



Right To Know

ADMINISTRATIVE UPDATE AND RECOMMENDATIONS

FOR CHANGE IN LEGAL SERVICES AND STAFF SUPPORT FOR RTK

Recommendations

- ▶ Approve the appointment of Dischell Bartle Dooley LLP as District Solicitor for Right To Know in accordance with the terms of the attached Memorandum and require the Administration to provide a summary performance report to the Finance Committee of the Board no later than 6 months from date of approval.
- ▶ Approve the Job Description for Right To Know, Safety & Security Support Specialist as presented.
- ▶ Approve a change of status for Elizabeth Yantosh from Human Resources Specialist at the Farina Education Center to Right To Know, Safety & Security Support Specialist at the Farina Education Center. Hourly Rate: \$32.60. No Change in hourly rate. Effective: March 23, 2022. This is a new position.

Right To Know

- ▶ Law enacted on Jan. 1, 2009
- ▶ Established the Office of Open Records
 - ▶ To serve as a source body for citizens, agencies, public officials and members of the media in obtaining public records of their government.
- ▶ Agencies are to ensure that citizens are provided access to records to which they are entitled.
- ▶ Requesters are to use good judgment in seeking records from the public body and not use this law to harass or overburden a public body from performing its other functions.
- ▶ All records are presumed to be public records unless disclosure is barred by: (1) state or federal law or regulation; (2) judicial order; (3), privilege, e.g., attorney-client or doctor-patient; or (4) one of the exceptions in Section 708 of the Right-to-Know Law.
- ▶ The burden is on the government agency to establish why the record is not available.
- ▶ Applies to Commonwealth Agencies, Local Agencies, Legislative Agencies, Judicial Agencies.

Right To Know Records - Exceptions

- ▶ Section 708 of RTK Law addresses exceptions for public records. (1) The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence.
- ▶ Examples of Exceptions of records:
 - ▶ The disclosure of which would result in the loss of Federal or State funds
 - ▶ Reasonably likelihood to result in a substantial and demonstrable risk of physical harm to or the personal security of an individual
 - ▶ Matter of public safety activity that, if disclosed, would be reasonably likely to jeopardize or threaten public safety
 - ▶ The disclosures would create a reasonable likelihood of endangering the safety or the physical security of a building
 - ▶ Documents or data relating to computer hardware, source files, software and system networks that could jeopardize computer security
 - ▶ Building plans or infrastructure records that expose or create vulnerability through disclosure of the location, configuration or security of critical systems

(These are only a few examples and do not reflect the entire number of exceptions as per Section 708)

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- ▶ Customary School District Staff and Process
 - ▶ Appoint Administrator as the Right To Know Officer
 - ▶ Provide some secretarial support
 - ▶ Technology support
 - ▶ Can respond to requests in timely fashion
- ▶ Methacton Staff and Process
 - ▶ Assigned a Right To Know Officer (Dr. Sorgini)
 - ▶ Provide some secretarial support
 - ▶ Technology support
 - ▶ Can respond to most requests in timely fashion
 - ▶ Engage the RTK solicitor firm to help process requests when needed

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- ▶ Common School Record Requests
 - ▶ Contracts with vendors
 - ▶ Payroll records from construction projects
 - ▶ Tax collector statements
 - ▶ Copies of presentations made at Board meetings
 - ▶ Staff directory information
 - ▶ Contract information – both personnel contracts and third party providers

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- ▶ Methacton School District Requests
 - ▶ We receive the common requests as outlined on previous slide
 - ▶ These requests are processed through the District's Right To Know Officer (Dr. Jason Sorgini). He receives some additional secretarial support to process common requests.
 - ▶ We also receive unique requests (just a sample)
 - ▶ These are types of requests for information – these are examples-
 - ▶ Records of communication from the Right to Know Officer monthly.
 - ▶ Records of communication between specific School Board members monthly.
 - ▶ Records of communication between administrators monthly.
 - ▶ Records of communication between administration and School Board members monthly.
 - ▶ Records of communication from the solicitor monthly.
 - ▶ Copy of solicitor invoices monthly.
 - ▶ Copy of redacted records from an individual's former requests.
 - ▶ Copy of search terms used in RTK searches.
 - ▶ Copy of documents from third party providers.

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- ▶ Volume Example
- ▶ August 10, 2020 through November 30, 2020
 - ▶ 29 separate requests from 1 person having a total of 886 items or 30.6 items per request.
 - ▶ This requires a determination of search terms (criteria that best meets the request) for each of the 886 items.
 - ▶ This requires the execution of a search on all 886 items given the search terms.
 - ▶ These requests customarily generate several hundred to several thousand pages of records.
 - ▶ This requires review of all records to determine if there are responsive records and if any fall within section 708 of RTK Law thus then requiring redaction.
 - ▶ This all is to take place in 5 days.
- ▶ Outcome from Example Period
 - ▶ 29 requests from 1 person in a 16 week period or nearly 2 requests per week.
 - ▶ The district spent a total of \$355,975.28 on Right To Know requests from 1 person during this period.
 - ▶ Includes \$189,195.16 of internal (district staff) costs
 - ▶ Includes \$166,780.12 of external (legal fees) costs.
 - ▶ The above example is indicative of the challenges from the 2020/21 SY forward.

