Received 2/14/2023 2:42:03 PM Commonwealth Court of Pennsylvania

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

NO. 1075 C.D. 2022

DYLAN SEGELBAUM and THE YORK DAILY RECORD
Appellants

vs.

THE COUNTY OF YORK
Appellee

BRIEF OF APPELLEE

Appeal from the Order of the Honorable Matthew D. Menges, Judge of the Court of Common Pleas of York County, Pennsylvania, dated September 6, 2022.

Date: February 14, 2023

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Pages**

Statutes

Rules

COUNTER-STATEMENT OF JURISDICTION

The Commonwealth Court has jurisdiction over this appeal pursuant to 42 Pa. C.S.A. § 762(a), as it involves the determination of a final order of the Court of Common Pleas interpretation and enforcement of the Right to Know Law, 65 P.S. § 67.101, 1302(a), et seq.

The Court also has jurisdiction over this matter pursuant to 42 Pa.C.S. § 762(a)(4), as the proceeding in the Court of Common Pleas was an appeal from a governmental agency other than a Commonwealth agency.

COUNTER-STATEMENT OF THE SCOPE AND STANDARD OF REVIEW

The scope of review by the Commonwealth Court of an order of the Court of Common Pleas of a question of law under the Right-to-Know Law is plenary. 65 P.S. § 67.101 et seq.; *City of Pittsburgh v. Silver*, 50 A.3d 296 (Pa. Commw. Ct. 2012).

The standard of review by the Commonwealth Court for a Right-to-Know Law appeal, when the court of common pleas is the reviewing or "Chapter 13" court, is limited to whether the trial court has committed an error of law and whether the findings of fact are supported by substantial evidence. 65 P.S. § 67.101 et seq., *Off. of the Dist. Att'y of Philadelphia v. Bagwell*, 155 A.3d 1119, 1123 (Pa. Commw. Ct. 2017).

COUNTER-STATEMENT OF QUESTIONS INVOLVED

I. WHETHER THE COURT OF COMMON PLEAS CORRECLTY DETERMINED THAT THE REQUEST OF APPELLANT IS MOOT AS THE APPELLEE FULLY COMPLIED WITH THE REQUEST OF APPELLANT?

Suggested Answer. Yes

II. WHETHER THE APPELLANTS' WILLFUL MISTATEMENTS REGARDING THE LOWER COURT'S ORDER AND MISREPRESENTATIONS REGARDING THE TESTIMONY AND ACTIONS OF THE COURT AND COUNSEL AT TRIAL IS A BLATANT ACT OF BAD FAITH?

Suggested Answer. Yes.

COUNTER-STATEMENT OF THE CASE

Preliminarily, in accordance with Pa. R.A.P. §§ 2153 and 2156, the Appellee, the County of York, avers that it has supplemented the reproduced record with portions of the record it deems important that are not contained in the Reproduced Record filed by Appellants, Dylan Segelbaum and the York Daily Record.

On November 12, 2021, Respondent Segelbaum submitted a Right-to-Know Law request seeking records regarding a vendor of the York County Prison Board of Inspectors. Specifically, the request was for "a copy of the curriculum vitae (CV) for Joseph Garcia …" (R.R. p. 001a).

The County invoked its right to an additional thirty days to respond and on December 14, 2021, responded to the Requester, here Appellant, indicating that a curriculum vitae was not in the possession of the County or Prison related to the named vendor. (R.R. p. 003a).

Thereafter the Requester, here Appellant, appealed to the Office of Open Records (hereinafter OOR), but this appeal was not properly served upon the County.[1]

Without having provided the County proper notice of such appeal, the OOR entered an initial Final Determination on January 20, 2022, on the basis of the

[1] It should be noted that the County is required to provide information to the Office of Open Records related to who and where such notices are to be served, in this case that was not followed by the OOR as they had routinely followed in the past.

County's failure to respond to the appeal. (R.R. p. 013a).[2] On the same day, the County contacted the OOR to indicate that the appeal to the OOR by the Appellant had not been properly served upon the County by the OOR, and as a result, was not received by the County which was the reason for the lack of response. (R.R. p. 015a). We believe that due to the fact that York County under the current Open Records Officer has never failed to respond to an OOR appeal timely noticed, the OOR granted additional time to respond. (R.R. p. 034a).

That same day, Thursday, January 20, 2022, the OOR issued a directive rescinding the final determination. The rescinded directive acknowledged the County's position that they had not properly received the Notice of Appeal. The OOR then issued a second directive also on January 20, 2022, which required a response to the OOR appeal by Tuesday, January 25, 2022. (R.R. p. 018a). This timeline provided a three-day window to respond, two days of which fell over a weekend. This timeline did not permit sufficient time for a detailed investigation and notice to the vendor whose CV had been requested.

