

**JOHN A. LAWRENCE**  
STATE REPRESENTATIVE  
13<sup>TH</sup> LEGISLATIVE DISTRICT



**HOUSE OF REPRESENTATIVES**  
COMMONWEALTH OF PENNSYLVANIA  
HARRISBURG

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Office of Open Records  
Liz Wagenseller, Executive Director  
333 Market Street, 16<sup>th</sup> Floor  
Harrisburg, PA 17101

Re: Appeal of Right to Know Request DCNR #2024-134

January 18, 2025

Dear Ms. Wagenseller –

I write to appeal the Department of Conservation and Natural Resources' 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 requested record is a public record
4. A written statement addressing the grounds stated by the agency for denying the request

**ORIGINAL RIGHT TO KNOW REQUEST**

A copy of my original Right to Know request is attached.

**AGENCY RESPONSE**

A copy of DCNR's response is attached.

**WRITTEN STATEMENT EXPLAINING THE GROUNDS THAT THE REQUESTED RECORDS ARE PUBLIC RECORDS**

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 data-processed or image-processed document.*

The information I requested from DCNR is a "record" under the definition provided by law. Each requested item documents a transaction or an activity of DCNR.

The law states that any "record" of a Commonwealth agency is a "public record" unless it meets one of the three circumstances outlined in the definition of a public record. DCNR does not assert that any of the information sought by my Right to Know request is ineligible for release due to the provisions outlined in law under the definition of a "public record."

## **WRITTEN STATEMENT ADDRESSING THE GROUNDS STATED BY DCNR FOR DENYING THE REQUEST**

### **DCNR ERRONEOUSLY STATES MY RTK REQUEST IS "GRANTED IN PART"**

DCNR claims partial fulfilment of my duly submitted Right to Know request, supporting this claim with the statement *"DCNR has searched its public records and...was able to locate documents relating to the closing and final settlement of the George Strawbridge Property"*<sup>1</sup> (emphasis added.) My Right to Know request had nothing to do with closing and final settlement documents, and the assertion that provision of the aforementioned documents partially fulfills my request is in error. As this was the only document DCNR provided in response to my request, and it has nothing to do with the information I requested, DCNR has in fact denied my Right to Know request in its entirety.

### **DCNR'S REASONS FOR DENIAL**

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<sup>1</sup> DCNR RTK Response to Rep Lawrence, DCNR #2024-134, January 2, 2025 pg 1-2

DCNR provides a series of purported justifications for denial of my Right to Know request. I will address each in turn.

### **DCNR'S FIRST REASON FOR DENIAL**

DCNR states:

*Your request for "(all)" Documentation regarding the ...acquisition of the George Strawbridge Property as well as email correspondence from 2009-2022" is denied as being insufficiently specific.<sup>2</sup>*

Here, DCNR misquotes my Right to Know request to justify denial, creating a false perception that my request is overly broad and vague, when in reality it is narrow and specific.

DCNR's use of quotation marks around the statement for "*(all) Documentation, regarding the ...acquisition of the George Strawbridge Property as well as email correspondence from 2009-2022*"<sup>3</sup> infers that DCNR is directly quoting from my Right to Know request. This is incorrect. My Right to Know request contains no such statement. This misquotation of my very clear and specific Right to Know request lays the foundation for DCNR to justify their complete denial in providing responsive documents.

In addition, the alleged quotation is significantly more broad and vague than the actual language I used in my Right to Know request. DCNR's fabricated quotation lends credence to their argument that my Right to Know is insufficiently vague and overbroad. While I am not attempting to ascribe intent or motives, DCNR's significant misquotation of my Right to Know request leads me to question if my request received a proper and thorough reading by DCNR officials.

### **DCNR'S SECOND REASON FOR DENIAL**

DCNR states:

*"As written, that portion of your RTKL request, uses the term "and any other information or records" as well as "email correspondence from 2009-2022" and therefore, is deemed by the Department as being overly broad and insufficiently specific pursuant to 65 P.S. § 67.703."<sup>4</sup>*

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<sup>2</sup> DCNR RTK Response to Rep Lawrence, DCNR #2024-134, January 2, 2025 pg 2

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

DCNR first takes issue with my use of the term “*and any other information or records*” in part 1 and 2 of my Right to Know request. DCNR claims that this language lacks “*sufficient specificity to enable [DCNR] to identify with certainty the records that are being requested.*”

When read in context, a plain reading of my Right to Know request leaves no doubt as to the records being requested. Part 1 of my request seeks records associated with a \$1.5 million Community Conservation Partnerships Program (C2P2) grant awarded in November 2018 to support the acquisition of property in Southern Chester County from George Strawbridge. Part 2 of my request seeks records associated with additional C2P2 grants, again regarding the acquisition of property in Southern Chester County from George Strawbridge.

