

COMMONWEALTH COURT OF PENNSYLVANIA

Ruben M. Collazo v. Pennsylvania Gaming Control Board

No. 244 C.D. 2018 (Pa. Commw. Ct. Dec. 28 2018) (Commonwealth Court of Pennsylvania 2018) · No. No. 244 C.D. 2018 · Decided December 28, 2018

SUMMARY

The Pennsylvania Commonwealth Court affirmed the Office of Open Records' determination upholding the Pennsylvania Gaming Control Board's denial of Ruben M. Collazo's Right-to-Know Law request. The court held that the requested records concerning the Board's purported complete control over gaming did not exist, that the requester could not modify his request on appeal, and that lists of questions do not constitute record requests under the RTKL.

CASE DETAILS

COURT	Commonwealth Court of Pennsylvania
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Pennsylvania
DECIDED	December 28, 2018
DOCKET	No. 244 C.D. 2018
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petition for review of a final determination by the Office of Open Records affirming the Pennsylvania Gaming Control Board's denial of a Right-to-Know Law request.
STANDARD OF REVIEW	Review of an Office of Open Records final determination is de novo, with a plenary scope of review. The Court may adopt the OOR's findings and legal conclusions when appropriate.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Ruben M. Collazo v. Pennsylvania Gaming Control Board

TOPICS

[gambling](#) [administrative law](#) [judicial review of agency action](#) [appellate procedure](#) [preservation of error](#)

PRACTICE AREAS

[Right-to-Know Law](#) [Pennsylvania administrative law](#) [gaming regulation](#) [appellate review](#)

QUESTIONS PRESENTED

1. Whether Collazo could modify the nature of his Right-to-Know Law request during the appeal before the Office of Open Records or the Commonwealth Court.
2. Whether a list of questions constituted a request for records under the Right-to-Know Law.
3. Whether the Gaming Control Board met its burden to establish that the requested records did not exist or were not in its possession, custody, or control.

HOLDINGS

1. A requester may not change the nature of a Right-to-Know Law request after filing it; the request is fixed when submitted to the agency.
2. A list of questions is not a request for records under the Right-to-Know Law, and the Office of Open Records is not authorized to refashion questions into a records request.
3. The Board met its burden of proving that it did not possess records responsive to Collazo's request because the requested records showing complete control over Pennsylvania casinos did not exist.

KEY QUOTATIONS

“At that point, the request is fixed and the requester cannot change the nature of his request.” (2)

“The OOR, in its final determination, properly concluded that a list of questions is not a record request and cannot be refashioned as such when it dismissed this part of Collazo’s request.” (3)

“Therefore, the OOR did not err when it accepted the averments in the affidavit as true and concluded that the Board met its burden of showing that it does not possess records responsive to the request because no such records exist.” (7)

FACTUAL BACKGROUND

Collazo requested documents and policies concerning the Pennsylvania Gaming Control Board's alleged exercise of complete control over casinos and gaming, and also included sixteen questions. The Board denied the request, stating that it regulates casino gaming but does not exercise complete control over casinos and that no responsive records existed. The Board supported its position with an affidavit from its Deputy Chief Counsel stating that the Board lacks authority to manage casinos' businesses and that its policies concern regulatory matters such as technical submissions, integrity requirements, approved gaming, and surveillance.

PROCEDURAL HISTORY

Collazo submitted a Right-to-Know Law request to the Pennsylvania Gaming Control Board seeking documents and policies concerning the Board's purported complete control over casinos and gaming, along with a list of questions. The Board denied the request, explaining that no responsive documents or policies existed. The Office of Open Records affirmed, and the Commonwealth Court affirmed the OOR's final determination.

DISPOSITION

affirmed

CASES CITED

- Bowling v. Office of Open Records, 75 A.3d 453, 477 (Pa. 2013)
- Bowling v. Office of Open Records, 75 A.3d 453, 474 (Pa. 2013)
- Dep't of Corr. v. Disability Rights Network of Pa., 35 A.3d 830, 833 (Pa. Cmwlth. 2012)
- Pa. Tpk. Comm'n v. Murphy, 25 A.3d 1294 (Pa. Cmwlth. 2011)
- Pa. State Police v. Office of Open Records, 995 A.2d 515, 516 (Pa. Cmwlth. 2010)
- Gingrich v. Pa. Game Comm'n, (Pa. Cmwlth. No. 1254 C.D. 2011, filed Jan. 12, 2012), slip op. at 6
- Hodges v. Pa. Dep't of Health, 29 A.3d 1190, 1192 (Pa. Cmwlth. 2001)
- Moore v. Office of Open Records, 992 A.2d 907, 909 (Pa. Cmwlth. 2010)
- Sherry v. Radnor Twp. Sch. Dist., 20 A.3d 515, 520-21 (Pa. Cmwlth. 2011)
- McGowan v. Pa. Dep't of Env'tl. Prot., 103 A.3d 374, 382-83 (Pa. Cmwlth. 2014)

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