

JOHN A. LAWRENCE
STATE REPRESENTATIVE
13TH LEGISLATIVE DISTRICT



HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

HARRISBURG OFFICE
P.O. BOX 202013
HARRISBURG, PA 17120
(717) 260-6117

JENNERVILLE OFFICE
1 COMMERCE BLVD., SUITE 200
WEST GROVE, PA 19390
(610) 869-1602

Office of Open Records
Liz Wagenseller, Executive Director
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234

September 22, 2023

Dear Ms. Wagenseller –

I write to appeal the City of Chester’s denial of an open records request.

As you are aware, to file an appeal under the Right-to-Know Law, a requester must provide:

1. A copy of the original right-to-know request.
2. A copy of the agency's response.
3. A written statement explaining the grounds that the record is a public record.
4. A written statement addressing the grounds stated by the agency for denying the request.

COPY OF THE ORIGINAL RIGHT-TO-KNOW REQUEST

A copy of my original right-to-know request is attached.

AGENCY RESPONSE

A copy of the City of Chester’s response is attached. The denial is additionally reproduced below:

This information is exempt from disclosure under Section 67.708(b)(10)(i)(A) "A record that reflects: (A) The internal, predecisional deliberations of an agency, its members, employees or officials or predecisional deliberations between agency members, employees or officials and members, employees or officials of another agency, including predecisional deliberations relating to a budget recommendation, legislative proposal, legislative amendment, contemplated or proposed policy or course of action or any research, memos or other documents used in the predecisional deliberations."

WRITTEN STATEMENT EXPLAINING THE GROUNDS THAT THE RECORD IS A PUBLIC RECORD

The Pennsylvania Right-To-Know law prescribes the following definition of a “public record:”

“Public record.” A record, including a financial record, of a Commonwealth or local agency that:

- (1) is not exempt under section 708;*
- (2) is not exempt from being disclosed under any other Federal or State law or regulation or judicial order or decree; or*
- (3) is not protected by a privilege.*

The law further prescribes the following definition of a “record:”

“Record.” 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. The term includes a document, paper, letter, map, book, tape, photograph, film or sound recording, information stored or maintained electronically and a dataprocessed or image-processed document.

The requested record, “Copies of the ‘Two credible plans’ provided by Chester Mayor Kirkland to Receiver Michael Doweary as referenced in the April 17 2023 DVJournal article entitled ‘Receiver: Chester’s Dire Financial Straits May Lead to Disincorporation’,” is a “record” under the definition provided by law. The law prescribes that any “record” of a Commonwealth or local agency is a “public record” unless it meets one of the three circumstances outlined in the definition of a “public record.”

City of Chester alleges the requested records are shielded from release due to two separate clauses of section 708(b). The City does not allege any other provision of section 708 as a basis for denying this open records request. I assert that the requested records are not exempt under section 708, as they do not fall under any of the exceptions contemplated in the law.

WRITTEN STATEMENT ADDRESSING THE GROUNDS STATED BY THE CITY OF CHESTER FOR DENYING THE REQUEST

I disagree with the City’s assessment, and I will address each of the city’s alleged grounds for denial.

REBUTTAL OF CHESTER’S ASSERTION THAT THE REQUESTED RECORDS ARE EXEMPT FROM DISCLOSURE UNDER § 67.708(b)(10)(i)(A).

City of Chester improperly asserts the exemption under § 67.708(b)(10)(i)(A). For this exemption to apply, three elements must be satisfied:

- 1) “[t]he records must ... be ‘internal’ to a governmental agency”;
- 2) the deliberations reflected must be predecisional, i.e., before a decision on an action; and
- 3) the contents must be deliberative in character, i.e., pertaining to proposed action. See Kaplin v. Lower Merion Twp., 19 A.3d 1209, 1214 (Pa. Commw. Ct. 2011).

It cannot be credibly asserted by the local agency that plans, transmitted from the Mayor to the Receiver, satisfy **all three elements** of the test established by the Commonwealth Court. Arguably, the requested records do not meet **any** of the three required elements.

The documents are not “internal” to a governmental agency. The Mayor specifically states that he provided the requested records to the Receiver. There can be no doubt that the requested records were transferred from one entity (Chester) to another (the Receiver.)