Even if DCNR’s contention that my use of the term “*and any other information or records*” is insufficiently specific, it does not absolve DCNR from responding to the remainder of the specific records requested. In *Pennsylvania State Police v Zloczower*, Commonwealth Court held that a state agency was responsible for producing “*specific types of files*” “*identified*” by a petitioner amongst a “*laundry list of unspecific requests.*”<sup>5</sup> Here, in addition to the term “*and any other information or records,*” I specifically identified “*emails, applications, letter of recommendation, communications, [and] transcripts*” related to specific DCNR grant awards. Responsive documents identified under these specifics must be provided even if the term “*and any other information or records*” is deemed problematic.

DCNR also takes issue with the term “*email correspondence from 2009-2022,*” again stating that such language is “*overly broad and insufficiently specific.*” DCNR’s claim is in error, and will be further discussed in subsequent sections of this appeal.

### **DCNR’S THIRD REASON FOR DENIAL**

DCNR claims my request is insufficient under 65 P.S. § 67.703 and the three-part *Carey* test.

Section 67.703 of the Right to Know law states in part:

“*A written request should identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested...*”<sup>6</sup>

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<sup>5</sup> *Pennsylvania State Police v. Zloczower*, No. 2082 C.D. 2010, (Pa. Commw. Ct. Oct. 4, 2011)

<sup>6</sup> 65 Pa. Stat. § 67.703

All four parts of my Right to Know request fall comfortably within this provision of the law. DCNR attempts to show that my Right to Know request falls short by citing the three-part balancing test elucidated in *Carey v Department of Corrections*. DCNR's analysis of *Carey's* applicability to my Right to Know request is fatally flawed and invalid.

### **DCNR MISAPPLIES THE CAREY THREE-PART BALANCING TEST**

DCNR states that the *Carey* test requires a Right to Know request must contain "(1) the subject matter of the request; (2) the scope of the documents sought; and (3) the timeframe for which the records are sought."<sup>7</sup> DCNR claims that my Right to Know request fails to meet these three requirements. I respectfully disagree with DCNR's conclusion.

*Carey* dealt with a prisoner requesting a large volume of information from the Pennsylvania Department of Corrections regarding prisoner transfers from Pennsylvania to Michigan. At the outset, it's significant to note that Commonwealth Court found the petitioner's lengthy information request was in fact justified. The court found against the plaintiff not on the basis of the volume or detail of documents requested, but on the separate and unrelated basis of potential personal security concerns. Such personal security concerns are not present in this case and not alleged by either myself or DCNR.

Importantly, the three-part test DCNR cites from *Carey* was used by the *Carey* court to *justify* the release of information, not to *withhold* it.

### **A REVIEW OF THE FACTS FROM CAREY REFUTES DCNR'S FLAWED JUSTIFICATION FOR DENIAL OF MY RTK REQUEST**

In *Carey*, the specific Right to Know request was as follows:

1. *All communications and statements made by [DOC], or to [DOC] regarding said [prisoner] transfers. Including emails, texts, phone messages, fax, etc.*
2. *All documents/communications which may indicate the individual[s] or agencies who authorized said transfers.*

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<sup>7</sup> DCNR RTK Response to Rep Lawrence, DCNR #2024-134, January 2, 2025 pg 2

3. All documents/communications of [DOC] including but not limited to, SCI–Albion, the Secretary of Corrections, the Governor of the State of Pennsylvania, the Michigan Department of Corrections and any other governmental official regarding the transfer of Pennsylvania inmates to the State of Michigan.

4. All documents which released inmate Douglas Ralph Carey [Requester] (GF–6829) from [DOC] and which recommitted inmate Carey to the State of Michigan Department of Corrections.

5. All documents which were provided to the inmates who were transferred prior to, during, and after said transfers.<sup>8</sup>

The Carey Right to Know request is far broader than my request in a number of respects. The Carey request uses sweeping language such as “*emails, texts, phone messages, fax, etc.*”<sup>9</sup> (emphasis added.) It seeks “All documents / communications which may indicate” (emphasis added) the transfer of prisoners.<sup>10</sup> It seeks “All documents / communications” regarding the referenced prisoner transfers from a lengthy list of governmental officials, including the broad catch-all term “*and any other governmental official*” (emphasis added.)<sup>11</sup> It seeks, without any specificity or limitation, “all documents...provided to...inmates who were transferred prior to, during, and after said transfers” (emphasis added.)<sup>12</sup> Commonwealth Court upheld the validity of the broad nature of Carey’s Right to Know request in its entirety.

