



September 23, 2010

William D. White  
16 East Manilla Ave.  
Pittsburgh, PA 15220-3306

**Re: Advisory Opinion Request Regarding MPOETC ("Municipal Police Officer's Education and Training Commission") and Response Requirements**

Dear Mr. White:

Thank you for writing to the Office of Open Records (OOR) with your request for an Advisory Opinion pursuant to the Right-to-Know Law, 65 P.S. §§67.101, *et seq.*, ("RTKL").

You asked the OOR to explain the status of the MPOETC and other general questions relating to who and how an agency may respond to a RTK request.

Please be advised that the OOR has decided not to grant this request for an Advisory Opinion. We are declining to accept this request because the request seeks a response to a series of questions. However, an explanation is provided to each of your questions for your reference.

1. The OOR has not made a determination of whether MPOETC qualifies as an independent "agency" required to comply with the RTKL apart from the Pennsylvania State Police. The issue of whether an entity qualifies as a Commonwealth or local agency is a highly fact-specific inquiry that must be determined on a case-by-case basis unless the entity has already been defined as such in case law. The OOR determines agency status on appeal by reviewing any laws and/or governing documents that form the entity and assessing the degree of financial and governmental relationships with and/or control by governmental entities based upon submissions by the entity and requester.

Were MPOETC to be deemed a separate agency subject to the RTKL, then it would be required to comply with the provisions requiring designation of an Open Records Officer (ORO) under Section 502(a). But, please be advised that requests to divisions or parts of recognized agencies are properly addressed by the umbrella agency, (*i.e.*, a County for its departments).

2. Pursuant to Section 502, each agency "shall designate an official or employee to act as the open-records officer." 65 P.S. §67.502(a), and the requests should be directed to that designated ORO.

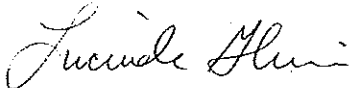
3. In the event that the ORO does not respond timely to a request directed to the ORO of a qualifying agency, the request is "deemed denied." If no extension is claimed, that occurs within five business days of the agency's receipt of the request. Thus, the vacancy of the ORO position does not result in a 'forfeit' of a dispute to public nature of records sought, and the deemed denial of the request would need to be appealed to the OOR to seek disclosure.

4. The term "business day" is not defined in the RTKL. The OOR has interpreted a "business day" as any day that an agency is open for business and/or operation. The term "open for business" is extremely fact-specific. For example, does a part time employee working from home constitute being "open for business?" Can an agency always be open for business? These types of fact-specific issues as to whether a specific agency is "open for business" are properly addressed within the RTKL appeal process. This appeal process permits a full examination of all the facts surrounding a specific request, agency, and agency operating procedures. In addition, the process allows for the parties to present their position and arguments on whether an agency is/is not "open for business."

5. Pursuant to the RTKL, an agency is to address each request separately and address each request on its individual merit. Again, should you choose to challenge an agency's response or an entity's lack of a response which may be based upon its belief that it does not qualify as an agency, you need to submit an appeal of the agency/entity's lack of a response (*i.e.*, deemed denial) to the OOR within fifteen business days of the deemed denial.

Thank you for your inquiry.

Respectfully,

  
Lucinda Glinn

**Brawley, Maryanne**

**From:** Bill White [whitelyte@whitelyte.com]  
**Sent:** Friday, September 03, 2010 4:36 PM  
**To:** DC, OpenRecords  
**Cc:** Young, E Beverly  
**Subject:** Advisory Opinion 09-03-10 MPOETC  
**Attachments:** PA Standard Right to Know MPOETC Bielich Appeal 09-03-10.doc

Executive Director  
Office of Open Records  
Commonwealth of Pennsylvania  
Commonwealth Keystone Building  
400 North Street, Plaza Level  
Harrisburg, PA 17120-0225

September 3, 2010

Request for Advisory Opinions

Dear Mr. Director,

1. Is the Municipal Police Officer's Education and Training Commission (MPOETC) a local or Commonwealth "agency" required to have its own RTK officer?
2. If an agency has not appointed its own RTK officer, may it utilize the RTK officer of another agency either temporarily or on a per request basis if they are required to have their own RTK officer?
3. Does the failure to have an RTK officer when required result in a lack of dispute, requiring a release of the records sought? I.e., the proper RTK officer fails to claim an extension of time or exemption, and cannot, because the office of RTK officer is vacant for that agency.
4. What is a "business day" when the agency operates 24/7?
5. May an agency conduct a review for each request, even if it has already been determined that a record is a public record, and delay or deny providing the same type records, to a different requestor?

This request for advisory opinions relates to a request made via email to the Administrative Officer of the MPOETC for various Certification records that MPOETC is exclusively responsible to administer.

The MPOETC has not designated an RTK officer, and does not provide RTK information on its website.

The Administrative Officer of the MPOETC made no written response.

The Administrative Officer advises via telephone that the request(s) were referred to the Pennsylvania State Police RTK Officer, who also failed to respond within five business days of the initial request.

The PSP RTK officer provided an "interim response" and notified that additional time was required for the PSP to review the request and determine if the requested record is a "public record". Although dated August 10, 2010, within the 5 day deadline, it was not received until August 13, 2010, 6 days, and was deemed denied and a timely appeal filed with the RTK Office.

Final Determination 20100607 Seitz v. Luzerne Borough suggests that these particular records, certifications for a police officer, have already been determined to be a public record and the Borough must produce them.

In this particular case, requestor attempted to obtain similar records from Braddock Hills Borough, and has been told they no longer exist because they weren't found, although the Borough is required to have them, and the

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Borough refuses to explain when or how they ceased to exist.

Requestor believes that the RTK Office should issue guidelines and a reporting method to forestall repeated reviews of the same or similar records, and that record identification and retention should be uniform. I.e., thousands of Boroughs can each make its own procedural rules, but many types of records are 'identical' in nature. Seitz applies to the Luzerne Borough to produce its copy of certification records it files with another agency, MPOETC, but MPOETC is not a party to Seitz and is conducting a review of its certification records in White to see if these are public records. Potentially, MPOETC may claim an exemption for their certification records in White, while Luzerne Borough must turn the same type records over in Seitz, while Braddock Hills Borough avoids the matter by eliminating the records that are available from another Borough with different policies and practices. The RTK Office should maintain a uniform identification index for records and whether or not is has been determined to be public. For example, Agency A calls a record a duty roster and it is determined to be public. Agency B calls the identical record (same information) a time card and exempt as a personnel record. Agency C keeps a somewhat different record it calls a personal daily log and exempt as personal notes, but is determined to be a financial record that must be disclosed. Agency A, B and C are in different counties, all appeal to Court and get conflicting decisions that don't apply to the other agencies, but to the type of record, which Agency D publishes daily in the public interest although it is exempt in the next county, and Agency E discards the same records daily. In other word, chaos. The public should be able to point to a type of record that is called the same thing whatever agency maintains it, and know if it has already been determined to be public, exempt, or open to challenge.

MPOETC is not subsidiary to the PSP, is akin to a professional licensing commission, and is independent of the PSP, although the Chairman of MPOETC is the commander of the State Police. MPOETC requires a quorum of 11 of 20 members to act.

The PSP operates 24/7, and records could be made available at any time. Does "business day" vary agency to agency? In this case, MPOETC operates with an ordinary 5 business day per week schedule, while the PSP operates 24/7. What five business days should be counted to deem denial and does it alter the 15 business day appeal period to include weekends or holidays?

Sincerely,

/s/ William D. White

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