I am not seeking *deliberations* that led to the Mayor’s final plans offered to the Receiver, nor am I seeking “research, memos or other documents used” in any predecisional deliberations leading up to his recommendations. I am seeking the “two credible plans” provided to the Receiver. A plan is not a deliberation, a plan is a document outlining a proposed action.

Further, to establish that records are deliberative, an agency must show that the information relates to the deliberation of a particular decision. McGowan v. Pa. Dep’t of Env’tl. Prot., 103 A.3d 374, 378-88 (Pa. Commw. Ct. 2014). The term “deliberation” is generally defined as “[t]he act of carefully considering issues and options **before** making a decision or taking some action...” BLACK’S LAW DICTIONARY 492 (9th ed. 2009); see also Heintzelman v. Pa. Dep’t of Cmty. & Econ. Dev., OOR Dkt. AP 2014-0061, aff’d No. 512 C.D. 2014 (Pa. Commw. Ct. 2014). City of Chester must establish the internal, predecisional and deliberative nature of the responsive record with sufficient specificity to allow the OOR to determine its applicability. See Scolforo, 65 A.3d at 1104. City of Chester must explain how the information withheld reflects or shows the deliberative process in which an agency engages during its decision-making. See Twp. of Worcester v. Off. of Open Records, 129 A.3d 44, 61 (Pa. Commw. Ct. 2016). City of Chester fails to assert any basis for the supposed “deliberative” nature of the requested records.

A record must make recommendations or express opinions on legal or policy matters and cannot be purely factual in nature. Kaplin, 19 A.3d at 1214. Factual material contained in otherwise deliberative documents is required to be disclosed if it is severable from its context. McGowan 103 A.3d at 382-83 (Pa. Commw. Ct. 2014).

The records being sought are the “two credible plans” transmitted from the City of Chester by its Mayor to the Receiver, presumably after the Mayor took such time and engaged in such

deliberations to develop his “two credible plans.” In plain terms, the proposal must consist of non-deliberative and factual information offered by the Mayor to support his “two credible plans,” and not the deliberations themselves. See Driscoll v. Chester Heights Borough, OOR Dkt. AP 2018-2054. Even more likely, these “credible plans” include estimates, projections, actual budget figures or comparisons. In such cases, the OOR has concluded that such materials are not deliberative in nature. See Lucia v. Pa. Dep’t of Transp., OOR Dkt. AP 2017-2205; see also Brambila v. Pa. Dep’t of Transp., OOR Dkt. AP 2017-0374.

Even if these plans were *used* in deliberations, if they contain factual information, the reports themselves are not deliberative in nature. See Yakim v. Municipality of Monroeville, OOR Dkt. AP 2018-0070 (“The evidence indicates that the memorandum consists of non-deliberative and factual information used by the Municipality to ‘formulate’ the budget, rather than containing the deliberations themselves.”).

It is unlikely, but not beyond the realm of possibility, that the finalized plans consist of both deliberative and non-deliberative/factual information offered by the Mayor to support his “two credible plans.” In such cases, redaction of the record is appropriate and not a denial. With that possibility in mind, Requester seeks an in-camera review of the subject records to make a proper determination whether the Mayor’s “credible plans” contain deliberative or non-deliberative information.

REBUTTAL OF CHESTER’S ASSERTION THAT THE REQUESTED RECORDS ARE EXEMPT FROM DISCLOSURE UNDER § 67.708(b)(17)(vi)(B)

City of Chester improperly asserts the exemption under § 67.708(b)(17)(vi)(B). It strains credulity for the local agency to assert that the disclosure of the Mayor’s “two credible plans” for fiscal recovery of the city transmitted to the Receiver relates to a noncriminal investigation or would somehow deprive a person of their right to an impartial adjudication.

Section 708(b)(17) of the Right To Know Law exempts from disclosure records of an agency “relating to a noncriminal investigation,” including, among other things, “complaints submitted to an agency” and “investigative materials, notes, correspondence and reports” and “[a] record that, if disclosed, would...[r]eveal the institution, progress or result of an agency investigation.” 65 P.S. §§ 67.708(b)(17)(i),(ii) and (vi).

