



# FOUNDATION

FOR IUP

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✓ Representative Daryl Metcalfe  
144 Main Capitol  
PO Box 20212  
Harrisburg, PA 17120-2012

Representative Mark B. Cohen  
127 Irvis Office Bldg.  
PO Box 202202  
Harrisburg, PA 17120-2202

Dear Representative Metcalfe and Representative Cohen:

On behalf of the members of the House PASSHE Caucus we are writing to you in support of the private, non-profit University Foundations that support the 14 public universities that comprise the Pennsylvania State System of Higher Education (PASSHE) and the more than 100,000 students enrolled at a PASSHE University. Specifically, we are writing to you to explain how the current Right-To-Know Law (RTKL), and certain Pennsylvania Court decisions, have negatively impacted the ability of the Foundations to perform the work that they undertake to provide an affordable college education; and to seek your assistance in clarifying the current law as it applies to University Foundations and other private entities that contract with an agency covered by the law.

The purpose of the RTKL is, and has always been, to promote transparency in the use of taxpayer dollars and promoting access to official government information. This is an important goal and we must ensure that public officials continue to be held accountable when spending the hard earned dollars of taxpayers.

The University Foundations were created to provide a private vehicle to solicit and manage donations from the private sector for the direct benefit of PASSHE Universities. Like all non-profit corporations, the Foundations have a specific purpose as outlined in their bylaws and articles of incorporation. While the charitable purpose of the Foundations is to benefit Pennsylvania's public universities, they are not part of the University and are separate legal entities providing a private function. As private corporations, Foundations also maintain their

own business records which reflect the daily operations of the Foundations. These business records include board of director's meeting minutes, executive committee meeting minutes, tax records, internal policies and procedures and correspondence with vendors directly hired by a Foundation.

As a result of appeals made by individuals seeking access to certain documents, Pennsylvania Courts have expansively interpreted Section 506 of the Right-To-Know Law to allow access to an unlimited number of Foundation documents. In these limited instances, Pennsylvania Courts have ruled that the Foundations perform a "governmental function" and therefore all documents directly relating to that function are public. Based on this interpretation, internal business documents, such as board of directors' meeting minutes, to donor files, are open to disclosure. As such, the critical distinction between the management of public funds versus the use and management of private Foundation funds has been lost in the current interpretation of the RTKL.

For University Foundations, the current interpretation of the RTKL has the effect of making the Foundations de facto public entities without ever being defined by the Legislature as an "agency" and, therefore, subject to the provisions of the law. In crafting the law the Legislature developed a comprehensive list of entities, including the State System of Higher Education, which are considered a "state-affiliated" entity and thereby are subject to the provisions of the RTKL. That comprehensive list does not include University Foundations based on the Legislature's recognition, at that time, that University Foundations are not state-affiliated entities, do not receive public support, and do not perform a governmental function. We do not believe that the intent of Section 506 was to open wide the doors of every private contractor that happens to contract with the government. These Court decisions have essentially redefined what a public agency is and have come to the conclusion that any private entity contracting with an agency to provide a good or service would be performing a "governmental function" and therefore would be subject to the RTKL. Would we require Staples office products to share all of its internal business documents because it sold pencils to a covered agency.. if not, why should the Foundations be treated any differently just because its corporate mission is to support an agency that is specifically covered under the RTKL?

It is my hope that the foregoing information sheds some light on the important role that private University Foundations play in this State and how the expansive language and interpretation of the RTKL, have negatively impacted the University Foundations. The Foundations are not trying to limit the public's access to public information; rather, the Foundations only wish to protect the integrity of their operations and preserve the interests of these important private vehicles that ultimately support the public good.

Respectfully yours,

  
Betsy Lauber, Executive Director