



June 17, 2019

The Honorable Frank Burns
House of Representatives
325 Main Capitol
Harrisburg, PA 17120
fburns@pahouse.net

RTKL: 19-54 Final Response

Dear Representative Burns,

This letter acknowledges receipt by the Pennsylvania Liquor Control Board (“PLCB”) of your written request for information pursuant to the *Pennsylvania Right-To-Know Law* (“RTKL”), 65 P.S. §§ 67.101, *et seq.* A copy of your request, which was received by this office on May 10, 2019, is attached. Section 901 of the RTKL, 65 P.S. § 67.901, provides that the PLCB must provide an initial response within five business days, or in this case by May 17, 2019. By letter dated May 17, 2019, you were notified, pursuant to section 902(b)(2) of the RTKL, 65 P.S. § 67.902(b)(2), that the PLCB required up to an additional 30 days in order to issue a final response to your request. This letter will serve as the PLCB’s final response to your request.

Through your request, you seek to obtain copies of the following:

Records that reflect the total number of restaurant liquor licenses eligible for auction in each county as of May 10, 2019.

Section 301 of the RTKL requires Commonwealth agencies, including the PLCB, to provide access to “public records.” 65 P.S. § 67.301. The RTKL defines a “public record” as “[a] record, including a financial record, of a Commonwealth or local agency that: (1) is not exempt under section 708 [of the RTKL]; (2) is not exempt from being disclosed under any other Federal or State law or regulation or judicial order or decree; or (3) is not protected by a privilege.” 65 P.S. § 67.102.

As you appear to be aware, section 470.3 of the Liquor Code gives the PLCB the authority to sell by auction expired restaurant liquor licenses, in cases where the licenses were either non-renewed, revoked by an administrative law judge, or are no longer eligible for safekeeping. 47 P.S. § 4-470.3. This statutory authority was given to the PLCB in order to generate revenue for the commonwealth based on the substantial value that restaurant liquor licenses have in

Pennsylvania as a result of the county quota system established by section 461 of the Liquor Code, 47 P.S. § 4-461. Notably, the auction process is intended to allow the market demand for restaurant liquor licenses in each county to dictate the purchase price of the licenses being offered for sale.

Since being given the authority described above, the PLCB has proceeded cautiously to avoid negatively impacting the fair market value of licenses sold by the PLCB in future auctions as well as the fair market value of licenses currently held by existing licensees. If the PLCB were to publicly disclose the total number of licenses in each county that will be available for sale via auction in the future, it would create an unintended chilling effect on the market. As such, the PLCB treats the information you are seeking as confidential proprietary information, as well as information that pertains to the PLCB's internal deliberations and strategies to implement and carry out the auction initiative. Such information is protected from disclosure under sections 708(b)(10) and (b)(11) of the RTKL, 65 Pa. C.S. §§ 67.708(b)(10)-(11).

It is also important to keep in mind that when section 470.3 was first enacted by Act 39 of 2016, it contained a requirement that the PLCB must post a list on the Internet of all licenses available for auction by March 1st of each year. However, that requirement was subsequently removed by Act 85 of 2016, thus demonstrating the legislative intent that such information not be made public.

While the PLCB appreciates that the RTKL is largely designed to promote governmental transparency, the PLCB also recognizes that the RTKL is not intended to undermine other laws. See 65 P.S. §§ 67.306 and 67.3101.1 (indicating that the RTKL is not intended to conflict with other laws or supersede or modify the public or nonpublic nature of a record or document as established by another law). Additionally, the interests favoring disclosure simply do not outweigh the interests favoring the restriction of access to the information you are seeking in this instance.

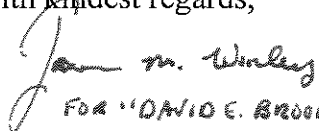
Accordingly, your request is **denied**.

To the extent that you disagree with this response, you may file an appeal with the Pennsylvania Office of Open Records ("OOR"). If you choose to file an appeal, you must do so within 15 business days of the mailing date of this response. In order to appeal, you must send to the OOR and simultaneously to me, in the same manner as the appeal is sent to the OOR (e-mail, fax, mail or hand delivery): (1) this response; (2) your request; (3) the appeal form that is available on the OOR website at: <https://www.dced.state.pa.us/public/oor/appealformgeneral.pdf>; (4) a statement of the grounds you assert for why your request should not have been denied; and (5) a statement that addresses any grounds for denial stated by the agency. The OOR requires that all of these items be submitted for your appeal to be valid.

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June 17, 2019
Page 3

Please be advised that this correspondence will serve to close this record with our office as permitted by law.

With kindest regards,



FOR "DAVID E. BROOKER"

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Agency Open Records Officer
Pennsylvania Liquor Control Board
419 Northwest Office Building
Harrisburg, PA 17124-0001

Attachment

cc: Rodrigo J. Diaz, Chief Counsel