

IN THE COURT OF COMMON PLEAS  
*of* YORK COUNTY  
CIVIL DIVISION

DYLAN SEGELBAUM *and*  
THE YORK DAILY RECORD,

*Respondents,*

v.

YORK COUNTY,

*Petitioner.*

No. 2022-SU-000516

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**RESPONDENTS' BRIEF**

ON APPEAL FROM THE FINAL DETERMINATION OF THE OFFICE OF OPEN RECORDS  
DATED JANUARY 31, 2022 (DOCKET NO. AP 2021-2943)

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## PRELIMINARY STATEMENT

This matter concerns a November 12, 2021 Right to Know Law (“RTKL”) request (“Request”) submitted to York County (“County”) by Respondents The York Daily Record (“YDR”) and then-YDR reporter Dylan Segelbaum. The Request sought “a copy of the curriculum vitae (CV) for Joseph Garcia, the ‘senior team leader’ of CSAU-1 LLC, a ‘corrections special operations’ organization based in Greenville, South Carolina.” Certified Record (“R.”) at 10.<sup>1</sup> There is significant public interest in Mr. Garcia, whose company has signed contracts with the County worth about \$375,000 to provide equipment and training to York County Prison, despite considerable controversy and litigation over his methods.

While the County has (belatedly) released eight partially redacted pages of a document titled “CV of STLIC - Joseph Garcia” (the “Partial CV”), it continues to withhold the “Verified CV of STL Garcia,” which contains 129 pages of photographs, reference letters, and certificates (the “Verified CV”). The Office of Open Records (“OOR”) correctly held that the Verified CV is responsive to the Request and not exempt from disclosure, and ordered the County to release the Verified CV. The County appeals that determination.

The County’s arguments on appeal are uniformly wrong. First, releasing the Partial CV did not moot the County’s appeal: both parties have a concrete stake in whether the Verified CV is subject to disclosure under the RTKL, and the Court can grant effective relief. Second, the Verified CV is an agency record because the County obtained, and retained a copy of, the Verified CV pursuant to its business arrangement with Mr. Garcia and C-SAU. Third, the County’s assertion that the Verified CV is not responsive to the Request rests on the incorrect and unreasonable premise that a document entitled “Verified CV of STL Garcia,” which contains

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<sup>1</sup> All citations to page numbers in the Certified Record refer to the pagination of the PDF file.

extensive information on Mr. Garcia's experience and qualifications, is not *really* a CV; this strained semantic nitpicking is not only absurd on its face, but also contrary to the RTKL's remedial purpose. Fourth, the County's argument that the Verified CV consists entirely of trade secrets and confidential proprietary information ("CPI") is unsupported by the evidence; the County's related assertion that records containing any amount of exempt information cannot be released in redacted form is wholly incorrect. Fifth, the County's contention that its own and Mr. Garcia's due-process interests have been violated is both untrue and irrelevant to any of the relief the County seeks. Last, the County has acted in bad faith, justifying attendant sanctions. Accordingly, the Court should affirm.

### FACTUAL AND PROCEDURAL BACKGROUND

In November 2020, York County entered a \$122,850 contract with C-SAU to provide equipment to York County Prison and train its corrections officers in cell-extraction techniques, among other things.<sup>2</sup> Petitioner's Ex. B. By the following August, prison officials were taking steps to renew the contract. *See Minutes*, York Cnty. Prison Bd. Inspectors (Aug. 11, 2021), <https://perma.cc/N32J-GJJG>. At that time, however, Mr. Garcia's work was the subject of litigation and public controversy in Pennsylvania and elsewhere—including questions about his resume, qualifications, and employment history.<sup>3</sup>

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<sup>2</sup> The County treats Mr. Garcia and C-SAU as effectively interchangeable.

<sup>3</sup> *See, e.g., Rustgi v. Reams*, 536 F. Supp. 3d 802, 810 (D. Colo. 2021); *Schwenk v. Garcia*, No. 21-CV-2079 (YK) (M.D. Pa. filed Dec. 13, 2021); *Sept. 20 Minutes*, Allegheny Cnty. Jail Oversight Bd. (Sept. 20, 2021), <https://perma.cc/87AA-LBRE>; *Sept. 2 Minutes*, Allegheny Cnty. Jail Oversight Bd. (Sept. 2, 2021), <https://perma.cc/9F89-KLX2>; Scarlett A. Wilson, *Report on Jamal Sutherland's Death at Charleston County's Detention Center*, Ninth Cir. Solic. Off. (July 26, 2021), <https://perma.cc/ERQ8-R98J>; *see also* Dylan Segelbaum, *Here's What We Know About C-SAU 'Senior Team Leader' Joseph Garcia's Employment Background*, York Daily Record (Sept. 15, 2021), <https://perma.cc/W6CS-W5ZS>; Matt Enright, *'I Own You': The Brutal History of York County's Prison Contractor*, York Dispatch

On September 19, 2021, hoping to secure a renewed contract with the County and refute unfavorable press coverage, Mr. Garcia emailed two documents to the prison's Intelligence Commander, Shawn Rohrbaugh. Tr. at 11:7–9, 80:2–5, 82:10–21, 86:12–87:6. One document was the eight-page Partial CV. Tr. at 47:11–18, 87:16–88:8; Petitioner's Ex. E. The other document was the 129-page Verified CV, containing 41 reference letters, 42 photographs of C-SAU trainings, and 42 certificates. R. 35, 41; Tr. at 24:12–27:9. Mr. Garcia personally labeled both documents "confidential" and "Classified" and sent them to Commander Rohrbaugh via a password-protected link set to expire in 24 hours. R. 35; Tr. at 89:4–14, 95:23–96:3, 149:25–150:10. Commander Rohrbaugh reviewed the Verified CV and used it to confirm the accuracy of Mr. Garcia's training certificates and work history. Tr. at 21:20–23:13, 26:23–27:5. He also printed out a copy and stored it in a locked filing cabinet in his office. Tr. at 30:10–31:13.

