



September 29, 2016

Via e-mail only

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The Honorable Sue Means  
Member, District 5  
Office of the County Council  
119 Courthouse, 436 Grant St.  
Pittsburgh, PA 15219

Re: Advisory Opinion

As a member of the Allegheny County Council (“Council”), you have requested an Advisory Opinion regarding the extent to which draft meeting minutes of Council committees may be withheld from public disclosure pursuant to Section 708(b)(21) of the Right-to-Know Law (“RTKL”), 65 P.S. § 67.708(b)(21).

In your correspondence you have noted that Council has established two (2) committees, the Executive Committee and the Economic Development Committee (collectively, the “Council committees”). Furthermore, you indicate that you have not been named to either of the Council committees, but have attended meetings of the Council committees and have requested the meeting minutes of the Council committee meetings. Additionally, in response to your request for Council committee meeting minutes, you indicate that the County’s Open Records Officer has advised you that the meeting minutes are in draft form, and are not publicly available until the respective Council committees meet again to approve the draft Council committee meeting minutes. Finally, you note that while Council meets twice per month, it is not uncommon for multiple months to pass between Council committee meetings.

You have requested an Advisory Opinion on two (2) issues; first, whether draft Council committee meeting minutes may be withheld from public disclosure when the Council committees meet infrequently; and, secondly, whether the draft Council meeting minutes may be withheld from a duly-elected Council member.

Please note that the purpose of an Advisory Opinion is to provide written guidance to an agency or requester that may be relied upon in taking action. Please be advised however, that the views expressed in Advisory Opinions are those of the OOR and, as such, they may be superseded by subsequent statute or court ruling.

**The Council committees are required to disclose draft Committee meeting minutes following the next regularly scheduled meeting of the Council committees or the next regularly scheduled Council meeting, whichever occurs first**

First, you asked whether draft Council committee meeting minutes may be withheld from public disclosure when the Council committees meet infrequently. You have requested meeting minutes of the Council committees and the Allegheny County Open Records Officer has advised you that these meeting minutes are “draft meeting minutes,” and are not publicly available until the next regularly scheduled meeting of the respective Council committees. Section 708(b)(21)(i) of the RTKL exempts from public disclosure “[d]raft minutes of any meeting of an *agency* until the next regularly scheduled meeting of the *agency*.” 65 P.S. § 67.708(b)(21)(i) (emphasis added). Thus, draft meeting minutes of *any* meeting of an *agency* are subject to public disclosure after the next regularly scheduled meeting of the *agency*. In this case, because the County argues that draft meeting minutes of the Council committees are exempt from disclosure until the next meeting of the respective Council committees, the question becomes whether the Council committees are “agencies” for purposes of the RTKL.

The RTKL defines an “agency” as a “Commonwealth agency, a local agency, a judicial agency or a legislative agency.” 65 P.S. § 67.102. Council committees do not fall under Section 102’s definition of a Commonwealth, judicial or legislative agency. *Id.* Thus, the issue to be determined is whether the Council committees are a “local agency” for purposes of the RTKL. The RTKL defines a “local agency” as any of the following:

- (1) Any political subdivision, intermediate unit, charter school, cyber charter school or public trade or vocational school.
- (2) Any local, intergovernmental, regional or municipal agency, authority, *council*, board, commission or similar governmental entity.

65 P.S. § 67.102 (emphasis added).

It is clear that the Council itself falls within the RTKL definition of a local agency, along with the County itself as a political subdivision. The OOR determines that Council committees are also to be considered a local agency because they fall under the definition of “similar governmental entity” using the Commonwealth Court’s analysis in *Appeal of Hadley*, 83 A.3d 1101 (Pa. Commw. Ct. 2014).

In *Hadley*, a requester sought the records of a “recognized tourism promotion agency” as defined by the County Code, 16 P.S. § 1770.6. In that case the OOR held that the entity from which records were sought was not a “local agency” because it was not a “similar government entity.” The Commonwealth Court analyzed, *inter alia*, whether the entity was a “similar government entity,” and, therefore, a “local agency” by looking at (1) whether the entity was

created by a political subdivision and exercised the authority of a political subdivision, (2) whether the government controlled the operations of the entity, and (3) whether the entity performed a government function. The Court ultimately determined that the entity was not a “similar government entity” because, in part, there was no evidence of control by government over the corporation’s operations or management and the corporation’s board was independent and contained few government representatives. *Hadley*.