In comparison, my Right to Know request is narrowly tailored, requesting information about specific DCNR grants awarded in connection with acquisition of property located in Southern Chester County from George Strawbridge, and email correspondence between two specific individuals/organizations and DCNR during a specified time frame.

**MY RTK REQUEST IS WELL WITHIN THE BOUNDARIES  
ESTABLISHED BY THE THREE-PART CAREY TEST**

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<sup>8</sup> Carey v. Pa. Dep’t of Corr., 61 A.3d 367 (Pa. Commw. Ct. 2013)

<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> Id.

<sup>12</sup> Id.

I humbly submit that my Right to Know request squarely complies with the *Carey* court's admonishment that requests must "*specifi[y] a subject matter, a finite timeframe and seek [ ] a discrete group of documents, either by type, as communications, or by recipient.*"<sup>13</sup> My Right to Know request contains four discrete components, each of which meets the *Carey* standard.

## **PART 1 OF MY RTK REQUEST MEETS THE CAREY STANDARD**

Part 1 of my Right to Know request states the following:

*DOCUMENTATION INCLUDING EMAILS, APPLICATIONS, LETTERS OF RECOMMENDATION, COMMUNICATIONS, TRANSCRIPTS, AND ANY OTHER INFORMATION OR RECORDS CONCERNING A \$1.5 MILLION COMMUNITY CONSERVATION PARTNERSHIPS PROGRAM (CCPP) GRANT AWARDED NOVEMBER 2018 IN CONJUNCTION WITH ACQUISITION OF PROPERTY LOCATED IN SOUTHERN CHESTER COUNTY FROM GEORGE STRAWBRIDGE.*<sup>14</sup>

This request clearly meets the three-part *Carey* standard.

### **1. SUBJECT MATTER OF THE REQUEST**

Here, the subject matter is a November 2018 \$1.5 million DCNR grant to acquire property in Southern Chester County from George Strawbridge. This request, concerning a single grant award in 2018, is far more narrow than the request affirmed by the *Carey* court. (In *Carey*, the court found that a request for "*all documents/communications*" related to "*the transfer of Pennsylvania inmates to Michigan*" was sufficiently specific.)

### **2. SCOPE OF DOCUMENTS SOUGHT**

Here, the scope of documents sought includes documents commonly associated with state grant awards, including applications and letters of recommendation, along with communication records associated with this specific grant award. In *Carey*, the court found the broad request of "*all documents/communications*" to be sufficiently specific given the request dealt with a specific program (prisoner transfers from Pennsylvania to

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<sup>13</sup> *Carey v. Pa. Dep't of Corr.*, 61 A.3d 367 (Pa. Commw. Ct. 2013)

<sup>14</sup> Lawrence RTK Request to DCNR, November 25, 2024 pg 1

Michigan.) My request clearly falls within the rather broad boundaries elucidated by the court in *Carey*.

### 3. TIMEFRAME

Here, the timeframe surrounds a grant awarded in November 2018. Responsive documents would be received or produced by DCNR in the time before and after the awarding of the grant. The *Carey* court noted that this factor is fluid and dependent on the subject matter and scope of the request.

## **PART 2 OF MY RTK REQUEST MEETS THE CAREY STANDARD**

Part 2 of my Right to Know request states the following:

*DOCUMENTATION INCLUDING EMAILS, APPLICATIONS, LETTERS OF RECOMMENDATION, COMMUNICATIONS, TRANSCRIPTS, AND ANY OTHER INFORMATION OR RECORDS CONCERNING C2P2 GRANTS AWARDED IN CONJUNCTION WITH ACQUISITION OF PROPERTY LOCATED IN SOUTHERN CHESTER COUNTY FROM GEORGE STRAWBRIDGE INCLUDING BUT NOT LIMITED TO THOSE GRANTS AWARDED IN 2016, 2017, AND 2018.*<sup>15</sup>

Part 2 of my request is broader than part 1, but it is still well within the confines of the three-part *Carey* test.