In November 2021, the County and C-SAU entered a two-year, \$252,770 contract extension for additional equipment and training. Petitioner's Ex. C; Tr. at 13:13–25. On November 12, 2021, Respondents submitted the Request to York County, seeking "the curriculum vitae (CV) of Joseph Garcia." R. 10. The County took a thirty-day extension of time to respond, R. 12, and denied the Request on December 14, 2021, stating that it had "performed a reasonable search and did not locate the document," R. 13. The County did not describe its search or provide an affidavit of non-existence. *Id.*

Respondents appealed the denial to the OOR on December 22, 2021. R. 7–9. On December 27, 2021, the OOR emailed a Notice of Appeal to the two County email addresses on

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(Aug. 31, 2021), <https://perma.cc/WPG6-JFHB>; Corinne Ramey, *City Probes Contract to Train Rikers Officers*, Wall St. J. (Aug. 30, 2016), <https://perma.cc/G89D-VAZZ>.

file in the Agency Open Records Officer database.<sup>4</sup> R. 16. The County did not respond. R. 22. Accordingly, on January 20, 2022, the OOR issued a Final Determination in favor of Respondents. *Id.* The County contacted the OOR that day, stating that it had not received the Notice of Appeal and asking the OOR to reopen the proceedings. R. 24. The OOR obliged, giving the County until January 25 to submit evidence and stating that it would issue a new Final Determination by January 31. R. 31, 33.

On January 25, the County submitted to the OOR a “position statement” and an attestation prepared by York County Solicitor and Open Records Officer Michéle Pokrifka. R. 34–36, 42–43. The County’s position statement acknowledged that it had located the Verified CV, R. 35, but nevertheless claimed that the record was not responsive to the Request because it was “not a curriculum vitae or CV.” R. 42. The County also asserted that the Verified CV was subject to multiple RTKL exemptions, precluding its disclosure. R. 35–36. In subsequent correspondence with the County and OOR, Mr. Segelbaum confirmed that he was “seeking the entire 12[9]-page document that Mr. Garcia has described as his CV[.]” R. 48.

On January 31, the OOR granted Respondents’ appeal and ordered the County to produce the Verified CV within thirty days. R. 65. The OOR held that the County had failed to meet its burden to prove that it lacked responsive records, explaining that “[t]he County’s interpretation of the Request was unreasonable,” that it “provided no basis for its narrow interpretation of the term ‘curriculum vitae,’” and that the Verified CV contained what “could reasonably be interpreted as components of a curriculum vitae.” R. 61–62. The OOR also held that the County

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<sup>4</sup> Those email addresses are “countyopenrecordsofficial@yorkcountypa.gov” and “mpokrifka@yorkcountypa.gov.”

had failed to prove that any RTKL exemptions applied, including the exemption for trade secrets or CPI under 65 P.S. § 67.708(b)(11). R. 62–65.

The County appealed the OOR’s Final Determination to this Court on March 2, 2022. On June 3, the Court held an evidentiary hearing and set a briefing schedule. The County submitted its brief on August 3.

### QUESTIONS INVOLVED

1. Is the County’s appeal moot?  
Suggested answer: no.
2. Must the County disclose the Verified CV pursuant to the RTKL?  
Suggested answer: yes.
3. Have the County and Mr. Garcia received all the process they are due?  
Suggested answer: yes.
4. Has the County acted in bad faith?  
Suggested answer: yes.

### ARGUMENT

#### I. Scope and standard of review.

The scope of this Court’s review is plenary. *Bowling v. Off. of Open Recs.*, 75 A.3d 453, 466 (Pa. 2013). Thus, the Court may review the entire record that was before the OOR, *Dep’t of Corr. v. Off. of Open Recs.*, 18 A.3d 429, 432 n.6 (Pa. Commw. Ct. 2011); supplement the record, *id.*; and conduct *in camera* review of any records in dispute, which “provides an essential check against the possibility that a privilege may be abused,” *Off. of Open Recs. v. Ctr. Twp.*, 95 A.3d 354, 367 (Pa. Commw. Ct. 2014). The Court need not defer to the OOR’s findings of fact, but it is free to adopt them. *Id.* at 459.

The Court reviews questions of law de novo, *Bowling*, 75 A.3d at 466, and it “must” interpret the RTKL so as “to maximize access to public records,” *McKelvey v. Pa. Dep’t of Health*, 255 A.3d 385, 400 (Pa. 2021). To that end, the Court “must construe [RTKL] exceptions

strictly, lest they subvert the RTKL's purpose" of facilitating access. *ACLU of Pa. v. Pa. State Police*, 232 A.3d 654, 656–67 (Pa. 2020).

