

Jon Frey

From: Snyder, Candy [csnyder@dvrpc.org]
Sent: Friday, August 19, 2011 3:42 PM
To: jfrey40535@gmail.com
Cc: Seymour, Barry; Shanis, Don
Subject: Response to Right to Know Request Dated August 12, 2011
Attachments: invoice 2 frey.pdf; Highway and Transit Counts.zip

Mr. Frey:

In reply to your request dated August 12, 2011 made pursuant to the Right-to-Know Law for records on the subject project (US 422), the Delaware Valley Regional Planning Commission (DVRPC) submits the following by way of specific reply to your Request:

1. These DVRPC records are internal, pre-decisional, deliberative and strategic and therefore exempt under both 65 P.S. § 67.708 (b)(10)(i)(A) and 65 P.S. § 67.708 (b)(10)(i)(B); are drafts prepared by or for an agency and therefore exempt under 65 P.S. § 67.708(b)(9); and relate to studies made by or for an agency in connection with the prospective construction project and therefore exempt under 65 P.S. § 67.708(b)(22)(i)(C).
2. See response to #1.
3. Contracts and invoices between Michael Baker, Jr., and DVRPC are not available electronically; they will be sent to you upon receipt of payment as per the attached invoice.
4. Highway and traffic counts collected for project 11-63-009 are attached. Traffic count numbers 58496 to 58500 were taken on ramps within the US 422/I-76 interchange, but not at the locations identified (by reference) under item #6 in your email. Please note that the Work Program project to which you refer by number is not the same project that DVRPC has undertaken with Michael Baker, Jr.
5. See response to #1. In addition this item of the Request is denied as it is disruptive pursuant to 65 P.S. § 67.506 (a). See DVRPC response dated August 12, 2011 in reply to your August 4, 2011 request for the same data. Also, this item of the Request is denied as it is disruptive pursuant to 65 P.S. § 67.506 (a). See DVRPC response dated August 12, 2011 in reply to your August 4, 2011 request for the same data.
6. As per the email you have attached to your original request, the traffic counts you reference that do exist are available on our website at this link: <http://www.dvrpc.org/Traffic/> If they are not posted online, then they do not exist.

Please forward payment for the documents noted above and we will be happy to process the remainder of your request.

Candace Snyder
DVRPC
Director, Office of Communications and Public Affairs
Phone ... 215-238-2875
Fax ... 215-592-9125
Email ... csnyder@dvrpc.org
Follow us on Twitter ... www.twitter.com/DVRPC

Jon Frey

From: Jon Frey [jfrey40535@gmail.com]
Sent: Friday, August 12, 2011 3:28 PM
To: 'Snyder, Candy'
Subject: RTK Request DVRPC Project Code 11-63-009
Attachments: 422_I76_Interchange_TrafficCount_Request.pdf; WS_1163009.pdf

Importance: High

Follow Up Flag: Follow up
Flag Status: Completed

August 12, 2011

Open Records Officer
Delaware Valley Regional Planning Commission
190 N. Independence Mall West, 8th Fl.
Philadelphia, PA 19106

Pursuant to §102 of the Commonwealth of Pennsylvania's right-to-know law, I request a copy of the following records:

All work products and correspondence performed in conjunction with Work Study Program 11-62-009 (see attached) from the FY 2011 DVRPC Work Study Program, or its successors, by DVRPC or its contractors. This includes, but is not limited to:

1. All correspondence, electronic or otherwise, between DVRPC and Michael Baker Jr., Inc.; all correspondence, electronic or otherwise between DVRPC and non-DVRPC personnel related to project 11-63-009.
2. Any reports, studies, presentations and forecasts or similar documents prepared by DVRPC or DVRPC subcontractors including, but not limited to Michael Baker Jr. Inc. on project 11-63-009.
3. All contracts and invoices between Michael Baker Jr., Inc. to DVRPC
4. All Highway and transit counts collected for project 11-63-009
5. Per the project document in the FY 2011 Work Program, "Draft documentation of forecasted highway volumes, transit ridership, operating costs, and capital costs, as well as of the technical processes used to determine the forecasts"
6. Traffic Counts on the US-422/I-76 interchange as described in the attached e-mail correspondence and map, between Jon Frey and DVRPC employee Scott Brady, or affidavit that no such counts exist. (see attachment)

All responsive records are to be provided electronically on a compact disc or DVD.

Thank you and have a nice weekend.

Jon Frey
Pennsylvania Transit Expansion Coalition
P.O. Box 76
Southampton, PA 18966
www.PA-TEC.org
215.634.2997



**Executive Director
Office of Open Records
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225**

September 2, 2011

This is an appeal under the Pennsylvania Right to Know Law, 65 P.S. §67.101.

I requested documents from the Delaware Valley Regional Planning Commission (DVRPC) . The Agency in part denied my request for information. I am appealing the denial of the records requested, under section 1101 of the Law and provide the following information in accordance with the Law:

Requester' s name: Jon Frey
Address/City/State/Zip: P.O. Box 76, Southampton, PA 18966
Date of Right to Know request: 08/12/2011
Date of Agency Response: 08/24/2011
Telephone and fax number: (215) 634-2997

SUPPLEMENTAL INFORMATION TO MY APPEAL REQUEST:

Description of records requested:

The request asked for records related to DVRPC's US-422 Corridor study. These records included:

1. Communications between the Commission and its subcontractor, Michael Baker, Jr.,
2. Reports, studies and forecasts related to the US-422 Corridor project
3. All contracts and invoices
4. Highway and transit counts
5. Stated products of the study, which include Draft documentation of forecasted highway volumes, transit ridership, operating costs, and capital costs, as well as of the technical processes used to determine the forecasts



6. Specific traffic counts at the I-76/US-422 interchange per maps supplied by PA-TEC.

DVRPC has responded to this request, and has fulfilled their obligation for items 3, 4 and 6. The remaining items: 1, 2, and 5 were denied on several grounds detailed below.