### 1. SUBJECT MATTER OF THE REQUEST

Here, the subject matter is C2P2 grants awarded by DCNR over a series of years in furtherance of the acquisition of property located in Southern Chester County from George Strawbridge.<sup>16</sup> This request is more narrow than the request affirmed by the *Carey* court. (In *Carey*, the court found that a request for “all documents/communications” related to “the transfer of *Pennsylvania inmates to Michigan*” was sufficiently specific.)

### 2. SCOPE OF DOCUMENTS SOUGHT

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<sup>15</sup> Lawrence RTK Request to DCNR, November 25, 2024 pg 2

<sup>16</sup> Over a period of years, Mr. Strawbridge sold several adjoining pieces of property that today make up almost all of Big Elk Creek State Park in Southern Chester County.



Here, the scope of documents sought includes documents commonly associated with state grant awards, including applications and letters of recommendation, along with communication records associated with these specific grant awards. In *Carey*, the court found the broad request of “*all documents/communications*” to be sufficiently specific given the request dealt with a specific program (prisoner transfers from Pennsylvania to Michigan.) My request clearly falls within the rather broad boundaries elucidated by the court in *Carey*.

### 3. TIMEFRAME

Here, the timeframe involves the time surrounding the awarding of each grant. Responsive documents would be received or produced by DCNR in the time before and after the awarding of each respective grant. The *Carey* court noted that this factor is fluid and dependent on the subject matter and scope of the request.

## **PARTS 3 AND 4 OF MY RTK REQUEST MEET THE CAREY STANDARD**

Parts 3 and 4 of my Right to Know request state the following:

3) *EMAIL CORRESPONDENCE FROM 2009 - 2022 BETWEEN BLAINE PHILLIPS OR OTHER INDIVIDUALS ASSOCIATED WITH OR EMPLOYED BY THE CONSERVATION FUND AND DCNR OFFICIALS, STAFF, EMPLOYEES, OR CONTRACTORS.*

4) *EMAIL CORRESPONDENCE FROM 2009 - 2022 BETWEEN INDIVIDUALS ASSOCIATED WITH OR EMPLOYED BY MT. CUBA CENTER AND DCNR OFFICIALS, STAFF, EMPLOYEES, OR CONTRACTORS.*<sup>17</sup>

Parts 3 and 4 of my request are within the three-part *Carey* standard as further clarified by additional case law. Here, while DCNR affirms that I “*specified the individuals [I am] looking for records from.*”<sup>18</sup> DCNR takes issue with the timeframe element of the three-part *Carey* test, claiming the “*broad range of*

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<sup>17</sup> Lawrence RTK Request to DCNR, November 25, 2024 pg 2

<sup>18</sup> DCNR RTK Response to Rep Lawrence, DCNR #2024-134, January 2, 2025 pg 3

2009-2022 is deemed by the Department as being overly broad and insufficiently specific.”<sup>19</sup> I contend DCNR’s assertion is without merit.

### 1. SUBJECT MATTER OF THE REQUEST

Here, the subject matter is email correspondence between DCNR and specifically identified individuals and organizations. These entities were important players in the acquisition of properties from George Strawbridge that today make up a substantial part of Big Elk Creek State Park.

### 2. SCOPE OF DOCUMENTS SOUGHT

Here, the scope of documents sought includes email communications between DCNR and specifically identified individuals and organizations. In *Carey*, the court found the broad request of “*all documents/communications*” to be sufficiently specific given the request dealt with a specific program (prisoner transfers from Pennsylvania to Michigan.) My request clearly falls within the comparatively broader boundaries elucidated by the court in *Carey*.

### 3. TIMEFRAME

Here, the timeframe involves the time associated with DCNR’s acquisition of properties formerly belonging to George Strawbridge and currently making up a substantial part of Big Elk Creek State Park. The parcels were acquired between 2009 – 2022 with the assistance of, among others, Blaine Phillips at the Conservation Fund, and with significant financial contributions from Mt. Cuba Center in Delaware.<sup>20</sup>

In denying parts 3 and 4 of my Right to Know request, DCNR makes the unsupported claim that “*the broad range of 2009-2022 is...overly broad and insufficiently specific.*”<sup>21</sup> Instead of relying on statute or case law to make

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<sup>19</sup> DCNR RTK Response to Rep Lawrence, DCNR #2024-134, January 2, 2025 pg 3

<sup>20</sup> “One of the Largest Open Spaces in Mid-Atlantic Conserved,” March 3, 2020.