Here, there is no dispute that the Council committees were created by Council, the duly elected body of a political subdivision (Allegheny County), that the operations of the Council committees are controlled by Council members appointed to the Council committees, and that the Council committees are entities carrying out the governmental functions of the Council, thus satisfying all three (3) prongs established by the Commonwealth Court in *Hadley*. *Id.* Therefore, the Council committees each constitute a “similar government entity,” and are “local agencies,” and, hence, “agencies” for purposes of the RTKL. This conclusion is further supported by the definition of “agency” contained within the Sunshine Act, 65 Pa.C.S. §§ 701 *et seq.*

Section 703 of the Sunshine Act defines an “agency” as the “body, and *all committees thereof* authorized by the body to take official action or render advice on matters of agency business of ... any political subdivision of the Commonwealth[.]” 65 Pa.C.S. § 703 (emphasis added). Because the RTKL and the Sunshine Act each relate to the public’s right to be informed of the government’s activities, these statutes are to be interpreted as one statute. *Silver v. Borough of Wilkinsburg*, 58 A.3d 125 (Pa. Commw. Ct. 2012). Thus, because the Council committees meet the express definition of an “agency” under the Sunshine Act, it is reasonable to conclude that the General Assembly intended for agency “committees” to be subject to the requirements of the RTKL. *See* 1 Pa.C.S. § 1921(a) (statutes are to be interpreted to give full effect to the intention of the General Assembly). To hold that Council committees are “agencies” for purposes of the Sunshine Act, but not “agencies” for purposes of the RTKL would place all records of the Council committees outside the reach of the RTKL. *See* 65 P.S. § 67.305(a) (only local “agencies” are required to provide public records under the RTKL). The General Assembly cannot be said to have intended such an unreasonable result. 1 Pa.C.S. § 1922(1).

Based on the foregoing, the OOR finds that the Council committees fall within the definition of an “agency” for purposes of Section 708(b)(21)(i) of the RTKL and that, generally, the meeting minutes of Council committees are exempt from public disclosure until the next regularly scheduled meeting of the Council committees. Notwithstanding the foregoing, however, Council itself is also an “agency” under Section 708(b)(21)(i) of the RTKL, and, based on the facts presented here, Council committee meeting minutes are exempt from disclosure only until “the next regularly scheduled meeting of [Council].”

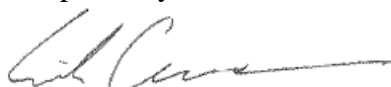
The OOR's opinion on these issues are based, in part, upon the fact that the Pennsylvania Supreme Court has recognized that the RTKL is to be liberally construed to effectuate the "overriding legislative intent of transparency of government and *speedy* resolution of requests [for records.]" *Levy v. Senate of Pa.*, 619 Pa. 586, 619 (Pa. 2013) (emphasis added). In this instance the OOR determines that interpreting Section 708(b)(21)(i) of the RTKL to apply *only* to the Council committees and not to Council itself would hinder the speedy resolution of requests for government records, especially where the Council committees meet infrequently. Furthermore, because the Council committees act on behalf of the Council, Council committee records are also records of the Council as well. Therefore, Section 708(b)(21)(i) of the RTKL can be properly interpreted to apply to *both* the Council Committees and the Council, and given the circumstances presented here regarding the infrequency of Council committee meetings, Council committee meeting minutes are subject to public disclosure following the next regularly scheduled meeting of the Council committees or the Council, whichever occurs first.<sup>1</sup>

**The RTKL is to be interpreted with regard to the identity of the requester**

Secondly, you have requested an Advisory Opinion on whether you are entitled to the requested Council committee meeting minutes under the RTKL based on your position as a member of the Council. The Commonwealth Court has previously held that the identity of a requester is not relevant to the issue of whether government records are subject to public disclosure. *Padgett v. Pa. State Police*, 73 A.3d 644 (Pa. Commw. Ct. 2013); *Coulter v. Pa. Bd. of Prob. & Parole*, 48 A.3d 516, 519 (Pa. Commw. Ct. 2012); *Davis v. Pa. Bd. of Prob. & Parole*, 2016 Pa. Commw. Unpub. LEXIS 402 (Pa. Commw. Ct. 2016). Accordingly, any position held by a requester, such as a member of the Council, is not relevant to any analysis of whether records should be released pursuant to the RTKL.

This Advisory Opinion shall be posted on the OOR website, [www.openrecords.pa.gov](http://www.openrecords.pa.gov).

Respectfully,



Erik Arneson

Executive Director

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<sup>1</sup> Section 504(a) of the RTKL authorizes agencies to "promulgate regulations and policies necessary for the agency to implement this act." 65 P.S. § 67.504(a). It is conceivable that Council could adopt a policy of making Council committee meeting minutes available within a certain number of days of the committee meeting. (See, e.g., *2015-16 Rules of the Senate of Pennsylvania, Rule (6)(c)(9)*: "The Secretary-Parliamentarian of the Senate shall post the Legislative Journal of the Senate on the Internet website maintained by the Senate upon approval of the Journal or within 60 calendar days of each session day, whichever is earlier.")