Despite the unreasonable time frame, a response was prepared and filed with the OOR by the County on January 25, 2022. The OOR then issued its second "final" determination on January 31, 2022, granting the request and requiring the 129-page document, which was not requested to be disclosed to the Appellant. The

[2] Despite the veiled allegations of Appellants' counsel against the York County Solicitor/Open Records Officer (ORO) as stated so unprofessionally in their brief, this ORO attests that no appeal to the OOR has been ignored nor has the County been unresponsive to any filed OOR appeal since taking this position in 2018.

County filed an appeal to the second “final” determination to the Court of Common Pleas on March 2, 2022.

While preparing its response to the appeal to the OOR, the County held a telephone conference on January 20, 2022, with Prison Warden Ogle, Deputy Warden Conway and Intelligence Commander, Shawn Rohrbaugh, to confirm that the County did not have a CV or resume of Joseph Garcia (STL Garcia).

It should be noted that the appeal to the OOR was upon Appellants’ belief that the County “has a copy of the curriculum vitae for C-SAU "Senior Team Leader" Joseph Garcia in its possession", and with unsupported allegations of a failure to perform a good faith search along with a vague reference to a conversation the requester had with the Warden of the York County Prison in November 2021, that requester admits in the appeal documents that he "cannot recall the specific words" used during such conversation. (R.R. p. 006a). Appellant further states in the appeal to the OOR that they are looking for the “information the County relied upon to contract with this individual and organization.” (R.R. p. 032a).

During this telephone conference on January 20, 2022, to discuss the matter and the three-day window provided to file a reply to the OOR, Commander Rohrbaugh, again confirmed that he did not request, nor did he have in his possession a CV of STL Garcia. (R.R. pp. 014a, 016a, 094a, 096a-097a). Due to the vague statement in the Requester’s appeal to the OOR as stated above, discussion was held regarding the vetting process and at that time Commander Rohrbaugh indicated that

he had inspected documents provided by STL Garcia while he was supervised by STL Garcia, who then after the review retrieved the documents. Commander Rohrbaugh indicated that he took a few notes from the documents to make some calls and verify some information. (R.R. p. 082a). He also disclosed that well after the vetting process, he received an email from STL Garcia in September 2021, which was encrypted and time locked (R.R. pp. 084a, 090a-091a). After gaining access to the record in September 2021, he recalled that it included copies of photographs that identified STL Garcia, along with other individuals, and also disclosed locations where various forms of training by STL Garcia had taken place. Other documents in the packet were copies of citations or certifications related to STL Garcia, which identified the type of training he has received throughout his career. Also included were letters from various governmental officials regarding the services STL Garcia had provided to other governmental entities both domestic and international. (R.R. pp. 091a-093a). The packet of information and the email that was attached to the document stated that the information was "confidential" and also marked as "classified". (R.R. p. 084a). The information provided by STL Garcia to Commander Rohrbaugh in September 2021, was approximately 129 pages long and as confirmed by Commander Rohrbaugh, did not contain a curriculum vitae or resume as it is more commonly called. He further testified that the information in the large packet was not related to the services provided to the County. (R.R. pp. 059a-060a, 126a).

The County in an effort to be transparent to the OOR in the appeal did disclose the existence of the large document, although encrypted and time locked, and reiterated that it was not in possession of a CV or resume of STL Garcia. (R.R. pp. 020a-021a). After a review of the information an attestation was provided to the OOR. (R.R. pp. 027a-028a).

As a result of the unavailability of STL Garcia during the OOR appeals process, a phone call with STL Garcia and members of the Prison management team was not able to occur until early February 2022. It was during this conversation to discuss the pending appeal at the Court of Common Pleas that STL Garcia indicated that the encrypted and time locked email contained two separate and distinct documents, one of which was a resume or CV. (R.R. pp. 154a-155a). This document was not able to be accessed prior to February 2022, and when authorization was provided in February 2022, it was noted that there was also a confidentiality requirement attached to the resume or CV. (R.R. pp. 155a-156a).

It was not until this time that Commander Rohrbaugh became aware that the document he was unable to open electronically was in fact STL Garcia's CV or resume. (R.R. p. 094a).

As a result of this discovery, it is important to note that due to its encryption and time lock, that at the time of the initial and second request of the Appellant for the resume or CV of STL Garcia, the County was not in possession of the CV during that time.