<https://www.conservationfund.org/our-impact/news-insights/one-of-the-largest-open-spaces-in-mid-atlantic-conserved/> (Accessed January 17, 2025)

<sup>21</sup> DCNR RTK Response to Rep Lawrence, DCNR #2024-134, January 2, 2025 pg 3

this unsupported determination, the Department cites itself as the authority on deciding when a given timeframe is or is not acceptable.<sup>22</sup> This novel assertion is not supported by case law or statute.

## DISCUSSION OF CASE LAW SURROUNDING RTK REQUEST TIMEFRAMES

The *Carey* court noted that the timeframe factor is fluid and dependent on the subject matter and scope of the request, and not solely the length of time involved. Other cases over the last fifteen years affirm this conclusion.

### MOLLICK ANALYSIS

In *Mollick v Worcester Township*, petitioner requested “any and all emails” between certain township commissioners and employees regarding “any township business” for a period of five years.<sup>23</sup> The court found issue with this request not because of the five year timeframe involved, but because it created “an unreasonable burden on an agency to examine all its emails for an extended time period without knowing, with sufficient specificity, what Township business or activity the request is related.”<sup>24</sup>

Here, parts 3 and 4 of my Right to Know request are not broadly asking for all emails regarding “any” DCNR business over a period of years, but instead specific emails related to specific external parties – clearly identifying the subject matter and scope of documents requested. The specific “business or activity” is clearly delineated in my request, in contrast to the request cited in *Mollick*.

### ST. HILAIRE ANALYSIS

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<sup>22</sup> “[T]he broad range of 2009-2022 is deemed **by the Department** as being overly broad and insufficiently specific.” (emphasis added) DCNR RTK Resp. to Rep Lawrence, DCNR #2024-134, January 2, 2025 pg 3

<sup>23</sup> *Mollick v. Twp. of Worcester*, 32 A.3d 859, 871 (Pa. Commw. Ct. 2011)

<sup>24</sup> *Id.*

In *Pennsylvania Department of Corrections v St. Hilaire*, petitioner requested documents related to inmate and employee deaths and injuries for a period of five years.<sup>25</sup> Despite the request for multiple years of data, the request was ultimately affirmed by Commonwealth Court given the specific scope and subject matter of the request.

Here, parts 3 and 4 of my request are similar, if not narrower, than the information sought in *St. Hilaire*. My request involves email correspondence between DCNR and specific external parties, as opposed to the broader “documents” sought and received in *St. Hilaire*. While the *St. Hilaire* timeframe is shorter than the timeframe involved in my Right to Know request, the court found no issue with a years-long timeframe.

## FERTICH ANALYSIS

In *Fertich v Pennsylvania Department of Conservation and Natural Resources*, petitioner sought “maps [that] were created, received or retained for the activity of acquiring or managing land for the Commonwealth” in West Perry Township, Snyder County for a period of 127 years.<sup>26</sup> On appeal, OOR denied applicant’s request not on the basis of the lengthy period of time involved, but instead on the basis that the subject matter and scope of documents were insufficiently specific.<sup>27</sup>

Certainly the *Fertich* case offered the OOR a golden opportunity to find a lengthy time period is fatal to a petitioner’s request, given the 127 year timeframe involved. However, OOR instead affirmed that “a long timeframe is ***not fatal*** to the specificity of the request...”<sup>28</sup> provided the subject matter and scope of documents requested were sufficient.

DCNR’s self-determined assertion that a range of 13 years is, in and of itself, “*overly broad and insufficiently specific*”<sup>29</sup> runs counter to established

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<sup>25</sup> *Dep’t of Corr. v. Amanda St. Hilaire*, 128 A.3d 859 (Pa. Commw. Ct. 2015)

<sup>26</sup> *Fertich v. Penna Dep’t of Conservation and Natural Resources*, #2024-2797 (Pa. Off. Open Rec. 2024)

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> DCNR RTK Response to Rep Lawrence, DCNR #2024-134, January 2, 2025 pg 3

case law and practice. It is without any basis in fact, and must be rejected as it is clearly in error.

#### **DCNR'S FOURTH REASON FOR DENIAL**

DCNR claims the subject matter of my Right to Know request does not specifically identify the "*transaction or activity of the agency for which the record is sought.*"<sup>30</sup> To bolster this claim, DCNR states:

*"Your request does not specifically define the subject matter of the 'memorandum of understanding,' 'compact,' 'agreement,' 'joint declaration,' and 'joint letter of intent' sought in the request."*<sup>31</sup>

This statement from DCNR is in error.