**II. The County's appeal is not moot because the parties seek, and the Court can grant, an order having legal effect.**

The County argues that it mooted its own appeal when it produced the Partial CV. County's Br. at 8–9. But the County's late production of the Partial CV does not comply with the OOR's order commanding the County to produce the Verified CV.<sup>5</sup> R. 65. And it certainly does not prevent this Court from granting effective relief as to the parties' core controversy: whether Mr. Garcia's Verified CV must be released pursuant to the RTKL. Indeed, effective relief is exactly what the County seeks—it asks this Court to “reverse” or “dismiss[]” the OOR's final determination and hold that the County has “fully complied” with its obligations under the RTKL. County's Br. at 8–9, 23; *see Lyft, Inc. v. Pa. Pub. Util. Comm'n*, 145 A.3d 1235, 1248 (Pa. Commw. Ct. 2016) (“A matter is moot when a court cannot enter an order that has any legal effect.”); *Horsehead Res. Dev. Co. v. Dep't of Env't Prot.*, 780 A.2d 856, 858 (Pa. Commw. Ct. 2001) (“[T]he appropriate inquiry in determining whether a case is moot is whether a litigant has been deprived of the necessary stake in the outcome or whether the court or agency will be able to grant effective relief.”). Ironically, dismissing the County's appeal as moot would foreclose this relief: it would prevent the Court from ruling on the merits, leaving intact the OOR's instruction—and the County's legal obligation—to release the Verified CV. R. 65; *Mistich v. Pa. Bd. of Prob. & Parole*, 863 A.2d 116, 121 (Pa. Commw. Ct. 2004) (“[M]ootness, however it may have come about, simply deprives us of our power to act; *there is nothing for us to remedy, even if we were disposed to do so.*”) (alteration in original) (emphasis added) (internal quotation

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<sup>5</sup> The County has not carried its burden of establishing that the information omitted from the Partial CV is exempt from disclosure under the RTKL.

marks and citation omitted). Because this matter presents a live and justiciable controversy, the Court should reach the merits.

### **III. The Verified CV is a record of the County and is therefore subject to the RTKL.**

For a requested document to fall under the RTKL's disclosure requirements, it must be a "record," and it must be "of" an agency. 65 P.S. § 67.102; *Barkeyville Borough v. Stearns*, 35 A.3d 91, 95, 97 (Pa. Commw. Ct. 2012). The County claims, for the first time, that the Verified CV is neither. County's Br. at 9–16; *see Dep't of Pub. Welfare v. Eiseman*, 125 A.3d 19, 29 (Pa. 2015) (finding that agency's claim that it did not possess the requested record, when not raised before the OOR and raised for the first time in court, "is not well taken"). The County is wrong.

Under the RTKL, a "record" is defined as "[i]nformation, regardless of physical form or characteristics," that (1) "documents a transaction or activity of an agency," and (2) "is created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency." 65 P.S. § 67.102. The County does not, and could not, contest the first part. Mr. Garcia's Verified CV indisputably documents an activity or transaction of the County: its contract with Mr. Garcia's company C-SAU to provide training and equipment for the prison. *See Allegheny Cnty. Dep't of Admin. Servs. v. A Second Chance, Inc.*, 13 A.3d 1025, 1034–35 (Pa. Commw. Ct. 2011) ("[I]nformation about [a contractor's] employees who perform services for the County pursuant to the contract . . . documents an activity or transaction of the County.").

Perplexingly, however, the County argues that the Verified CV was not "received or retained" "in connection with" an agency "transaction" or "activity." County's Br. at 10. The evidence says otherwise. Mr. Garcia sent the Verified CV, containing information about his background and abilities, to Commander Rohrbaugh, who then retained it in his office and used it to verify Mr. Garcia's employment history and training. At the time, the County had a contract with C-SAU and was in the process of considering whether to renew it. Thus, an agency

“transaction” or “activity”—the County’s decision to contract with C-SAU—led Mr. Garcia to send, and Commander Rohrbaugh to use, the Verified CV. That makes the Verified CV a “record” subject to the RTKL. *See Stearns*, 35 A.3d at 95 (emails discussing borough’s consideration of land development plans were records); *A Second Chance, Inc.*, 13 A.3d at 1035 (names and information about contractor’s staff were “created, received, or retained . . . in connection with its contractual obligations to the County”); *Dep’t of Conservation & Nat. Res. v. Off. of Open Recs.*, 1 A.3d 929, 936 (Pa. Commw. Ct. 2010) (“[C]ertified payroll records submitted to the Agencies by third-party contractors” were records under RTKL). Whether the CV was “requested by the County,” County’s Br. at 10, is irrelevant. The RTKL covers records “created, received or retained” by an agency, not “requested” by one. 65 P.S. § 67.102. Nor is it relevant, as the County argues, that Mr. Garcia instructed Commander Rohrbaugh not to keep the record. County’s Br. at 22. Commander Rohrbaugh *did* keep the record, in his County office pursuant to his role as a County official conducting County business.

The County muddies the waters by urging the Court to apply the RTKL’s special, more stringent test for disclosure of records held solely by a third-party government contractor. *Id.* at 11–15 (citing 65 P.S. § 67.506(d)(1)).<sup>6</sup> But the County concedes that the Verified CV has been in its actual, physical possession since September 2021. *See, e.g.*, Tr. at 17:4–7 (Commander

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<sup>6</sup> Section 67.506(d)(1) requires disclosure of “[a] public record that is not in the possession of an agency but is in the possession of a party with whom the agency has contracted to perform a governmental function on behalf of the agency, and which *directly relates* to the governmental function.” 65 P.S. § 67.506(d)(1) (emphasis added). Even if this provision applied, it would require release of the Verified CV, because (1) C-SAU performs a government function by contracting with the County to provide equipment and training to the prison, and (2) the CV is directly related to that work, as it seeks to establish Mr. Garcia’s qualifications to fulfill the contract. *See E. Stroudsburg Univ. Found. v. Off. of Open Recs.*, 995 A.2d 496, 504 (Pa. Commw. Ct. 2010) (holding that “all contracts that governmental entities enter into with private contractors necessarily carry out a ‘governmental function’”).

