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December 17, 2021

Via Electronic Mail

Joshua T. Young, Esquire
Commonwealth of Pennsylvania
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234

Re: Right-to-Know Law Appeal – Docket # AP 2021-2799
Susan Spicka v. Commonwealth Charter Academy Charter School

Dear Attorney Young:

On December 7, 2021, Commonwealth Charter Academy Charter School (CCA) received notice from the Office of Open Records (OOR) that it had received the above docketed appeal.

Attached, please find CCA's request for OOR to dismiss Requester's deficient appeal, or, in the alternative, request that additional information be provided in support of the appeal. CCA files the forgoing motion without waiving its right to submit additional information and substantive argument in support of its denial of Requester's appeal.

Respectfully submitted,

/s/ Katherine M. Fitz-Patrick
Katherine M. Fitz-Patrick, Esq.
Philip J. Murren, Esq.
Ball, Murren & Connell, LLC
2303 Market Street
Camp Hill, PA 17011
Counsel for Commonwealth Charter Academy

cc: Susan Spicka (via electronic mail and U.S. Mail)

Enclosures

**COMMONWEALTH OF PENNSYLVANIA
OFFICE OF OPEN RECORDS**

SUSAN SPICKA	:
Requester,	:
	:
v.	: Docket # AP 2021-2799
	:
COMMONWEALTH CHARTER	:
ACADEMY CHARTER SCHOOL,	:
Respondent.	:

**COMMONWEALTH CHARTER ACADEMY’S MOTION FOR
DISMISSAL OF DEFICIENT APPEAL**

Pursuant to the Pennsylvania Office of Open Records’ (OOR) procedural guidelines,¹ OOR is required to request additional information for deficient appeals or dismiss such appeals *sua sponte*.

COMES NOW, Commonwealth Charter Academy Charter School (CCA), by and through its undersigned counsel, and hereby requests that OOR either dismiss Susan Spicka’s appeal or, in the alternative, request that she provide additional information in support of her appeal. In support of this request, CCA avers as follows:

1. On November 29, 2021, Susan Spicka (Requester) submitted a Right-to-Know Law (RTKL) request to CCA. The Requester requested the following:
 - a. An invoice or other documentation that shows the cost of the parade balloon that was used in the November 2021 6abc Dunkin’ Donuts Thanksgiving parade in Philadelphia.

¹ OOR, Appeals Process - Procedural Guidelines:
https://www.openrecords.pa.gov/Documents/Appeals/2015-10-01_Procedural_Guidelines.pdf (last visited Dec. 16, 2021).

b. An invoice or other documentation that shows the cost to enter CCA group in the November 2021 6abc Dunkin' Donuts Thanksgiving parade in Philadelphia.

c. An invoice or other documentation that shows the cost of promotional spot for CCA during the November 2021 6abc Dunkin' Donuts Thanksgiving parade in Philadelphia.

2. On December 6, 2021, CCA advised the Requester that it did not have any records responsive to the request as written. Further adding, “[t]o the extent CCA has records relating to the November 2021 6abc Dunkin' Donuts Thanksgiving parade in Philadelphia, the records would reveal a trade secret and confidential proprietary information and be exempt from access. *See* 65 P.S. § 67.708(b)(11). This includes records of third-parties. *See* 65 P.S. § 67.707(b).”

3. On December 7, 2021, Requester filed an appeal of CCA's response with OOR. The Requester used OOR's standard appeal form to file her appeal.

4. On December 7, 2021, CCA received official notice of the appeal from OOR.

5. On December 13, 2021, CCA requested an extension of the submission deadline, which OOR granted.

6. CCA and Requester have until the end of the day (11:59:59 p.m.) on December 23, 2021, to make submissions.

7. Section 1101(a)(1) of the RTKL requires appeals to “state the grounds upon which the requester asserts that a record is a public record, legislative record or financial record and shall address any grounds stated by the agency for delaying or denying the request.” 65 P.S. § 67.1101(a)(1).

8. To file an appeal under the RTKL, the Office of Open Records states,² in accordance with Section 1101(a)(1) of the RTKL, a requester must provide all of the following:

a. “State why you believe the record is a public record. A general statement that the record is public under the RTKL is insufficient. It is advisable to explain why you believe a record documents a transaction or activity of an agency and explain why you believe it was created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency.”

b. “Address **all** grounds that the agency raised in its denial. You must state why you believe each of the agency’s denial, arguments, and exemptions are incorrect – a general statement that the agency is incorrect is insufficient. Legal argument is not required, but requesters should try to explain why the agency’s reliance on an exemption is misplaced and why a record should be public.” (emphasis added).