First, I never used any of the aforementioned terminology in my Right to Know request. I made no mention of a memorandum of understanding, nor a compact, nor an agreement, nor a joint declaration, nor a joint letter of intent. I cannot speculate how or why DCNR ascribed these words to me, or why such a statement was included in their response to me. At a minimum, the inclusion of this specious quotation significantly undermines DCNR's arguments attempting to justify their denial of my Right to Know request.

Second, DCNR's allegation that my request "*does not specifically define the subject matter*" at hand is irrational on its face. I specifically note the exact grants of interest by date, by program, and by the property to be acquired. DCNR retains a robust database of C2P2 grant awards dating back to 2007 on their publicly available website<sup>32</sup>, and further lists over 200 grants awarded in November 2018 alone.<sup>33</sup> My request seeks information on a handful of these grants which are clearly and specifically identified.

#### **DCNR'S FIFTH REASON FOR DENIAL**

DCNR states:

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<sup>30</sup> DCNR RTK Response to Rep Lawrence, DCNR #2024-134, January 2, 2025 pg 2

<sup>31</sup> *Id.*

<sup>32</sup> [elibrary.dcnr.pa.gov/GetDocument?docId=4077164&DocName=2007\\_2020\\_pdf\\_ofgrantannouncements.pdf](https://elibrary.dcnr.pa.gov/GetDocument?docId=4077164&DocName=2007_2020_pdf_ofgrantannouncements.pdf) (Accessed January 17, 2025)

<sup>33</sup> [elibrary.dcnr.pa.gov/GetDocument?docId=3247976&DocName=dcnr\\_20033764.pdf](https://elibrary.dcnr.pa.gov/GetDocument?docId=3247976&DocName=dcnr_20033764.pdf) (Accessed January 17, 2025)

*“Your request merely states in broad terms ‘all documents and emails.’”<sup>34</sup>*

This statement from DCNR is in error.

My request does not contain the phrase *“all documents and emails.”* As previously stated, I cannot speculate how or why DCNR ascribed these words to me, or why such a statement was included in their response to me. At a minimum, the inclusion of this specious quotation significantly undermines DCNR’s arguments attempting to justify their denial of my Right to Know request.

Further, the DCNR’s claim that my *“request merely states”* is truly puzzling. Even a cursory review of my Right to Know request plainly shows a significant amount of detail surrounding the requested documents. DCNR’s assertion is questionable at best and must be dismissed.

#### **DCNR’S SIXTH REASON FOR DENIAL**

DCNR states:

*“An agency is not required to use its judgement to determine what is meant by a record ‘that constitutes’ a subject.”<sup>35</sup>*

My request does not contain the phrase *“that constitutes.”* I cannot speculate how or why DCNR ascribed these words to me, or why such a statement was included in their response to me. At a minimum, the inclusion of this specious quotation significantly undermines DCNR’s arguments attempting to justify their denial of my Right to Know request.

DCNR’s assertion is without basis and must be dismissed.

#### **DCNR’S SEVENTH REASON FOR DENIAL**

DCNR states:

*“Depending on the degree of relation among any records that may be identified in response to such a request, an agency would be required to conduct legal research and/or render legal or factual opinions in the agency’s response itself as to whether or not a record is indeed responsive.”<sup>36</sup>*

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<sup>34</sup> DCNR RTK Response to Rep Lawrence, DCNR #2024-134, January 2, 2025 pg 2

<sup>35</sup> DCNR RTK Response to Rep Lawrence, DCNR #2024-134, January 2, 2025 pg 2-3

<sup>36</sup> DCNR RTK Response to Rep Lawrence, DCNR #2024-134, January 2, 2025 pg 3

It appears that DCNR included this statement to further expound on their previous statement finding fault with the term “*that constitutes.*” As previously noted, I never used the term “*that constitutes*” in my Right to Know request. Thus, this analysis from DCNR appears to be completely unrelated to my Right to Know request.

Regardless, the fulfillment of my Right to Know request does not require DCNR to conduct legal research nor render a legal opinion. I am simply requesting information surrounding several grant awards and email communications between DCNR and specifically identified entities.

### **DCNR’S EIGHTH REASON FOR DENIAL**

DCNR states:

*“Because you have failed to identify a discrete group of documents by the ‘transaction or activity of the agency’ for which the record is sought, your request is hereby denied on that basis at this time.”<sup>37</sup>*

Here, DCNR alleges my Right to Know request fails to identify a “*discrete group of documents by the ‘transaction or activity’*”<sup>38</sup> and denies my request on this basis. DCNR’s claim is in error.