To successfully assert the noncriminal investigative records exemption, the local agency must demonstrate that “a systematic or searching inquiry, a detailed examination, or an official probe” was conducted regarding a noncriminal matter. Pa. Dep’t of Health v. Office of Open Records, 4 A.3d 803, 810-11 (Pa. Commw. Ct. 2010). Further, the inquiry, examination or probe

must be “conducted as part of an agency's official duties.” Id. at 814. An investigation is only an official probe when conducted by agencies acting within their legislatively granted fact-finding or investigative powers. Johnson v. Pa. Convention Center Auth., 49 A.3d 920 (Pa. Commw. Ct. 2012); see also Pa. Dep't of Public Welfare v. Chawaga, 91 A.3d 257 (Pa. Commw. Ct. 2014). To hold otherwise would “craft a gaping exemption under which any governmental information-gathering could be shielded from disclosure.” Id. at 259.

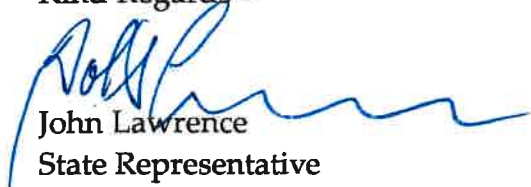
As there is no ongoing investigation or probe within the meaning of the law, the Mayor’s “two credible plans” were not prepared pursuant to a noncriminal investigation. There is no indication whatsoever that the Mayor’s “two credible plans” were created for use in an official probe conducted by the City of Chester (or any other government entity,) thus the local agency’s assertion of this exception is misplaced.

As the requested record was not created in furtherance of an official investigation or probe, it bears mentioning that the local agency is equally unable to assert that providing these records would deprive the Mayor (or anyone else employed by the City) of an impartial adjudication.

CONCLUSION

For the aforementioned reasons, I appeal the decision of the City of Chester to deny my request for records, and ask the Office of Open Records to order the City to release the requested records as required under the law.

Kind Regards –



John Lawrence
State Representative
Commonwealth of Pennsylvania

John Lawrence

From: John Lawrence
Sent: Thursday, August 24, 2023 3:33 PM
To: [REDACTED]m
Cc: Kathleen Book; Karen Updegraff
Subject: RTK Request from Rep Lawrence
Attachments: 1287_001.pdf

Good Afternoon Candice -

Please see the attached Right to Know request. Thank you.

Kind Regards - John Lawrence

John Lawrence
State Representative
Commonwealth of Pennsylvania
610 869 1602 Jennersville Office
717 260 6117 Capitol Office
RepLawrence.com



Standard Right-to-Know Law Request Form

Good communication is vital in the RTKL process. Complete this form thoroughly and retain a copy; it may be required if an appeal is filed. You have 15 business days to appeal after a request is denied or deemed denied.

SUBMITTED TO AGENCY NAME: CITY OF CHESTER (Attn: AORO)

Date of Request: AUG 24 2023 Submitted via: Email U.S. Mail Fax In Person

PERSON MAKING REQUEST:

Name: REP JOHN LAWRENCE Company (if applicable): PA HOUSE OF REPRESENTATIVES

Mailing Address: 1 COMMERCE BLVD STE 200

City: WEST GROVE State: PA Zip: 19390 Email: JLAWRENCE@PAHOUSEGOP.COM

Telephone: 610-869-1602 Fax: _____

How do you prefer to be contacted if the agency has questions? Telephone Email U.S. Mail

RECORDS REQUESTED: *Be clear and concise. Provide as much specific detail as possible, ideally including subject matter, time frame, and type of record or party names. RTKL requests should seek records, not ask questions. Requesters are not required to explain why the records are sought or the intended use of the records unless otherwise required by law. Use additional pages if necessary.*

COPIES OF THE "TWO CREDIBLE PLANS" PROVIDED BY CHESTER MAYOR KIRKLAND TO RECEIVER
MICHAEL DOWEARY AS REFERENCED IN THE APRIL 17 2023 DVJOURNAL ARTICLE ENTITLED
"RECEIVER: CHESTER'S DIRE FINANCIAL STRAITS MAY LEAD TO DISONCORPRATION."

