



# COUNTY OF ALLEGHENY

## OFFICE OF THE COUNTY COUNCIL

119 COURTHOUSE • 436 GRANT STREET  
PITTSBURGH, PA 15219

PHONE (412) 350-6490 • FAX (412) 350-6499

COUNCIL@ALLEGHENYCOUNTY.US

HTTP://WWW.ALLEGHENYCOUNTY.US/COUNCIL

October 31, 2013

Chief Executive Fitzgerald  
101 County Courthouse  
436 Grant Street  
Pittsburgh, PA 15219

Dear Chief Executive Fitzgerald:

I am writing to request all information given to the Office of Purchase and Supplies in response to the Deer Lakes RFP sent out on September 27, 2013. I am requesting this information to fulfill my duties as a member of Council, which as a body, is charged with the authority to form and negotiate all contracts dealing with the leasing of county-owned property.

As you know, as a former member of Council, the Allegheny County Home Rule Charter gives County Council the authority to lease and convey or permit the use of County land in Article IV, Section 2 (K). Further, the Administrative Code Section 1.5-502 explicitly limits the Executive's power to negotiate contracts by excepting all negotiations of contracts contained within section (K) or contracts involving the leasing of County land. Together, these provisions place the authority to negotiate contracts involving County-owned land entirely within the purview of Council.

Additionally, in your Quarterly Address to Council on September 24<sup>th</sup>, 2013, you stated that you would like Council to engage the Administration and give suggestions and input when it came to the negotiation of the Deer Lakes contract.

*"I'd like to ask Council --- and I know many Council members have already been giving us suggestions..., so if there's any input or any suggestions you have when it comes to the negotiations and things we want to ask for, feel free. Let us know. Let the County Manager, Andy Szefi, the County Solicitor, on how we will do that. So that's also part of what we'd like to do".*  
(Transcript of Allegheny County Council's Regular Meeting held on 9-24-13; Pg.34, 6-18)

Following your suggestion, it is my desire to review the response(s) to the Deer Lakes RFP so that I may be fully informed when making suggestions and giving input on the negotiation of this issue.

It has come to my attention through the media that requests for information regarding the Deer Lakes RFP response have been denied by the Administration. The RFP and its response(s) are public documents. The RFP contained language evidencing the fact that the response to the RFP was not to be considered private, specifically stating in Section 1.5 that "nothing submitted shall be considered confidential or proprietary."

Further, according to our Administrative Code, Section 903.02, all contracts in excess of \$30,000 shall be given to the Controller as well as the Purchasing Officer and **“the Purchasing Officer shall announce all bid figures publicly.”** If the Deer Lakes contract is to be considered a “Professional Service Contract” and is excepted from this section, it shall follow Section 905.03 of the Code and shall be reviewed by a Professional Services Review Committee. The Code requires at least two members of Council to be a part of that committee.

If the Administration is designating this to be a professional service contract then as a member of Council and a member of that Committee, it is within my purview to have access and review the documents submitted in response to the RFP so that Council, as part of this process may make evaluations required by the Code with regard to costs, expertise, and MWDBE requirements amongst others. I am also concerned that the publication of the reports coming out of this review process be properly published on the County website according to the terms of the Code so that the public can be aware of the deliberation process.

I implore you to follow our Code and to act in accordance with your own invitation for Council involvement in these very important negotiations so that upon inevitable future scrutiny by the public on the result of this decision, no one can rightly question the adherence to proper procedure in an attempt to challenge the outcome.

Please send me the information by Monday, November 3<sup>rd</sup> by 5PM.

Sincerely,

A handwritten signature in blue ink, appearing to read "William Russell Robinson".

Council Member William Russell Robinson  
Council District 10

c.c. Jennifer Liptak, Chief of Staff, Office of the Chief Executive



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November 19, 2013

Office of Open Records  
Commonwealth Keystone Building  
400 North Street, 4<sup>th</sup> Floor  
Harrisburg, PA 17120-0225

### **Facts:**

On November 5th, 2013, comporting with our County Open Records Policy, I sent an Open Records Request Form to the appropriate Open Records Officer for the Administration of Allegheny County in which I requested the following information:

*All written or electronic materials tendered in response to the “Department of Administrative Services Division of Purchasing and Supplies Request for Proposal for ‘The leasing of Allegheny County’s rights to oil, natural gas, and other hydrocarbons underlying Deer Lakes Park’, specification no. 7154,” together with any documents, written or electronic, containing negotiations undertaken by Allegheny County employees, elected officials, or other agents regarding RFP specification no. 7154.*

The request form was sent through our internal mail system to the appropriate records officer. Within the allotted 5 day window, the Open Records Officer, Mr. Jerry Tyskiewicz, sent a final response to my request which was a complete denial. The denial was based on an exception from disclosure under Section 708 (b) (26) Exceptions for public records:

(26) A proposal pertaining to agency procurement or disposal of supplies, services or construction prior to the award of the contract or prior to the opening and rejection of all bids; financial information of a bidder or offeror requested in an invitation for bid or request for proposals to demonstrate the bidder’s or offeror’s economic capability; or the identity of members, notes and other records of agency proposal evaluation committees established under 62 Pa.C.S. § 513 (relating to competitive sealed proposals).

## **Argument:**

Pennsylvania's Right to Know Law Section 302 (a) states that a local agency shall provide public records if those records do not fall within an exception to disclosure. The documents I have requested do exist, they are in the control of the Administration of Allegheny County and they do not meet the exception cited by the Administration nor do they meet any other exception covered by law.