### **DISCUSSION OF CASE LAW SURROUNDING THE TERM “DISCRETE GROUP OF DOCUMENTS”**

In *Pennsylvania Department of Education v Pittsburgh Post-Gazette*, Commonwealth Court held that a Right to Know request “*must identify ‘a discrete group of documents, either by type...or by recipient,’*”<sup>39</sup> and applied the standard to the “scope of documents sought” prong of the three-part *Carey* test.<sup>40</sup> Petitioner sought “[*all of the emails of Acting Secretary of Education Carolyn Dumaresq as they pertain to the performance of her duties as Acting Secretary*]” for approximately one year.<sup>41</sup> The court held this broad request was sufficiently discrete and properly “*limit[ed] the scope of the request.*”<sup>42</sup>

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<sup>37</sup> DCNR RTK Response to Rep Lawrence, DCNR #2024-134, January 2, 2025 pg 3

<sup>38</sup> *Id.*

<sup>39</sup> *Pennsylvania Dep’t of Educ. v. Pittsburgh Post-Gazette*, 119 A.3d 1121, 1125 (Pa. Commw. Ct. 2015)

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

In *Department of Environment Protection v Legere*, Commonwealth Court affirmed petitioner's broad request for "All Act 223, Section 208 determination letters issued by the [DEP] since January 1, 2008, as well as the orders issued by [DEP] to well operators in relation to those determination letters, as described in Section 208 of the Oil and Gas Act" as a clearly delineated group of documents, and ordered DEP to release the information to petitioner.<sup>43</sup>

In *Carey v Pennsylvania Department of Corrections*, Commonwealth Court affirmed that a Right to Know request can fulfill the "discrete group of documents" standard "either by type...or by recipient," to enable the affected state agency the ability "to assess which records are sought."<sup>44</sup> The *Carey* court affirmed petitioner's Right to Know request as sufficiently specific even though it used the somewhat vague clause "all documents / communications which may indicate the identities of those who authorized [certain activities]" (emphasis added), noting that the petitioner's specific subject matter and timeframe was sufficient "to apprise DOC of the records sought."<sup>45</sup>

Here, each of the four parts of my Right to Know request identifies a discrete group of documents by type, by recipient, or both. Parts 1 and 2 outline the specific types of documents sought (emails, applications, letters of recommendation, communications, transcripts). Parts 3 and 4 outline both the type of document sought (email correspondence) and the recipients (DCNR, Blaine Phillips, the Conservation Fund, and Mt. Cuba Center.) These requests fall well within the standards established under *Pittsburgh Post-Gazette*, *Legere*, and *Carey* in direct contradiction to DCNR's eighth reason for denial.

## DCNR'S NINTH REASON FOR DENIAL

DCNR states:

*"Furthermore, the scope of the RTKL request must identify 'a discrete group of documents either by time or recipient.' While your request does use general types or categories of documents (e.g. "'memorandum of understanding,' 'compact,' 'agreement,' 'joint declaration,' and 'joint letter of intent'") your request does not define the scope of the*

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<sup>43</sup> *Com., Dep't of Env't Prot. v. Legere*, 50 A.3d 260, 262 (Pa. Commw. Ct. 2012)

<sup>44</sup> *Carey v. Pa. Dep't of Corr.*, 61 A.3d 367 (Pa. Commw. Ct. 2013)

<sup>45</sup> *Id.*



*“transaction or activity of the agency” for the documents sought. Accordingly, you did not identify the scope of the records requested.”<sup>46</sup>*

DCNR’s inclusion of this paragraph is nonsensical. DCNR refers to a mythical set of terms that appear nowhere in my Right to Know request. I cannot speculate how or why DCNR ascribed these words to me, or why such a statement was included in DCNR’s response to me. At a minimum, the inclusion of this specious quotation significantly undermines DCNR’s arguments attempting to justify their denial of my Right to Know request.

Additionally, DCNR’s allegations that I failed to identify the scope of the records requested appears to be another reference to the three-part *Carey* test; the substance of which is discussed at length elsewhere in this appeal.

DCNR’s ninth reason for denial is baseless in its entirety.