STL Garcia during the appeal to the Court of Common Pleas did in fact provide access to the encrypted and time locked CV or resume. He further confirmed that his CV had not been requested prior to the initial contract entered into with the County. (R.R. p. 146a). After the resume was reviewed, it was lightly redacted and was provided to the Appellant in satisfaction of their request. STL Garcia testified that the document now being requested through the appeal process was a document he put together in response to the news articles published by the Appellant and was not related to either contract with the County but was to debunk the "grossly defaming articles" printed by the Appellant. (R.R. p. 149a).

The County's position remains that as it was not in the possession of any resume or CV at the time of either request of Appellant for same, it was not required to provide the document. As the document and access to it was provided to the County during the Court of Common Pleas appeal process, the County in an effort to resolve the pending litigation provided the CV to Appellant. Despite providing the CV, the Appellant refused to agree to a withdrawal of the matter. Instead, what the Appellant is attempting to do is to have the lower Court affirm the OOR's modification of their request on appeal, which is not permitted.

SUMMARY OF THE ARGUMENT

The request of Dylan Segelbaum was for:

> "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. (R.R. p. 001a).

In its appeal documents, the Appellant states:

> "Upon information and belief, York County has a copy of the curriculum vitae (CV) for C-SAU "Senior Team Leader" Joseph Garcia in its possession.
>
> Following the meeting of the York County Prison Board of Inspectors on Nov. 10, 2021, I spoke with York County Prison Warden Adam Ogle. Warden Ogle told me that he had confidence in the Office of Intelligence and Security, which was in charge of vetting Mr. Garcia and C-SAU. Though I cannot recall the specific words he used, Warden Ogle indicated that the county had received a copy of Mr. Garcia's CV and verified his credentials. (R.R. p. 006)."

In its emails to the OOR Hearing Officer the Appellant states:

> "It is of the utmost importance for the public to know what information the County relied upon to contract with this individual and organization. (R.R. p. 032a)."

It is important to note that the only active contract at the time of the Right-to-Know Request was a contract entered into in November 2020. A second extension of the contract was entered in November 2021. As a result, any information relied upon to enter into a contract with STL Garcia would have been received prior to November 2020. The CV or resume of STL Garcia was not actually obtained until February 2022, as a result of the appeal. The County provided the redacted copy of the CV to the Requester, after February 2022, despite the fact that at the time of the

request no documents were in the possession of the County th.at were responsive to the request. (S.R.R. pp 0001b-0008b).

As a result, the request for the CV, although not in the possession of the County at the time of the request, was later provided, resulting in satisfaction of the RTKL request. The Court correctly noted,

> "how does the fact that the CV that has been requested has now been produced, how does that not make the appeal moot and require a second request for additional documents that are now being sought." (R.R. p. 133a).

There is no dispute that the CV or resume has been produced. The Appellants' response to the Court's statement was an admission that the request had been fulfilled when they indicated "it is difficult for us to refute that argument… and further indicated that filing an amended or new Right-to-Know Law request unfortunately takes time." (R.R. pp. 141a-142a).

Appellants, have by this statement, admitted to their attempt to broaden or modify their request on appeal, as they admit that their initial request was for only the CV of STL Garcia. Further, they attempt to argue to the lower court that the OOR's impermissible broadening of the Appellants' request should be affirmed. Such modification by the Appellants and the OOR was inappropriate. Appellants have further willfully misstated the complexity of filing a one-page on-line form to request the other documentation.

What is equally important is that such statement by the Appellants is disingenuous as the Appellants failed to note that a subsequent request for the other

documentation was not submitted to the County as suggested by the Court, due to the fact that the named Appellant, Dylan Segelbaum, no longer worked for the agency, York Daily Record (YDR) for whom the request was made at the time of the appeal hearing before the lower court. (R.R. p. 144a). As a result, there is no longer the desire or need for the Appellant, Dylan Segelbaum, to request such documentation.

The County's position is that the request has been satisfied. The lower court agreed that the requested information having been provided resulted in the matter being deemed moot, overruling the Final Determination of the OOR.

Despite the fact that the County, at the time of the appeal to the OOR, had in its possession, in violation of the confidentiality agreement and the restriction against copying, other documents provided by STL Garcia, those documents were not and are not the subject of the request or of the appeal before the Court.