Rohrbaugh answering “yes” when asked, “Sometime in . . . September of 2021, did you come into possession of this 129-page document?”); R. 42; *see Uniontown Newspapers, Inc. v. Pa. Dep’t of Corr.*, 185 A.3d 1161, 1172 (Pa. Commw. Ct. 2018), *aff’d*, 243 A.3d 19 (Pa. 2020) (requiring disclosure of records “in an agency’s physical possession” or control). Thus, the Verified CV is indisputably a County record.

#### **IV. The Verified CV is responsive to the Request.**

The OOR correctly held that the Verified CV is responsive to the Request and that the County’s contrary interpretation is unreasonable. R. 61–62; *see UnitedHealthcare of Pa., Inc. v. Pa. Dep’t of Hum. Servs.*, No. 824 C.D. 2017, 2018 WL 2436334, at \*4 (Pa. Commw. Ct. May 31, 2018) (agencies’ “interpretation must be reasonable”); *Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011) (agencies bear the burden of establishing responsive records do not exist). On appeal, the County does not develop any counterargument; it merely asserts that the Verified CV is “clearly not the subject of the request.” County’s Br. at 9. This undeveloped assertion is wrong.

Indeed, the available evidence demonstrates that the Verified CV is *directly* responsive to the Request because it appears on its face as, was intended to be used as, and was in fact used as, a curriculum vitae describing Mr. Garcia’s qualifications to perform work for the County. CVs typically contain extensive listings of an individual’s accomplishments and experience—often running to dozens of pages—in order to help others assess their fitness for the task at hand. *See, e.g., Ezeibe v. Chivers*, No. 19-CV-189 (YK), 2022 WL 882732, at \*7 (M.D. Pa. Mar. 24, 2022) (finding expert’s “sixty-nine (69) page Curriculum Vitae” showed he had “extensive experience”); *Mylan, Inc. v. Kirkland & Ellis LLP (LPL)*, No. 15-CV-581, 2015 WL 12733414, at \*1 n.4 (W.D. Pa. June 9, 2015) (noting expert’s “lengthy curriculum vitae information (*e.g.*, the 128-page C.V. of Declarant Dr. Eli Meltzer)”; *United States v. Maurizio*, No. 14-CR-23

(KRG), 2015 WL 5439059, at \*3 (W.D. Pa. Sept. 15, 2015) (describing expert’s “forty-four page *curriculum vitae*, which extensively summarizes his education; licenses and certifications,” and work experience); *Commonwealth v. Dominick*, 240 A.3d 205 (Pa. Super. Ct. 2020) (discussing “expert’s fifty-five page curriculum vitae,” which described his “extensive employment”).<sup>7</sup> As the OOR correctly held, Mr. Garcia’s Verified CV falls easily within this broad category. R. 62.

The Verified CV is titled “Verified CV of STL Garcia.” R. 41. The cover page states that it contains information about Mr. Garcia’s “Leadership,” “Certifications,” and “Professional References,” which are all found in a typical CV. *Id.* Indeed, the Verified CV reportedly contains reference letters, photographs of C-SAU trainings, and certificates—information designed to demonstrate Mr. Garcia’s professional accomplishments and qualifications, exactly as CVs generally do. R. 35, 42; Tr. at 24:12–26:19.

Mr. Garcia offered the Verified CV as a record of his experience and qualifications in order to fortify his business relationship with the County. At the time Mr. Garcia sent the Verified CV to Commander Rohrbaugh, Mr. Garcia had been the subject of critical press coverage and public commentary, and the County was deciding whether to renew his contract. *See supra* note 3. Reacting to those events, Mr. Garcia wrote in his cover email to Commander Rohrbaugh, “I know I do not need to send this, but this should give you, the warden, the

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<sup>7</sup> As these cases show, in the context of expert testimony, courts regularly *demand* that CVs contain detailed information on the individual’s background, in order to determine whether they have the “broad range of knowledge, skills, and training” needed to qualify as an expert under *Daubert*. *Strictly F/X L.L.C. v. Pyrotechnico F/X, L.L.C.*, No. 20-CV-201 (CCW), 2022 WL 2343309, at \*4 (W.D. Pa. June 29, 2022) (internal quotation marks and citation omitted). Similarly, universities direct their students to prepare extensive CVs, noting that “[t]he CV presents a full history of your academic credentials, so the length of the document is variable.” *Resume vs. Curriculum Vitae: What’s the Difference?*, UC Davis Internship & Career Ctr., <https://perma.cc/4WFK-R5MJ>; *see also CV vs. Resume Guide*, Princeton Univ. Ctr. for Career Dev., <https://perma.cc/PYR9-KUSR> (“CV is a detailed description of all the academic activities and accomplishments you have accumulated . . . and includes extensive information.”).

commissioner, Commissioner Ron, the sheriff and the other important key supporters 100 percent confidence in my background and ability, capability, and skill sets.”<sup>8</sup> Tr. at 92:20–93:1.

The County used Mr. Garcia’s Verified CV as CVs are generally used: to aid its assessment of his experience and qualifications. Commander Rohrbaugh testified that he “reviewed the content of the 129-page document and then basically just confirmed the validity of some certificates that it contains, training certificates.” Tr. at 21:23–22:3. He also confirmed Mr. Garcia’s work history by calling past clients listed in the document. Tr. at 22:19–23:13. Shortly thereafter, the County and C-SAU entered a two-year, \$252,770 contract extension. Petitioner’s Ex. C; Tr. at 13:13–25. For both Mr. Garcia and the County, the Verified CV served its purpose as a CV: to confirm Mr. Garcia’s credentials in advance of a contract renewal.

