

[J-122-2012] [MO: Baer, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

MARC LEVY,	:	No. 44 MAP 2012
	:	
Appellee	:	Appeal from the Order of Commonwealth
	:	Court entered 10-06-2011 at No. 2222 CD
v.	:	2010 which Affirmed in Part; Reversed in
	:	Part the Open Records Order entered
	:	09-16-2010 at No. 01-2010.
	:	
SENATE OF PENNSYLVANIA,	:	ARGUED: October 16, 2012
	:	
Appellant	:	

CONCURRING OPINION

MR. JUSTICE EAKIN

DECIDED: April 24, 2013

I agree with the majority's disposition of this case. Respectfully, I disagree with the majority's conclusion that the statute is ambiguous. That the statute does not address the specific question before us does not mean it is ambiguous — it means it is silent. While it may seem a quibbling distinction, statutory silence on a question of procedural waiver does not in my judgment comprise ambiguity, a notion involving language from which multiple meanings can be taken. Here, the issue is a waiver rule, a subject not addressed by the statute — there being no statutory language about waiver, there is nothing that is subject to multiple meanings, and hence no ambiguity.

That said, the procedural question still requires an answer. I agree with the rejection of the waiver rule of Signature Information Solutions, LLC v. Aston Township, 995 A.2d 510 (Pa. Cmwlth. 2010). The finding that reasons not raised in an agency's initial written denial are deemed waived per se, id., at 514, runs contrary to the plain language of the Right to Know Law, as specific reasons for denial are not required under

all circumstances. An agency's failure to respond to requests within a specified time-frame means the request will be "deemed denied." 65 P.S. §§ 67.901, 67.902(b)(2)-(3); see also Majority Slip Op., at 22-23. The statute provides for a general denial with no indication at all of "specific reasons for the denial [or] ... citation of supporting legal authority." 65 P.S. § 67.903(2). As the statute provides that listing no reason at all waives nothing, the Signature Information waiver rule (reasons not listed are waived) is contrary to the plain language of the statute.

Madame Justice Todd joins this concurring opinion.