List any grounds upon which the requester asserts that the record is a public record:

DVRPC has released summary conclusions of the records sought in this appeal at various public presentations, webcasts, the DVRPC operated “422plus.com” website and Governor Corbett’s Transportation Funding Advisory Commission. DVRPC is using these summary conclusions to operate a public relations campaign to build public support for capital investments along the US-422 corridor in Montgomery and Berks Counties. The intent of the RTK and this appeal is to obtain the underlying data relied upon by the Commission to issue various summary reports and statements made regarding the US-422 Corridor projects, and ultimately sell the project to the public and elected officials.

Addressed grounds relied upon by agency for denial of request:

Items 1, 2 and 5: communications, reports, studies and forecasts, and products of the study, were denied by DVRPC per 65 P.S. § 67.708(b)(10)(i)(A) and 65 P.S. § 67.708(b)(10)(i)(B), 65 P.S. § 67.708(b)(9); and 65 P.S. § 67.708(b)(22)(i)(C). I will address each of these points below:

1. **The requested records are not pre-decisional per 65 P.S. § 67.708 (b)(10)(i)(A) and 65 P.S. § 67.708 (b)(10)(i)(B).**

To qualify for protection under 65 P.S. § 67.708 (b)(10)(i)(A), a record must *reflect* an agency’s deliberations, and relate to a proposed policy or course of action for the agency. The OOR has consistently held that in order to establish that this exception applies, an agency must show the following three elements: (1) the communication must be **internal** to the agency, including its representatives, (2) the communication must be **predecisional**, meaning it was made before the deliberative process of decision-making was completed; and (3) the communication must be **deliberative in character** in that it makes recommendations or expresses opinions on legal or policy matters, and is not purely factual in nature.



In the instant matter, the records sought are products of the deliberations and decisions made to proceed with DVRPC Project Code 11-63-009. This includes records of communication between the Commission and its subcontractors, which fails the internal test of 65 P.S. § 67.708 (b)(10)(i)(A), nor is it deliberative. Other records sought in the request include ridership counts and estimated costs for expansion of a highway, construction of a rail line, and revenue from tolling, all of which are non-deliberative, factual in nature, and have been released to the public in summary form only. These records are factual in nature, and were generated after any internal deliberations occurred on initiating the project. DVRPC submitted a summary of the requested records to Governor Corbett's Transportation Funding Advisory Commission for use in a presentation that suggested that tolling **WAS** the chosen policy alternative for the US-422 corridor made by the study. DVRPC has delivered public presentations to and released summary conclusions of the study's results. DVRPC is also using the requested records to advocate for legislative changes and obtain public support that will enable implementation of decisions already made. As the findings of this study have released to the public and offices of the Commonwealth, the underlying records used to develop the summary conclusions are now also public. I ask that the OOR find that the records requested are not exempt per 65 P.S. § 67.708 (b)(10)(i)(A) and 65 P.S. § 67.708 (b)(10)(i)(B) and that my request be granted in its entirety.

2. **The requested records are neither the drafts of legislative bills, resolutions, regulations, statement of policy, management directive or amendments to ordinances as defined by 65 P.S. § 67.708(b)(9).** This exemption does not apply to the records requested, and the claim of exemption should be discarded by the PA-OOR. Please see the description of records requested for details on the records requested, along with the original request, as attached.

3. **The request is not disruptive pursuant to 65 P.S. § 67.506 (a).**
On August 4, 2011 I had submitted a RTK request to Candace Snyder of DVRPC requesting passenger ridership projections based on summary conclusions provided in a PDF file on



DVRPC's website: http://www.422plus.com/422Corridor/wp-content/uploads/2011/06/DRAFT_422_TFACPresentation_06-06-11.pdf, page 20, and transit and operating costs from the same document on page 21.

In this request, I am seeking products of a study that is included in DVRPC's 2011 Planning Work Program, Project Code 11-63-009. While this study contains similarities to my August 4th, 2011 RTK request, it is not a duplicate of that request. I ask that the OOR find that this request is not disruptive per 65 P.S. § 67.506 (a) and that my request be granted in its entirety.

4. **The records requested are not exempt per 65 P.S. § 67.708(b)(22)(i)(c).** The records I have requested are for studies that are unrelated to any real estate transaction or construction project to be undertaken by DVRPC. The records requested relate to a study that was conducted by or for DVRPC to determine a transportation project's feasibility and to gather public and political support to advance the project for additional study and funding. This requested study will not result in the authorization of any construction project. DVRPC is an advisory agency only.

"DVRPC does not have actual authority for carrying out its planning proposals"

See DVRPC's appeal response in *Frey vs. Delaware Valley Regional Planning Commission*, OOR Dkt. AP 2011-0700. I ask that the OOR find that this request is not exempt per 65 P.S. § 67.708(b)(22)(i)(c) and that my request be granted in its entirety.

Thank you,

A handwritten signature in blue ink that reads "Jon Frey". The signature is written in a cursive style.

Jon Frey
Pennsylvania Transit Expansion Coalition
P.O. Box 76
Southampton, PA 18966
215.634.2997