Under any “reasonable” interpretation, Mr. Garcia’s Verified CV is responsive to the Respondents’ request for Mr. Garcia’s CV. *UnitedHealthcare of Pa., Inc.*, 2018 WL 2436334, at \*4. As the saying goes, “[a]t some point in this process, a [factfinder] should be allowed to conclude that if something walks like a duck, sounds like a duck, flies like a duck, and swims like a duck, then it is a duck . . . .” *Commonwealth v. Tau Kappa Epsilon*, 609 A.2d 791, 796 n.3 (Pa. 1992).

**V. The County fails to establish that the requested record falls within the RTKL’s exemptions for trade secrets or confidential proprietary information.**

Likewise, the County’s argument that the Verified CV is exempt from disclosure as “[a] record that constitutes or reveals a trade secret or confidential proprietary information” falls short. 65 P.S. § 67.708(b)(11); County’s Br. at 16–23. When an agency asserts that a responsive

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<sup>8</sup> Mr. Garcia’s bald statement that he does not currently consider the document a CV is neither dispositive nor, frankly, credible. *Compare* R. 41 (cover page labeling document a “Verified CV”) *and* Tr. at 84:14–85:1 (explaining that he sent the Verified CV to show “I had the skill sets to or the experience or that I’ve worked with different people and different agencies”) *with* Tr. at 83:16–18 (claiming he does not consider Verified CV to be part of his CV).

record is exempt from disclosure, it must prove by a preponderance of the evidence that one of the RTKL's exemptions applies; meeting this burden requires the agency to produce evidence "specific enough to permit th[e] Court to ascertain how . . . the records sought fall within the proffered exemptions." *West Chester Univ. of Pa. v. Schackner*, 124 A.3d 382, 393 (Pa. Commw. Ct. 2015); *see also Pa. Dep't of Educ. v. Bagwell*, 131 A.3d 638, 656 (Pa. Commw. Ct. 2015). As noted above, RTKL exemptions "must be narrowly construed" to ensure that they do not "frustrate the remedial purpose of the" law. *Off. of Dist. Att'y of Phila. v. Bagwell*, 155 A.3d 1119, 1130 (Pa. Commw. Ct. 2017). Here, the County's evidence comes nowhere near demonstrating that the entire Verified CV is a trade secret or CPI. And even if the County had succeeded in proving that part of the record were exempt, the RTKL would require the County to release it in redacted form.

**A. The County fails to establish that the Verified CV is a trade secret.**

The County fails to establish that Mr. Garcia's entire Verified CV is a trade secret. The RTKL defines "trade secret" as:

Information, including a formula, drawing, pattern, compilation, including a customer list, program, device, method, technique or process that:

- (1) Derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other person who can obtain economic value from its disclosure or use; and
- (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

65 P.S. § 67.102. "A trade secret must be an actual secret of peculiar importance *to the business* and constitute competitive value to the owner." *Pa. Liquor Control Bd. v. Burns*, No. 1159 C.D. 2019, 2020 WL 3256836, at \*9 (Pa. Commw. Ct. June 16, 2020) (internal quotation marks omitted) (emphasis in original). The County bears the burden of proving its sweeping assertion that the *entire* Verified CV is "an actual secret," *id.*, with specific evidence, *Schackner*, 124 A.3d

at 393. Yet the County appears to have instead “blindly defer[red] to the determinations of private entities”—Mr. Garcia—“as to what information is exempt from disclosure under the RTKL.” *McKelvey*, 255 A.3d at 404.

First, although the County emphasizes that Mr. Garcia labeled the Verified CV as “classified” and “confidential” and instructed officials not to retain a copy, “confidentiality agreements/clauses, alone, are unenforceable under the RTKL.” *Nay v. Morrisville Borough Sch. Dist.*, Dkt. No. AP 2019-2359, 2020 WL 469102 (Pa. Off. Open Recs. Jan. 24, 2020) (collecting cases). An agency “may not contract away the public’s right of access to public records” in such a way. *Newspaper Holdings, Inc. v. New Castle Area Sch. Dist.*, 911 A.2d 644, 649 n.11 (Pa. Commw. Ct. 2006).

Second, the County points to nothing beyond such labeling to establish that the Verified CV’s contents are *actually* secret—nor could it. As the record evidence shows, many of Mr. Garcia’s and C-SAU’s clients have been publicly identified, including by Mr. Garcia himself. *See, e.g.*, Tr. at 22:19–23:7 (Virginia Beach, Virginia); 86:1–8 (Allegheny County); *Rustgi*, 536 F. Supp. 3d at 810 (Weld County, Colorado); Mike Detty, *The Man Who Quiets*, *Tactical Life* Mag. 58 (Aug./Sept. 2020), <https://perma.cc/SR4B-7AJX> (“I have worked with the Israelis and in Singapore, Guam, Argentina, Ukraine.”); *id.* at 59 (“We’ve serviced the City of New York. Major communities like Maricopa County (in Arizona) . . . .”); Wilson, *supra*; *Special Operations Group in the Henderson County Jail*, Henderson Cnty., <https://perma.cc/WM5F-H2MX> (Henderson County, North Carolina); Ramey, *supra* (New York City); Karina Bolster, *Al Cannon Detention Center Special Ops Officers Receive Special Training*, WCSC (May 28, 2015), <https://perma.cc/6ZU8-HKG8> (Charleston, South Carolina); Julie Murphy, *Guard Training*, *Daytona Beach News-Journal* (Sept. 11, 2013), <https://perma.cc/L7P6-9CSU> (Flagler

County, Florida). Mr. Garcia regularly shares photographs and videos of C-SAU trainings online, sometimes identifying clients. *See, e.g.*, Tr. at 61:7-61:21 (Commander Rohrbaugh discussing how Mr. Garcia shared unauthorized video from within York County Prison); Respondent's Ex. 3; *STL Joseph Garcia*, Facebook, <https://www.facebook.com/STL-Joseph-Garcia-393921155117>; *Stl\_garcia\_kilo1*, *Instagram*, [https://www.instagram.com/stl\\_garcia\\_kilo1/?hl=en](https://www.instagram.com/stl_garcia_kilo1/?hl=en). When "information is known outside of the [agency] when it suits the [contractor's] purposes," it cannot receive "trade secret status." *Pa. Dep't of Revenue v. Flemming*, No. 2318 C.D. 2014, 2015 WL 5457688, at \*5 (Pa. Commw. Ct. Aug. 21, 2015).