Right To Know Legal Costs (4 year summary)

Year	2017-2018	2018-2019	2019-2020	2020-2021	Total
Right To Know Legal Expense	\$1,575.00	\$54,166.79	\$210,875.31	\$975,360.72	\$1,241,977.82
Total District Legal Expense	\$432,897.76	\$359,718.05	\$587,052.59	\$1,836,337.99	\$3,216,006.39

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▶ Example of Frequency (FY 2021-2022)

Number of Files worked on per Month
As of December 31, 2021

Requestor	July	August	September	October	November	December	January	February	Total
Requestor 20	51	51	54	56	57	58	0		327
Requestor 41	1	1	1	1	1	1	0		6
Requestor 16	1	1	2	1	0	0	0		5
Requestor 43	0	1	1	1	1	1	0		5
Requestor 42	0	0	1	1	1	1	0		4
Requestor 40	1	1	2	0	0	0	0		4
Requestor 51	0	0	0	1	1	1	0		3
Requestor 48	0	0	0	1	1	1	0		3
Requestor 38	1	1	1	0	0	0	0		3
Requestor 34	1	0	0	1	1	0	0		3

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► Example of Costs (FY 2021-2022)

Top Requestors by Cost by Month

As of December 31, 2021

Requestor	July	August	September	October	November	December	January	February	Total
Requestor 20	\$ 49,710.44	\$ 59,770.07	\$ 42,788.05	\$ 37,568.40	\$ 34,882.95	\$ 32,517.55	\$ -	\$ -	\$ 257,237.46
Requestor 42	\$ -	\$ -	\$ 273.00	\$ 13,377.00	\$ 10,695.90	\$ 3,803.40	\$ -	\$ -	\$ 28,149.30
Requestor 48	\$ -	\$ -	\$ -	\$ 1,501.50	\$ 4,738.50	\$ 1,201.65	\$ -	\$ -	\$ 7,441.65
Requestor 43	\$ -	\$ 874.00	\$ 2,613.00	\$ 2,103.05	\$ 764.45	\$ 15.45	\$ -	\$ -	\$ 6,369.95
Requestor 38	\$ 1,502.80	\$ 261.65	\$ 15.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,779.45
Requestor 51	\$ -	\$ -	\$ -	\$ 136.50	\$ 1,306.50	\$ 331.50	\$ -	\$ -	\$ 1,774.50
Requestor 52	\$ -	\$ -	\$ -	\$ 434.50	\$ 546.00	\$ -	\$ -	\$ -	\$ 980.50
Requestor 40	\$ 254.55	\$ 254.55	\$ 456.75	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 965.85
Requestor 41	\$ 12.40	\$ 12.40	\$ 18.60	\$ 850.00	\$ 18.75	\$ 18.75	\$ -	\$ -	\$ 930.90
Requestor 16	\$ 273.00	\$ 273.00	\$ 195.00	\$ 97.50	\$ -	\$ -	\$ -	\$ -	\$ 838.50

Summary of Facts

- ▶ Hiring more district staff was considered at multiple times and for various aspects during last year and this year.
- ▶ Considered hiring of in house legal counsel or more staff.
- ▶ Met with largest requester to mitigate issues, change processes, consider feedback.
- ▶ We need a new approach to process requests and need new legal perspective/advice to counter the trajectory of costs.
- ▶ Given costs and performance of legal counsel, the district issued an RFI in November 2021

Conclusion

- ▶ The Right To Know law is an important part of providing transparent government services.
- ▶ The district success on appealing RTK matters has been poor.
- ▶ Many appeals have led to additional costs associated with processing similar requests while awaiting outcome on appeal.
- ▶ The current legal firm has missed deadlines associated with RTK matters including appeals costing additional expense.
- ▶ The current legal firm is not responsive to the districts needs on RTK.
- ▶ While a change in personnel internally (part of this recommendation) will allow us to keep current with the common RTK requests and take on the lion share of other unique requests, we need new eyes on our processes and different advice going forward.

RFI Process — For RTK Legal Services

- ▶ RFI was issued in November 2021
- ▶ RFI included sample requests and required responses
- ▶ 6 of the 9 firms responded to RFI
- ▶ All respondents were reviewed by considering costs, response to RFP, experience, previous working relationship, follow up response (Interview), technical response, and sample redaction.
- ▶ Respondents were narrowed down to the top two firms based on scoring matrix.
- ▶ Interviews with top two took place along with submission of sample letters/documents.

Recommendation 1

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Recommendation 2 & 3

- ▶ Approve the Job Description for Right To Know, Safety & Security Support Specialist as presented.
- ▶ Approve a change of status for Elizabeth Yantosh from Human Resources Specialist at the Farina Education Center to Right To Know, Safety & Security Support Specialist at the Farina Education Center. Hourly Rate: \$32.60. No Change in hourly rate. Effective: March 23, 2022. This is a new position.

Recommendation 2 & 3

- ▶ Current secretarial support (internal) will be leaving the district. This creates a void in support and is the second change in less than 4 months.
- ▶ District needs to ensure consistency and a high level of professionalism to support the District RTK Officer in addressing requests and communications.
- ▶ The district has a need to maintain safety and security documentation associated with the district safety teams and requirements under Act 44.
- ▶ I have identified the tasks as outlined in the job description posted to the agenda and the personnel most appropriate with providing this support.

Summary Recommendations

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