9. The standard form does not include a space for a requester to explain or address such grounds as required by the RTKL nor does it direct the requester to attach a document with additional details. Instead, the standard appeal form³ contains the following stock language:

I requested the listed records from the Agency named above. By submitting this form, I am appealing the Agency's denial, partial denial, or deemed denial because the requested records are public records in the possession, custody or control of the Agency; the records do not qualify for any exemptions under § 708 of the RTKL, are not protected by a privilege, and are not exempt under any Federal or State law or regulation; and the request was sufficiently specific.

² OOR, Citizens’ Guide:

<https://www.openrecords.pa.gov/Documents/RTKL/CitizensGuide.pdf> (last visited Dec. 16, 2021)

³ Online version of the Official OOR Appeal Form:

<https://www.openrecords.pa.gov/Appeals/AppealForm.cfm> (last visited December 16, 2021)

10. Reliance on this stock language does not satisfy a requester's *statutory obligation* to "specify in its appeal to Open Records the particular defects in an agency's stated reasons for denying a RTKL request." *Pa. Dep't of Corr. v. Office of Open Records*, 18 A.3d 429, 434 (Pa. Cmwlth. 2011).

11. In *Pa. Dep't of Corr.*, the Requester submitted a handwritten appeal, which contained four numbered paragraphs containing procedural history and one numbered paragraph stating, "The above Pa. right to know requests are public." *Id.* at 431. Commonwealth Court held OOR erred in deciding requester's clearly deficient appeal. In this case, Requester's reliance on OOR's standard appeal form goes no further than requester's handwritten note in *Pa. Dep't of Corr.* as far as providing an opportunity for a requester to identify flaws in an agency's decision. OOR cannot lawfully provide a forum for error correction, when it does not have a full picture of the appeal. *See Id.* at 434.

12. Courts have held that failure to comply with Section 1101(a)(1) renders an appeal deficient. See *Barnett v. Dep't of Pub. Welfare*, 71 A.3d 399, 405-06 (Pa. Cmwlth. 2013); *see also*, *Padgett v. Pa. State Police*, 73 A.3d 644, 647 (Pa. Cmwlth. 2013).

13. In *Keystone Nursing and Rehab of Reading, LLC, v. Simmons-Ritchie*, 2020 WL 40042 (Pa. Cmwlth. 2020), Commonwealth Court recently addressed the issue of whether requesters' appeal to OOR complied with the requirements set forth in Section 1101(a)(1). *See, Daniel Simmons-Ritchie and Pa Media Group v. Pennsylvania Department of Health*, [OOR Docket # 2018-1379](#). In *Keystone Nursing*, the Requesters, in addition to OOR's standard appeal form, attached "three pages of detailed explanation including a summary of interactions, the specific items which the Requester[s] wished to appeal, a summary of each and the response of the D[epartment] to each, and why the Requester[s] believed the withheld documents were public

records.” *Id.* at *5. The Court concluded that “[t]he standard electronic appeals form, **coupled with** Requesters’ written submission, satisfy the requirements set forth in Section 1101(a)(1).” *Id.* at *6 (emphasis added). Further noting, “[i]n these submissions, Requesters asserted that the Withheld Records are not exempt from disclosure and set forth their rationale for believing that the asserted exemptions do not apply.” *Id.*

14. Since Requester used OOR’s standard appeal form and did not attach additional documentation to address the grounds CCA raised in its response, i.e., identity flaws in CCA’s decision for denying the request, as the Court in *Keystone Living* deemed sufficient, it’s unclear whether the Requester is challenging the nonexistence of records or the stated exemption.

15. Therefore, Requester’s appeal is deficient.

WHEREFORE, for the foregoing reasons, it is respectfully requested that OOR dismiss Requester’s appeal, or, in the alternative, require Requester to provide additional information to support the appeal in compliance with Section 1101(a)(1) of the RTKL.⁴

Respectfully submitted,

/s/ Katherine M. Fitz-Patrick
Katherine M. Fitz-Patrick, Esq.
Philip J. Murren, Esq.
Ball, Murren & Connell, LLC
2303 Market Street
Camp Hill, PA 17011
Counsel for Commonwealth Charter Academy

⁴ CCA files the forgoing motion without waiving its right to submit additional information and substantive argument in support of its denial of Requester’s appeal.

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF OPEN RECORDS

Susan Spicka :
 :
 :
 v. : **Docket # AP 2021-2799**
 :
 Commonwealth Charter Academy :
 Charter School :

CERTIFICATE OF SERVICE

I, Katherine M. Fitz-Patrick, hereby certify that on December 17, 2021, a true and correct copy of CCA’s Motion for Dismissal of Deficient Appeal was served via First-Class Mail, postage prepaid, and electronic mail upon:

Susan Spicka
Education Voters of PA
412 N. Third Street
Harrisburg, PA 17101
sspicka@educationvoterspa.org

/s/ Katherine M. Fitz-Patrick
Katherine M. Fitz-Patrick, Esq.
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Counsel for Commonwealth Charter Academy