Third, the County has not established that Mr. Garcia or C-SAU derives independent economic value from the Verified CV's purported secrecy. 65 P.S. § 67.102. The County "did not identify . . . competitors" of C-SAU. *Flemming*, 2015 WL 5457688, at \*6. Mr. Garcia claimed that sharing information on his trainings could allow competitors to "say, okay, you know what, we will just hire this guy or that guy and then we can under bid this man," but provided no support for this speculation. Tr. at 100:5-13; *cf. Burns*, 2020 WL 3256836, at \*15 ("[V]ague affidavits do not carry [agency's] burden in establishing the [trade secrets] exemption as they merely speculate regarding the possible loss of future revenue."); *Mission Pennsylvania, LLC v. McKelvey*, 212 A.3d 119, 137 (Pa. Commw. Ct. 2019) ("[D]efer[ring] to OOR's determination that [affiant] lacked credibility because he deemed [the] entire application a trade secret."), *aff'd in part, vacated in part on other grounds sub nom. McKelvey*, 255 A.3d at 385. Indeed, Mr. Garcia has said previously that most of C-SAU's contracts are no-bid, and publicly available information shows the same. *See Sept. 20 Minutes, supra*; *Sept. 2 Minutes, supra*; Glenn Smith, *Ex-Charleston County Jail Chief Draws Scrutiny Over Schnauzer Breeding*

*Business, Post & Courier* (Apr. 23, 2022), <https://perma.cc/B8K3-YZRN> (“The no-bid arrangement made sense because Garcia was the only one offering this training[.]”); Enright, *supra*; Detty, *supra* (Mr. Garcia saying, “[o]ur stuff is 98 to 99 percent sole-sourced to us, which means there is no bidding on the contracts”).<sup>9</sup> Additionally, “[t]he possibility of another company recruiting away one’s employees,” or submitting a lower bid, “is present in nearly every industry, regardless of whether the public is furnished with a list of” employees’ information. *Hecht v. U.S. Agency for Int’l Dev.*, No. 95-CV-263 (SLR), 1996 WL 33502232, at \*8 (D. Del. Dec. 18, 1996); *see also Keystone Nursing & Rehab of Reading, LLC v. Simmons-Ritchie*, No. 1631 C.D. 2018, 2020 WL 40042, at \*13 (Pa. Commw. Ct. Jan. 3, 2020) (holding “employee biographical information” was not trade secret absent “specific evidence”). Therefore, the County has not met its burden of proving that the Verified CV is exempt as a trade secret.

**B. The County fails to establish that the Verified CV contains confidential proprietary information.**

The County also fails to establish that the Verified CV is exempt from disclosure as CPI. The RTKL defines CPI as “commercial or financial information received by an agency: (1) which is privileged or confidential; and (2) the disclosure of which would cause substantial harm to the competitive position of the person that submitted the information.” 65 P.S. § 67.102. The second prong requires a showing of “affirmative use of proprietary information by competitors,” not “simply any injury to competitive position.” *Burns*, 2020 WL 3256836, at \*11 (internal citations and quotation marks omitted). “The word ‘substantial’ appears in the statute to

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<sup>9</sup> Mr. Garcia also claimed competitors could copy his training videos. *See* Tr. at 137:20–138:2. The Verified CV does not contain training videos. In any event, Mr. Garcia’s example was of an unnamed competitor using an unspecified video that he chose to share on Facebook. *Id.*

characterize the degree of injury needed . . . .” *Dep’t of Pub. Welfare v. Eiseman*, 85 A.3d 1117, 1128 (Pa. Commw. Ct. 2014), *rev’d in part on other grounds*, 125 A.3d 19 (2015).

As outlined above, while the County claims that Mr. Garcia took steps to keep his Verified CV confidential, it has not established that its contents are, in fact, confidential. To the contrary, extensive information about his past clients and trainings has already been made public, including by Mr. Garcia himself. *See supra*.

Nor has the County met its burden to establish that disclosure would cause substantial competitive harm. As described above, the County provides no information about Mr. Garcia’s or C-SAU’s competitors and instead only speculates as to how those unnamed competitors might weaponize the Verified CV. “Although the court need not conduct a sophisticated economic analysis of the likely effects of disclosure . . . conclusory and generalized allegations of substantial competitive harm . . . are unacceptable and cannot support an agency’s decision to withhold requested documents.” *Eiseman*, 85 A.3d at 1130 (internal quotation marks omitted); *see also Wexford Health Sources, Inc. v. Pa. Dep’t of Corrs.*, 247 A.3d 1179 (Table) (Pa. Commw. Ct. 2021) (rejecting CPI claim where evidence “utterly fails to address the actual competition in the relevant market, and the likelihood of substantial injury” (internal quotations marks and citation omitted)); *Keystone Nursing & Rehab of Reading, LLC*, 2020 WL 40042, at \*12 (holding that “employee biographical information, by itself, is not facially proprietary” and is not CPI “in the absence of evidence of how release of the Disputed Records would cause . . . competitive harm”); *Golden Gate Nat’l Senior Care Center v. Brambila*, No. 1543 C.D. 2018, 2020 WL 40013, at \*2 (Pa. Commw. Ct. Jan. 3, 2020) (same, as to employees’ “detailed biographical information,” including resume). Without evidence of how each part of the

Verified CV would substantially harm Mr. Garcia if disclosed, the County has not met its burden to show the record is CPI.

