciplinary in nature) against PSU arising out of the Sandusky matter. In summary, the Commonwealth would allege the following:

- The NCAA and its member institutions, by and through their officers, directors, employees, agents or other representatives, have conspired to restrain and suppress competition in the relevant markets using the Sandusky offenses as a pretext to impose

arbitrary, capricious, and unprecedented sanctions on PSU for actions wholly unrelated to the mission of the NCAA.

- The conduct of the NCAA and the member institutions who engaged in the attack on PSU threatens to harm competition in the relevant markets by depriving consumers of a robust, well-supported, financially stable state university in the Commonwealth and eliminating a major competitor in the markets for Division I football players and college football-related apparel and memorabilia.
- As a result of the NCAA's illegal and anticompetitive scheme, the Commonwealth of Pennsylvania and its citizens have and continue to suffer antitrust injury. This injury is of the type the federal antitrust laws were designed to prevent and flows from that which makes the NCAA's conduct unlawful.
- NCAA's anticompetitive acts were intentionally directed at the United States market and had a substantial and foreseeable effect on interstate commerce, including but not limited to hospitality revenues, the flow of scholarship funds, and the allocation of revenues and profits in the relevant markets.
- The conduct of the NCAA and its member institutions as a result of the consent decree imposing sanctions is ongoing and will continue to impose antitrust injury on the Commonwealth of Pennsylvania and its citizens unless injunctive relief is granted.

Lead OGC Attorney: Executive Deputy General Counsel Jarad W. Handelman

## Magnatta, Michael

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**From:** Schultz, James D.  
**Sent:** Wednesday, December 19, 2012 10:59 AM  
**To:** Magnatta, Michael  
**Subject:** FW:  
**Attachments:** Delegation Letter.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

For the PSU folder.

**James D. Schultz** | General Counsel  
Office of the Governor  
Commonwealth of Pennsylvania  
225 Main Capitol Building  
Harrisburg, PA 17120  
[REDACTED]  
[REDACTED]

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**From:** Schild, Leslie A. [REDACTED]  
**Sent:** Wednesday, December 19, 2012 10:40 AM  
**To:** Schultz, James D.  
**Cc:** Neuhauser, Gregory R.; Conley, William V.  
**Subject:**

Mr. Schultz,

Attached is the Delegation Letter in the case of *Commonwealth of Pennsylvania, et al. v. NCAA*. The original paperwork will follow via mail.

Thank you.

***Leslie A. Schild***

Civil Litigation Coordinator

And Assistant To:

Gregory R. Neuhauser, CDAG

M. Abbegael Giunta, DAG



COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF ATTORNEY GENERAL  
HARRISBURG, PA 17120

LINDA L. KELLY  
ATTORNEY GENERAL

16TH FLOOR  
STRAWBERRY SQUARE  
HARRISBURG, PA 17120  
(717) 787-3381

December 17, 2012

James D. Schultz  
General Counsel  
Office of General Counsel  
17th Floor - Harrisburg # 2  
Harrisburg, PA 17120

Re: *Commonwealth of Pa. and Tom Corbett v. NCAA (M.D.Pa.)*

Dear Mr. Schultz:

In response to your request for delegation dated December 14, 2012, and pursuant to Section 204(c) of the Commonwealth Attorneys Act, you are hereby delegated authority to handle the above- referenced case. The Office of Attorney General is delegating this matter to avoid a conflict or an appearance of a conflict in light of the Office's prosecution of current and former officials of Penn State.

This delegation does not include authority to handle appeals of these cases to the Commonwealth Court, the Pennsylvania Supreme Court, the Court of Appeals for the Third Circuit of the United States or the United States Supreme Court, unless the matter delegated is itself an appellate matter. Authority to handle appeals requires a separate delegation by the Attorney General in accordance with the attached Appeals Procedure. If authority to handle an appeal to one of the appellate courts listed above is delegated, a further delegation is required for authority to handle any subsequent appeal.

After a decision in the case, the information and documents listed in the appeal procedure should be sent to John G. Knorr, III, Chief Deputy Attorney General, Appellate Litigation Section, so that a decision may be made in a timely fashion about the handling of any appeal.

Any special conditions of this delegation pertaining to a particular case are stated in a separate memorandum attached to the documents in the case.

James D Schultz  
December 17, 2012  
Page 2

This authorization shall continue until either terminated or amended in writing by this Office.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Gregory R. Neuhauser", followed by a horizontal line extending to the right.

Gregory R. Neuhauser  
Chief Deputy Attorney General  
Chief, Litigation Section

GRN/las  
ICMS Log No.: 28816

**OFFICE OF ATTORNEY GENERAL  
PROCEDURE FOR APPEALS OF DELEGATED CASES**

**The following procedures are in effect for the representation of the Commonwealth in any appeal. All requests for appeal delegations are to be sent to John G. Knorr, III, Chief Deputy Attorney General, Appellate Litigation Section, Office of Attorney General.**

**1. Adverse Decisions.** Within seven days after receipt of an adverse final decision or an interlocutory ruling from which an appeal may lie, please forward a copy of the opinion with a memorandum recommending whether or not an appeal should be taken.

**2. Favorable Decisions.** If the other party seeks discretionary review of a decision favorable to the Commonwealth, please forward the petition or other papers with a copy of the brief below. For cases in which the opposing party has an appeal as of right, please forward a copy of the lower court's opinion and appellant's brief. In either case, these documents should be sent immediately.

**3. Delegation.** In addition to the above, the General Counsel shall submit a request for delegation of any case which the General Counsel or the agency wishes to handle on appeal.

**4. Briefs.** If the appeal has been delegated to the General Counsel, the assigned attorney is to send the brief to Mr. Knorr seven days before the date it is due to be filed. This requirement does not apply to appeals in the Commonwealth Court.