

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

STATEMENT OF ISSUES COMPLAINED OF ON APPEAL

BACKGROUND

This matter concerns a request (the “Request”) submitted to York County (the “County”) by Appellants Dylan Segelbaum and the York Daily Record (“the newspaper”) under Pennsylvania’s Right to Know Law (“RTKL”). The Request sought “a copy of the curriculum vitae (CV) for Joseph Garcia, the ‘senior team leader’ of CSAU-1 LLC.”

The County denied the Request. The newspaper and Mr. Segelbaum appealed to the Office of Open Records (“OOR”). The OOR issued a Final Determination ordering the County to produce a document in its possession titled “Verified CV of STL Garcia”—hereafter, the “Verified CV.”

The County appealed the OOR’s Final Determination to this Court. On September 6, 2022, this Court entered an order dismissing the County’s appeal as moot. In an accompanying opinion, the Court reasoned that (1) the Verified CV is not a CV, and therefore is not responsive to the Request; and (2) the County had already responded in full to the Request by producing a different document during the proceedings before this Court.

By emails dated September 21, 2022 and September 28, 2022 (Exhibit A), counsel for the

newspaper and Mr. Segelbaum sought the County's position on whether it intended to comply with the OOR's Final Determination—given the dismissal of its appeal as moot—or seek further relief. The County did not respond.

The newspaper and Mr. Segelbaum noticed an appeal to the Commonwealth Court on October 3, 2022. That day, this Court ordered the newspaper and Mr. Segelbaum to file a concise statement of errors complained of on appeal, pursuant to Pennsylvania Rule of Appellate Procedure 1925(b).

STATEMENT OF ISSUES ON APPEAL

Consistent with this Court's order of October 3, 2022, the newspaper and Mr. Segelbaum respectfully submit that they anticipate raising the following issues on appeal:

1. This Court erred in dismissing as moot the County's appeal from the OOR's Final Determination of January 31, 2022. The County has not complied with the OOR's Final Determination, and the question of whether the County must produce the Verified CV pursuant to the RTKL (as the OOR instructed) represents a live, justiciable controversy.

2. This Court erred in failing to order the County to produce the Verified CV in accordance with the OOR's Final Determination of January 31, 2022.

a. The Verified CV is responsive to the Request. The Verified CV is not only titled "Verified CV of STL Garcia"—it is also a documentary record of Mr. Garcia's experience and credentials, which he submitted to the County to demonstrate that he was qualified to perform contract services for the County. The Request encompasses the Verified CV under any reasonable interpretation.

b. The Verified CV is a record of the County subject to the RTKL. The Verified CV is in the County's physical possession and was received by the County in connection with a transaction, business, or activity of the County; the RTKL applies to it.

- c. The County has not met its burden to establish that the Verified CV is exempt from disclosure under the RTKL. The County has failed to demonstrate by a preponderance of the evidence that *any* portion of the Verified CV is exempt from disclosure—much less that the *entire* Verified CV is exempt from disclosure.

3. This Court erred in failing to hold that the County has acted in bad faith and is therefore subject to civil penalties—including liability for reasonable attorney fees and costs—under 65 P.S. § 67.1304. The record is clear that, at minimum, the County took an unwarranted 30-day extension before initially responding to the Request; denied the Request before conducting a diligent search for responsive records; and unjustifiably prolonged the litigation over the Request before both this Court and the OOR. The County’s failure to take appropriate action following the dismissal of its appeal as moot further underscores its bad faith.

Dated: October 24, 2022

Respectfully submitted,

/s/Paula Knudsen Burke

Paula Knudsen Burke (PA Bar No. 87607)

Charles Hogle (*pro hac vice*)

REPORTERS COMMITTEE FOR

FREEDOM OF THE PRESS

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Counsel for Appellants

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

I certify that on this 24th day of October, 2022, I caused a true and correct copy of the foregoing document to be served via First-Class, certified U.S. mail on the following:

The Honorable Matthew D. Menges
Nineteenth Judicial District of Pennsylvania—County of York
45 N. George Street
York, PA 17401

Mich lle Pokrifka
York County Solicitor
York County Administrative Center
28 East Market Street, 2nd Floor
York, PA 17401

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.

/s/ Paula Knudsen Burke
Paula Knudsen Burke (No. 87607)

EXHIBIT A



York County Prothonotary Civil E-Filed - 24 Oct 2022 12:25:08 PM

Charlie Hogle <chogle@rcfp.org>

Segelbaum v. York County, 2022-SU-000516 - Release of record2 messages

Charlie Hogle <chogle@rcfp.org>

Wed, Sep 21, 2022 at 11:41 AM

To: "Pokrifka, Miche'le" <MPokrifka@yorkcountypa.gov>, "Puleo, Agatha" <apuleo@yorkcountypa.gov>

Cc: Paula Knudsen Burke <pknudsen@rcfp.org>, Jim Davy <jimdavy@allriselaw.org>, Sasha Dudding <sdudding@rcfp.org>

Dear Michèle - I'm writing to follow up on *Segelbaum v. York County, 2022-SU-000516*.

As you know, on September 6, the Court of Common Pleas dismissed as moot the County's appeal from the OOR's Final Determination of January 31. In keeping with its conclusion that the County's appeal was moot, the court did not reverse or vacate the OOR's Final Determination, which requires the County to release Mr. Garcia's 129-page CV.

Could you please let Respondents know at your earliest convenience when the County intends to comply with the OOR's Final Determination - or, if the County does not intend to comply with the OOR's Final Determination, whether the County will seek further relief from either the Court of Common Pleas or Commonwealth Court?

Best regards,
Charlie

--

Charlie Hogle

Media Litigation Fellow

Reporters Committee for Freedom of the Press

202/800/3536 (x131)

he/him

Charlie Hogle <chogle@rcfp.org>

Wed, Sep 28, 2022 at 10:49 AM

To: "Pokrifka, Miche'le" <MPokrifka@yorkcountypa.gov>, "Puleo, Agatha" <apuleo@yorkcountypa.gov>

Cc: Paula Knudsen Burke <pknudsen@rcfp.org>, Jim Davy <jimdavy@allriselaw.org>, Sasha Dudding <sdudding@rcfp.org>

Hi Michèle - I'm just checking in on the questions I raised in my email last Wednesday. When does the County intend to comply with the OOR's Final Determination of January 31? If the County doesn't intend to comply with that Final Determination, will it seek further relief from the Court of Common Pleas or Commonwealth Court?

If you could let us know the County's position as soon as possible, we'd appreciate it.

Best,
Charlie

[Quoted text hidden]