DO YOU WANT COPIES? Yes, printed copies (default if none are checked)
 Yes, electronic copies preferred if available
 No, in-person inspection of records preferred (may request copies later)

Do you want certified copies? Yes (may be subject to additional costs) No
RTKL requests may require payment or prepayment of fees. See the Official RTKL Fee Schedule for more details.
Please notify me if fees associated with this request will be more than \$100 (or) \$_____.

ITEMS BELOW THIS LINE FOR AGENCY USE ONLY

Tracking: _____ Date Received: _____ Response Due (5 bus. days): _____

30-Day Ext.? Yes No (If Yes, Final Due Date: _____) Actual Response Date: _____

Request was: Granted Partially Granted & Denied Denied Cost to Requester: \$ _____

Appropriate third parties notified and given an opportunity to object to the release of requested records.

Receiver: Chester's Dire Financial Straits May Lead to Disincorporation



Posted to [Politics](#) April 17, 2023 by [Linda Stein](#)

The official charged with overseeing the City of Chester's dismal finances is predicting the city might reach the point where it will be disincorporated or dissolved.

Michael Doweary, the receiver appointed three years ago by former Gov. Tom Wolf to help pull the cash-strapped municipality out of insolvency, blamed elected city officials who filed appeals to block a bankruptcy and who also appealed court-approved modifications to the receiver's plans.

Chester needs a plan by the end of 2023, or it will cease to exist as a municipality, Doweary said.

Vijay Kapoor, Doweary's chief of staff, called the situation "sobering."

"Chester is really running out of time," Kapoor said. "There needs to be a focus right now on solving Chester's problems. If a comprehensive solution is not found by the end of the year, there may be no alternative for Chester but disincorporation."

If that were to happen, all municipal employees would be fired while the city's elected officials would be dismissed. A state administrator would then oversee the municipality as a disenfranchised territory.

Kapoor claimed that if a bankruptcy lawyer had not brokered a bargain with bondholders, the city would be out of money by this September.

The city's newly completed 2019 audit showed a \$6.8 million loss and a negative \$27.7 million fund balance. Also, the city has not made \$40 million in payments to its pension fund.

Kapoor said Chester would need a \$5 million loan in January to make its payroll.

And in 2025, Chester faces "a significant fiscal cliff," said Doweary.

"If you're out of money, you can't keep the lights on. Chester's financial situation is critical, and it is running out of time to find a solution," he said.

When Kapoor said city officials had not devised their own plan, Mayor Thaddeus Kirkland objected.

“We provided the Receiver with two credible plans,” said Kirkland. Both involved deals with the Chester Water Authority (CWA), including selling it to Aqua PA.

“Offers to monetize (that asset) are not a comprehensive plan,” Doweary countered. “Those were just offers for the system, not a plan.

“Bankruptcy is the only thing to bring all of the creditors to the table.”

Elected officials have been unwilling to cut back on pensions, one of the biggest items of bloat in the city budget. Kirkland said one former employee, whose husband died, told him: “How am I going to make it if you cut my pension?”

CWA lawyer Frank Catania said CWA is the only entity that has offered to help Chester, proposing in 2019 to give the city \$60 million in exchange for dropping any efforts to take over or sell the authority.

“It’s not a solution to sell (CWA) to Aqua,” he said of the city’s current fiscal crisis. Doing that “shifts the burden from Chester to the ratepayers.”

“The city (Chester) is in a bad spot (financially),” Catania said. He asked why the state has not given Chester a deal like those it gave to Philadelphia, Harrisburg, and Pittsburgh, which have also run into financial difficulties over the years.

Last year, the legislature and Wolf approved an extension of the Pennsylvania Intergovernmental Cooperation Authority’s oversight of Philadelphia until 2047.

“The state has overseen Chester for more than 25 years,” said Catania. “I think they have an obligation to help it, and rather than offer to help, they let the problem get much, much worse.

“It’s hard to conclude anything other than it was done on purpose.”

Catania also cited recent remarks by Philadelphia mayoral candidate Jeff Brown, saying many people in state government share his attitude.

A spokesperson for Gov. Josh Shapiro did not respond when asked about state help for Chester.

