

**COMMONWEALTH OF PENNSYLVANIA
OFFICE OF OPEN RECORDS**

DAVID F. PIERRE, JR.	:	
Complainant,	:	
	:	
v.	:	DOCKET # AP 2012-1462
	:	
PHILADELPHIA DISTRICT	:	
ATTORNEY'S OFFICE,	:	
Respondent.	:	

**DECLARATION OF ASSISTANT DISTRICT ATTORNEY BRAD P. BENDER
IN OPPOSITION TO THE APPEAL OF DAVID F. PIERRE, JR.**

I, Assistant District Attorney Brad P. Bender, intending to be legally bound and subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities), declare as follows:

1. Complainant David F. Pierre, Jr., submitted a Right-to-Know Law (“RTKL”) request, dated May 17, 2012, to the Philadelphia District Attorney’s Office (“DAO”). Mr. Pierre requested documents reflecting the costs or expenses related to the prosecutions of Msgr. William J. Lynn, Rev. James J. Brennan, Rev. Charles Engelhardt, Bernard Shero, and Edward Avery (referred to herein as the “First RTKL Request”). A copy of the First RTKL Request is attached hereto as Exhibit “A.”

2. In response, the DAO sent to Mr. Pierre a large volume of documents that were responsive to the First RTKL Request. In its letter enclosing the responsive documents, the DAO noted that it is not obligated to create a responsive document that does not exist or that it does not possess. A copy of the DAO’s response (but not all of the enclosed documents) is attached hereto as Exhibit “B.”

8. Thus, the DAO does not possess any records responsive to Mr. Pierre's specific request for staffing and salary records for the two cases he references in his Second RTKL Request.

9. Moreover, the Second RTKL Request is extremely vague and non-specific when it requests "all documents...that in any way relate to the staff members" who worked on the Lynn or Avery cases. This request could implicate a whole host of documents that relate to the number of staff members who worked, in whole or in part, on the two referenced cases, but which would have absolutely no relation to the Lynn and Avery cases and relate to the thousands of other cases on which these staff members have worked during their tenures with the DAO.

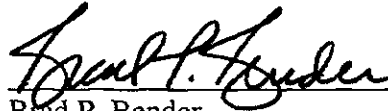
10. Under Section 703 of the RTKL, a requestor must "identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested..."

11. By broadly requesting "all documents...that in any way relate to" the DAO staff that worked on the Lynn and Avery cases, Mr. Pierre plainly has failed to comply with Section 703 and its requirement to sufficiently specify which documents he is seeking.

12. Based on the absence of responsive documents to his specific request for staffing records for the Lynn and Avery cases, as well as his failure to comply with Section 703's specificity requirement, Mr. Pierre's appeal should be denied.

I declare under penalty of perjury under the laws of the Commonwealth of Pennsylvania that the foregoing is true and correct.

Date: September 14, 2012



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