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Middleton, WI 53562

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

Re: *Bagwell v. Philadelphia District Attorney*
OOR Dkt. No. AP 2013-1586

September 30, 2013

Dear Mr. Schnee:

This is a final reply to the District Attorney's ("DA") arguments, which you permitted by way of e-mail correspondence on September 19, 2013.

The DA argues that I have not proven the requested records are "public records" under the RTKL. While it is true that I bear the threshold burden of proving a requested record is a "public record," to meet that burden, one must only prove that the requested information constitutes a "record" under the RTKL. "A requested piece of information must constitute a 'record' under the RTKL in order to constitute a 'public record' under the RTKL." *Barkleyville Borough v. Stearns*, 35 A.3d (Pa. Commw. Ct. 2012).

The RTKL defines a "record" as:

"Information, regardless of physical form or characteristics, that documents a transaction or activity of an agency and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency."

There are two parts to this definition. First, the requested record must document a transaction or activity of an agency, and second, it must have been created, received or retained as part of the agency's activities.

Here, I sought records from several individuals who have done business with the Commonwealth. Barry Feudale is the former supervising judge of the statewide grand jury. Randy

Feathers is a former investigator with the state Attorney General's office and continues to be involved in activities of the Attorney General. Louis Freeh, Tom Cloud and Greg Paw are private investigators who participated in an investigation with the Attorney General. All were involved in the business and activities of the the Attorney General. Therefore, the requested records document communication between people involved in the activities of a Commonwealth agency. Since the correspondence was also created in connection with the activities of the Attorney General, the requested information constitutes "records" under the RTKL.

The affidavit supplied by Mr. Bender only suggests that the requested information does not document a transaction or activity of the DA. However, it makes no showing that the requested information does not document information about another agency. Mr. Bender could have easily provided adequate evidentiary support by describing the content of the records with sufficient specificity. He chose not to do so. Without such evidence, his affidavit does not support his argument that the requested records document information other than transactions or activities of a Commonwealth agency.

CONCLUSION

The requested records document a transaction or activity of a Commonwealth agency, and were created in connection with an activity of that agency. Therefore, the requested records are "records" under the RTKL.

Respectfully submitted,

/s/

Ryan Bagwell