Accordingly, the Verified CV is not exempt under either part of Section 708(b)(11) and must be disclosed.<sup>10</sup>

**C. If the Verified CV did contain any exempt information, the RTKL would require the County to release it with narrowly targeted redactions.**

Even if part of the Verified CV were exempt from disclosure, the RTKL would require the County to release it in redacted form. The County asserts that the presence of any exempt information in the 129-page Verified CV permits it to withhold the *entire* record, County's Br. at 22–23, but that assertion is unsupported and plainly wrong. Under the RTKL, when a record contains both public and exempt information, “the agency’s response shall grant access to the information which is subject to access and deny access to the information which is not subject to access.” 65 P.S. § 67.706. Consistent with this instruction, the Pennsylvania Supreme Court has

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<sup>10</sup> The County also briefly claims that releasing the identities of Mr. Garcia’s references would violate their constitutional privacy interests. County’s Br. at 21. Although “[b]efore the government may release personal information, it must conduct a balancing test to determine whether the right of informational privacy outweighs the public’s interest in dissemination,” that test is not applicable here. *Off. of Gen. Couns. v. Bumsted*, 247 A.3d 71, 85 (Pa. Commw. Ct. 2021). The reference writers do not have a protected privacy interest in their names because they are, on information and belief, government employees who voluntarily wrote the letters. *See* Tr. 83:19–84:2, 97:22–98:17; *Butterfield v. Lycoming Cnty.*, Dkt. No. AP 2019-0281, 2019 WL 2162355, at \*5 (Pa. Off. Open Recs. May 13, 2019) (stating that “the names of public employees are generally considered to be public information”). The strong public interest in disclosure tips the scales. Mr. Garcia’s references factored into the County’s vetting process, after which the County awarded C-SAU a contract worth over \$250,000 to work at the prison. Tr. at 22:19–23:13, 36:5–7; Petitioner’s Ex. C. Access to information about recipients of government funds is “precisely what the General Assembly intended when codifying the public’s right to know.” *Pa. State Univ. v. State Emps.’ Ret. Bd.*, 935 A.2d 530, 539 (Pa. 2007). There is also public interest in disclosure that, as here, “enables oversight of law enforcement.” *Lancaster Cnty. Dist. Attorney’s Off. v. Walker*, 245 A.3d 1197, 1205–06 (Pa. Commw. Ct. 2021) (internal quotation marks omitted). If the Court finds any names are exempt, the remedy is to redact them, not to withhold the entire Verified CV. *See Reese v. Pennsylvanians for Union Reform*, 173 A.3d 1143, 1159 (Pa. 2017); 65 P.S. § 67.706.

made clear that “the RTKL places the burden on the governmental agency to discern what parts of a record are subject to access and what parts are properly exempt, and, through redaction, disclose those parts subject to access.” *McKelvey*, 255 A.3d at 400.

**VI. The OOR properly served the County, and both the County and Mr. Garcia have received all the process they are due.**

According to the County, the OOR “improperly served” notice of Respondents’ initial appeal and “violated the due process rights of the third-party vendor and the County.” County’s Br. at 15, 16. Not so. The OOR properly served the County: it sent notice of Respondents’ initial appeal to both email addresses listed for the County in the Agency Open Records Officers database. *See* R. 16; Office of Open Records, *Find Agency Open Records Officers*, <https://perma.cc/PY9J-RNTJ>.<sup>11</sup> The County does not explain its accusation that this notice was improper. County’s Br. at 15. Nor does it explain its representation that it “never received” the notice. R. 24. As the OOR pointed out, the notice of appeal and the OOR’s January 20 order to release the Verified CV went to same official email address ([mpokrifka@yorkcountypa.gov](mailto:mpokrifka@yorkcountypa.gov)), and the County “promptly responded” to the latter. R. 27. Despite these curious circumstances, the OOR indulged the County’s request to re-open the record and granted the County multiple opportunities to submit evidence. *See* R. 31 (re-opening record); R. 34–43 (County’s position statement, exhibits, and attestation); R. 51 (request for additional evidence from County); R. 59 (noting County’s failure to submit additional evidence as requested).

As for Mr. Garcia’s participation: to the extent Mr. Garcia was unaware of the Request and the OOR proceedings, it is because the County failed to notify him. There is no indication in the record that the County informed Mr. Garcia of the Request “within five business days” of its

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<sup>11</sup> The Agency Open Records Officers Database exists to “ensure[] that the OOR can contact” Agency Open Records Officers “in the event an appeal is filed with OOR.” *Id.*

receipt. 65 Pa. Stat. § 67.707(b); R. 58 n.2. And the record indicates that as of January 31, the County still had not informed Mr. Garcia of the proceedings before the OOR, even though the County had indisputably been aware of those proceedings for more than a week. *See* R. 63–64; *see also* R. 16–18.