Exceptions for public records, section 708 (b) (26), which was used as the basis for denial of my request is not applicable for the following reasons:

*(1) A proposal pertaining to agency procurement or disposal of supplies, services or construction prior to the award of the contract or prior to the opening and rejection of all bids*

Firstly the proposal in question does not seek to acquire or dispose of supplies, services, nor construction. The proposal in question merely seeks permission to gain access to the mineral rights attached to the Deer Lakes County Park land. Our own Administration has repeatedly made admissions that the drilling contracts which are adjacent to the park have already been negotiated and will be constructed with or without access to the County's mineral rights. The proposal merely seeks the right of access to the land beneath our County's Deer Lakes Park. A successful bidder will not provide the County with any services nor will there be any construction pursuant to the agreement with the County.

*(2) financial information of a bidder or offeror requested in an invitation for bid or request for proposals to demonstrate the bidder's or offeror's economic capability*

If the response did include financial information of the bidder which would be excepted, this information would only be a portion of the documents requested. This information could be redacted if there is any issue as to its exception from disclosure instead of being used as an excuse to exclude the entirety of the response documents. Furthermore, the RFP in question explicitly stated that any documents submitted in response would not be considered "confidential or proprietary" (see Section 1.5 of the Deer Lakes RFP attached herein).

*(3) or the identity of members, notes and other records of agency proposal evaluation committees established under 62 Pa.C.S. § 513 (relating to competitive sealed proposals).*

An exception based on notes and records of an evaluation committee does not apply to Allegheny County. This exception speaks only to the procurement practices of the Commonwealth and specifically its procurement policy related to competitive sealed proposals.

Allegheny County's procurement process is solely governed by our Administrative Code attached herein. We have no such limitation stated within our Code to mirror the Commonwealth's requirements. In fact there is no mention of confidentiality or "sealed proposals" anywhere within the Allegheny County's procurement policy enumerated in the Code.

The documents I have requested in response to the Deer Lakes RFP are governed by the Allegheny County's Administrative Code Section 903.02 which states that all contracts in excess of \$30,000 shall be given to the Controller as well as the Purchasing Officer and "the Purchasing Officer shall announce all bid figures publicly."

If the Deer Lakes contract is to be considered a "Professional Service Contract" and is excepted from the section 903.02 requiring public disclosure, it shall follow Section 905.03 of the Code and shall be reviewed by a Professional Services Review Committee. The Code requires at least two members of Council to be a part of that committee. The Code requires that the Professional Services Review Committee report information to Council and to the public and makes no mention of confidentiality or limited access to the bidding response documents they review.

As our Administrative Code does not protect documents that are part of procurement negotiations and the leasing of mineral rights are not covered by an exception within paragraph 26, the denial of access to these documents pursuant to this exception is void. Absent a valid exception cited by the Administration, these documents are public and the burden rests on the Administration to prove otherwise.

The second part of my request was denied on the basis that these documents "don't exist" which I vigorously dispute as the Administration has made admissions that they are in the process of negotiations with the prospective bidders and that including members of Council in negotiations would be too burdensome.

Because these documents have both been denied to the public as well as to me as a member of Council and a member of the Professional Services Review Committee I believe these documents have been maliciously withheld in violation of Allegheny County's Ethics Code and the County's Administrative Code in an attempt to deny Council its legally mandated responsibilities involving negotiations of County land contracts. Therefore I ask that the arbiter of this dispute enforce the civil penalty provision of the Pennsylvania Right to Know Law as the Administration of Allegheny County has denied access to public records in bad faith.

Sincerely,

A handwritten signature in blue ink, appearing to read "William Russell Robinson".

Honorable William Russell Robinson  
Council District 10

COUNTY OF ALLEGHENY



RICH FITZGERALD  
COUNTY EXECUTIVE

November 14, 2013

William Russell Robinson  
Office of County Council  
436 Grant Street  
Room 119 Courthouse  
Pittsburgh, PA 15219

Re: RTK – Final Response

Dear Councilman Robinson:

This is in response to your request for records under the Pennsylvania Right-to-Know Law pertaining to Specification #7154 – The Leasing of Allegheny County's Rights to Oil, Natural Gas, and Other Hydrocarbons Underlying Deer Lakes Park. The Allegheny County Office of Open Records received your request on November 6, 2013. For the reasons set forth below, your request must be respectfully denied.

The initial part of your request was for all written or electronic materials tendered in response to Specification #7154. This initial part of your request must be denied pursuant to Section 708 (b) (26) of the Right-to-Know Law. Section 708 (b) (26) of the Right-to-Know Law exempts from disclosure:

- (26) A proposal pertaining to agency procurement or disposal of supplies, services or construction prior to the award of the contract or prior to the opening and rejection of all bids; financial information of a bidder or offeror requested in an invitation for bid or request for proposals to demonstrate the bidder's or offeror's economic capability; or the identity of members, notes and other records of agency proposal evaluation committees established under 62 Pa. C.S. § 513 (relating to competitive sealed proposals).

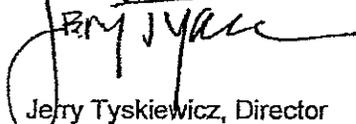
November 14, 2013  
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The second part of your request was for any documents, written or electronic, containing negotiations undertaken by Allegheny County employees, elected officials, or other agents regarding Specification #7154. The second part of your request also must be denied because there are no records in existence that are responsive to your request. See generally, Section 705 of the RTK Law. (Agency cannot be compelled to provide records that do not exist).

Any party denied access to a record may file an appeal with the Office of Open Records within 15 days of the mailing date of the agency response:

Office of Open Records  
Commonwealth Keystone Building  
400 North Street, Plaza Level  
Harrisburg, PA 17120-0225

Sincerely,

A handwritten signature in black ink, appearing to read "J. Tyskiewicz", written over a horizontal line.

Jerry Tyskiewicz, Director  
County of Allegheny Open Records Officer