The state Supreme Court has agreed to hear appeals on the Chester cases. In the meantime, said Kapoor, elected officials have resumed their control of various city departments after a Commonwealth Court judge had ousted them.

In that ruling, Judge Ellen Ceisler blasted city officials for nepotism and self-dealing.

Also, federal grant programs that came online due to COVID are ending, so Chester may have to lay off some 20 people in January.

“We need to have a plan in place by the end of the year,” said Doweary.

About the Author



Linda Stein

Linda Stein is News Editor at Delaware Valley Journal.

Candice Newsome
City Clerk/Open Records Officer



Telephone [REDACTED]
Facsimile [REDACTED]

Right-To-Know Law Extension Notice

August 31, 2023

Rep. John Lawrence
1 Commerce Blvd, Ste 200
West Grove PA 19390

Dear Rep. John Lawrence:

Thank you for writing to City of Chester with your request for records pursuant to Pennsylvania's Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq.* On August 31, 2023, you requested "see attached".

Pursuant to Section 902(a) of the RTKL, an additional 30 days are required to respond because:

- The request requires redaction in accordance with Section 706 of the RTKL.
- The request requires the retrieval of a record stored in a remote location.
- A timely response cannot be accomplished due to bona fide staffing limitations.
- A legal review is needed to determine whether the record is subject to access.
- The requester has not complied with the Agency's policies regarding access to records.
- The requester refuses to pay applicable fees authorized by the RTKL.
- The extent or nature of the request precludes a response within the required time period.

City of Chester expects to respond to your request on or before October 8, 2023.

Respectfully,

Candice Newsome
City of Chester Open Records Officer

John Lawrence

From: Candice Newsome [REDACTED]
Sent: Friday, September 15, 2023 11:05 AM
To: John Lawrence
Subject: [EXTERNAL]: FW: City of Chester Open Records Request
Attachments: Xerox Scan_08312023162738.pdf

Greetings Rep. John Lawrence,

Attached is a copy of your Open Records Request. Your request is denied for the following reasons:

This information is exempt from disclosure under Section 67.708(b)(10)(i)(A) "A record that reflects: (A) The internal, predecisional deliberations of an agency, its members, employees or officials or predecisional deliberations between agency members, employees or officials and members, employees or officials of another agency, including predecisional deliberations relating to a budget recommendation, legislative proposal, legislative amendment, contemplated or proposed policy or course of action or any research, memos or other documents used in the predecisional deliberations."; and Section 67.708(b)(17)(vi)(B) "A record of an agency relating to a noncriminal investigation, including: (vi) A record that, if disclosed, would do any of the following: (B) Deprive a person of the right to an impartial adjudication."

Enjoy the rest of your day!

Candice Newsome
City Clerk/Open Records Officer
City of Chester
1 Fourth Street
Chester PA 19013

-----Original Message-----
From: Candice Newsome

Sent: Thursday, August 31, 2023 4:29 PM
To: jlawrence@pahousegop.com
Subject: City of Chester Open Records Request

Greetings Rep. John Lawrence,

Please see the attached letter in regards to your Open Records Request for the City of Chester.

Thanks and enjoy the rest of your day!

Candice Newsome
City Clerk/Open Records Officer
City of Chester
1 Fourth Street
Chester PA 19013

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

From: [REDACTED]@chestercity.com>
Sent: Thursday, August 31, 2023 4:29 PM
To: Candice Newsom [REDACTED]
Subject: Xerox Scan

Please open the scanned attachment

Sent by: [cnewsome@chestercity.com]
Number of Images: 4
Attachment File Type: PDF

Device Name: VersaLink B7025
Device Location:

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.



Standard Right-to-Know Law Request Form

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Date of Request: AUG 24 2023 Submitted via: Email U.S. Mail Fax In Person

PERSON MAKING REQUEST:

Name: REP JOHN LAWRENCE Company (if applicable): PA HOUSE OF REPRESENTATIVES

Mailing Address: 1 COMMERCE BLVD STE 200

City: WEST GROVE State: PA Zip: 19390 Email: JLAWRENCE@PAHOUSEGOP.COM

Telephone: 610-869-1602 Fax: _____

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About the Author



Linda Stein

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