In any event, Mr. Garcia has received all the process he is due. When an intervening third party establishes that it has not had the opportunity to challenge the release of purported trade secrets or CPI, courts generally must ensure that the third party is granted a “meaningful opportunity to be heard.”<sup>12</sup> *Pennsylvania Tpk. Comm’n v. Elec. Transaction Consultants Corp.*, 230 A.3d 548, 557–58 (Pa. Commw. Ct. 2020). In the past, the Commonwealth Court has done this via remand to the OOR, with instructions to give the third party fifteen days to submit evidence. *Id.* at 559. But the County does not seek that remedy here. *See* County’s Br. at 16, 23. Nor could it reasonably do so: this Court has already given both the County and Mr. Garcia at least as much process as they would be entitled to on remand by convening an evidentiary hearing at which the County had the opportunity to supplement the record and Mr. Garcia provided hours of testimony. Tr. at 89:15–23. The County and Mr. Garcia have therefore had a “meaningful opportunity to be heard” on the release of the Verified CV; the law requires nothing more. *Pennsylvania Tpk. Comm’n*, 230 A.3d at 557.

## **VII. The County has acted in bad faith.**

When an agency delays or denies access to public information in bad faith, the court may award reasonable attorney fees and costs to the requester and impose civil penalties on the agency. 65 P.S. § 67.1304. “In the RTKL context, ‘bad faith’ does not require a showing of

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<sup>12</sup> Neither Mr. Garcia nor C-SAU has sought to intervene in this matter—despite having months in which to do so, and despite the fact that this appeal purportedly concerns their sensitive commercial information.

fraud or corruption. The lack of good faith compliance with the RTKL and an abnegation of mandatory duties under its provisions rise to the level of bad faith.” *Uniontown Newspapers, Inc. v. Pennsylvania Dep’t of Corr.*, 185 A.3d 1161, 1170 (Pa. Commw. Ct. 2018) (“*Uniontown I*”). “After-discovered records are a type of evidence from which a court may discern bad faith,” and “[e]vidence of an agency’s failure to perform its mandatory duties, including a failure to search its records prior to a denial of access, may suffice.” *Id.* at 1171.

A finding of bad faith and attendant sanctions are warranted here for at least three reasons. First, the County granted itself a thirty-day extension of time in which to respond to the Request based on the Request’s “extent or nature.” R. 12. But nothing about the Request necessitated this extension; indeed, there is no evidence that the County made any effort to respond within the default five-day statutory time frame, 65 P.S. § 67.707(b), or that its search (when it eventually began) was complicated or time-consuming. *See* County’s Br. at 3–4; *see also Uniontown Newspapers, Inc. v. Pennsylvania Dep’t of Corr.*, 243 A.3d 19, 28 (Pa. 2020) (“*Uniontown II*”) (affirming finding of bad faith “in significant part because the open records officer failed to act with diligence in response to” an RTKL request).

Second, the record establishes that the County did not conduct a diligent search before denying the Request. *Compare* R. 42 (stating that County’s initial search consisted of emailing the Warden of York County Prison on an unspecified date) *with Uniontown II*, 243 A.3d at 28 (holding that an open records officer cannot “fulfill[] his or her obligation [to conduct a diligent search] simply by relying on the representations of others without inquiring as to what investigation was made and without reviewing the records upon which the individual responding to the request relied”); *see also* County’s Br. at 16 (apparently conceding that the County did not conduct “an appropriate investigation” before denying the Request or, for that matter, during the

OOR appeal); Tr. at 57:25 (Commander Rohrbaugh estimating that he learned of Request just before January 1—long after submission of Request and likely after commencement of OOR proceedings—and did not search his email until late February); County’s Br. at 3 (stating that “[t]he OOR only provided the County of York three business days *to conduct a search, investigate the matter . . . and to prepare and file an answer*”) (emphasis added). This may explain why the County did not inform Respondents of the Verified CV until after the OOR reopened their initial appeal. *See Uniontown Newspapers*, 185 A.3d at 1170 (“Where an agency d[oes] not perform a search of its records under the RTKL until the matter was in litigation, the agency denie[s] access in willful disregard of the public’s right to public records.”).

Third, the County has unjustifiably prolonged this litigation and delayed public access to the Verified CV by (1) failing to inform Mr. Garcia of the Request, 65 P.S. § 67.707(b); R. 58 n.2.; R. 63–64; (2) failing to respond to the OOR’s Notice of Appeal, R. 22;<sup>13</sup> (3) failing to promptly notify Mr. Garcia of the proceedings before the OOR, R. 58 n.2, 63–64; and (4) advancing frivolous arguments in support of nondisclosure, including—but not limited to—the arguments that the RTKL precludes the release of redacted records, that the Verified CV is not a County record despite the County officially using and physically possessing it, and that both the County and Mr. Garcia have suffered infringements of their due process interests, *see supra*.

## CONCLUSION

For the foregoing reasons, Respondents respectfully ask this Court to affirm the OOR’s Final Determination, order the prompt release of Mr. Garcia’s Verified CV, issue a finding that

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<sup>13</sup> Commander Rohrbaugh’s testimony strongly suggests that the County first notified him of the Request on or around December 27, 2021—the date on which the OOR transmitted the notice of appeal. *See* Tr. 57:25; R. 16. This casts further doubt on the County’s unsubstantiated representation that it was “unaware” of the appeal, R. 24, and implies that the County, despite being on notice of the OOR appeal, simply missed its deadline to respond.

the County failed to comply in good faith with its obligations under the RTKL, award reasonable attorney fees to Respondents, and impose civil sanctions on the County.

Dated: September 2, 2022

Respectfully submitted,

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**CERTIFICATE OF SERVICE AND  
COMPLIANCE WITH PUBLIC ACCESS POLICY**

I certify that on this 2<sup>nd</sup> day of September, 2022, I caused a true and correct copy of the foregoing document to be served via email on the following:

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I further certify that this document complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

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