#### **DCNR’S TENTH REASON FOR DENIAL**

DCNR states:

*“In addition, when seeking email correspondence, even though you specified the individuals you are looking for records from, the broad range of 2009-2022 is deemed by the Department as being overly broad and insufficiently specific. The Department cannot under the RTKL be expected to search the Department’s entire database for 13 years’ worth of emails.”<sup>47</sup>*

Here, DCNR affirms my Right to Know request provides sufficient specificity regarding the individuals involved. However, the *“broad range of 2009-2022 is deemed by the Department as being overly broad and insufficiently specific.”<sup>48</sup>* To justify this assertion, the Department asserts that it *“cannot under the RTKL be expected to search for 13 years’ worth of emails.”<sup>49</sup>* This assertion is problematic for several reasons.

DCNR’s assertion that it *“cannot under the RTKL be expected to search for 13 years’ worth of email”<sup>50</sup>* suggests that the Department did not attempt to undertake such a search at all. If correct, this is in direct conflict with the Department’s previous statement that *“DCNR has searched its public records”<sup>51</sup>* in response to my Right to Know request.

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<sup>46</sup> DCNR RTK Response to Rep Lawrence, DCNR #2024-134, January 2, 2025 pg 3

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> DCNR RTK Response to Rep Lawrence, DCNR #2024-134, January 2, 2025 pg 1

Pennsylvania's Right to Know law requires DCNR to "make a good faith effort to determine...whether the agency has possession, custody or control of the identified record."<sup>52</sup> Pennsylvania courts have repeatedly upheld the good faith effort requirement and reprimanded state agencies for failure to complete a required search in response to a Right to Know request.<sup>53</sup> Such searches are not limited to mere examination of computers and files, but also include a duty to inquire of supervisors and relevant agency employees to obtain data relevant to the request.<sup>54</sup> While the law presumes public officials perform their duties in good faith<sup>55</sup>, evidence of the failure to comply with the clear mandates of the Right to Know law may constitute bad faith,<sup>56</sup> which past courts have used to justify fines and penalties against an offending state agency.<sup>57</sup>

DCNR's attempted justification for their claim that "the Department cannot...be expected to search" is their claim that "even though you specified the individuals you are looking for records from, the broad range of 2009-2022 is deemed by the Department as being overly broad and insufficiently specific."<sup>58i</sup> Nothing in statute suggests DCNR's refusal is justified, as even DCNR tacitly admits when citing it is the *department's* judgement (as opposed to statute or case law) that deems the "broad range of 2009-2022" "as being overly broad and insufficiently specific."<sup>59</sup>

The courts of this commonwealth have repeatedly rejected agency arguments that an otherwise compliant Right to Know request can be rejected due to the burden placed on the agency to search for the requested documents.

In *Department of Environmental Protection v Legere*, Commonwealth Court held "The fact that a request is burdensome does not deem it overbroad."<sup>60</sup> The court later stated,

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<sup>52</sup> 65 Pa. Stat. Ann. § 67.901

<sup>53</sup> *Uniontown Newspapers, Inc. v. Pa. Dep't of Corr.*, 185 A.3d 1161, 1168 (Pa. Commw. Ct. 2018) holding the Department of Corrections "neglected to perform a good faith search"

<sup>54</sup> *Mollick v. Twp. of Worcester*, 32 A.3d 859, 874-75 (Pa. Commw. Ct. 2011)

<sup>55</sup> *Commonwealth Office of the Governor v. Donahue*, 59 A.3d 1165.

<sup>56</sup> "An agency's failure to perform a good faith search in response to a RTKL request may be grounds for bad faith." *Uniontown Newspapers, Inc. v. Pa. Dep't of Corr.*, 151 A.3d 1196, 1207 (Pa. Commw. Ct. 2016)

<sup>57</sup> *California University of Pennsylvania v. Bradshaw*, 1491 C.D. 2018

<sup>58</sup> DCNR RTK Response to Rep Lawrence, DCNR #2024-134, January 2, 2025 pg 3

<sup>59</sup> *Id.*

<sup>60</sup> *Com., Dep't of Env't Prot. v. Legere*, 50 A.3d 260, 265 (Pa. Commw. Ct. 2012)

*“there is simply nothing in the RTKL that authorizes an agency to refuse to search for and produce documents based in the contention that it would be burdensome to do so.”<sup>61</sup>*

DCNR’s self-determined justification as stated in their tenth reason for denial is in direct contravention of clearly established case law, and must be rejected.

## CONCLUSION

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

Kind Regards –



John Lawrence  
State Representative  
Commonwealth of Pennsylvania

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<sup>61</sup> *Com., Dep’t of Env’t Prot. v. Legere*, 50 A.3d 260, 265 (Pa. Commw. Ct. 2012)