As a result, the appeal of Appellants should be dismissed, and the determination of the lower court affirmed that the matter is moot as a result of providing the CV of STL Garcia to the Appellants. Determining the matter to be moot does not, as the Appellants would have you believe, affirm the Final Determination of the OOR. The lower court was loud and clear as to the intent of its Order and that the other documentation having not been requested was not on appeal before the Court, to attempt to present these facts otherwise is a willful misrepresentation by the Appellants to this Honorable Court.

ARGUMENT

I. WHETHER THE COURT OF COMMON PLEAS CORRECTLY DETERMINED THAT THE REQUEST OF APPELLANT IS MOOT AS THE APPELLEE FULLY COMPLIED WITH THE REQUEST OF APPELLANT?

II. WHETHER THE APPELLANTS WILLFUL MISTATEMENTS REGARDING THE LOWER COURTS ORDER AND MISREPRESENTATIONS REGARDING THE TESTIMONY AND ACTIONS OF THE COURT AND COUNSEL AT TRIAL IS A BLATANT ACT OF BAD FAITH?

The request of Dylan Segelbaum was for:

> "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. (RTK request was marked as Exhibit A)."

Such request was further confirmed by the emails to the hearing officer during the OOR appeal and the statements in the OOR appeal documents, which stated as follows:

> "Upon information and belief, York County has a copy of the curriculum vitae (CV) for C-SAU "Senior Team Leader" Joseph Garcia in its possession.
>
> Following the meeting of the York County Prison Board of Inspectors on Nov. 10, 2021, I spoke with York County Prison Warden Adam Ogle. Warden Ogle told me that he had confidence in the Office of Intelligence and Security, which was in charge of vetting Mr. Garcia and C-SAU. Though I cannot recall the specific words he used, Warden Ogle indicated that the county had received a copy of Mr. Garcia's CV and verified his credentials. (R.R. p. 006).
>
> It is of the utmost importance for the public to know what information the County relied upon to contract with this individual and organization. (R.R. p. 032a)."

During the investigation and preparation for the appeal to the Court of Common Pleas, it was realized that the CV had been provided to the County, not as part of any vetting process, but voluntarily nearly a year after the initial contract was entered. The CV was encrypted and time locked by STL Garcia. (R.R. pp. 155a-156a).

If, upon the submission of a RTKL request, no records exist or are not in possession of the local agency, the local agency has no production obligation with respect to the request. *Olick v. Easton Suburban Water Auth.*, 271 A.3d 533 (Pa. Commw. Ct. 2021).

Whereas here, the CV was not in the possession of the County at the time of the request and as confirmed by the testimony presented was never requested by the County decision makers prior to the entry of either contract with STL Garcia. (R.R. pp. 081a, 083a, 146a). Further, the CV or resume was never used or relied upon to contract with this individual and organization as was clear from the testimony of Commander Rohrbaugh who indicated he did not even see a CV until February-March 2022. (R.R. p. 095a), although Appellants argument heavily relies upon the assumption that the CV would have been part of the vetting or hiring review process, as was stated by Appellant in the OOR appeal documents. The County therefore did not have possession of the document and had no obligation to obtain or produce it. Despite that fact, the County requested to be granted access to the CV in February

2022, specifically in preparation for the appeal hearing before the Court of Common Pleas. When access to the CV was granted and authorization provided, the CV was then provided to the Appellants in satisfaction of the request. The CV was not obtained or provided by the County until after February 2022.

What was clear to the Court and the Appellee County was that the Appellants were attempting to modify their request on appeal which request was eventually deemed moot by the lower court.

The Court stated:

> When I look back at the November 12th, 2021, request, it asks for a copy of the curriculum vitae for Joseph Garcia, et cetera, which is what Exhibit F is. So while there may now be a request for additional documents, how does the fact that the CV that has been requested has now been produced? How does that not make the appeal moot and require a second request for the additional documents that are now being sought. (R.R. p. 133a).

Appellant then states that the CV along with the additional documentation is the actual CV as was requested. (R.R. p. 134a).

The Court again addresses the issue of the mootness of the request by stating:

> Let's say in the course of a medical malpractice case an expert doctor produces his CV. And as part of his CV, he has listed that he's been published certain times and he can make that available upon request. Is that part of his CV or is that additional information that is then made available when requested?" (R.R. p. 135a).

In response, the Appellant incorrectly states we can look to the RTK law itself for this point. (R.R. p. 135a). She goes on to state "There is an actual definitional

section about these records and it is pretty broad." (R.R. p. 135a). The definition of a CV is not included in the RTKL, The RTKL contains no such term.

The court goes on to state that:

> I'm not suggesting that the records may not be requestable. What I'm suggesting is they are not what was requested in this right-to-know request. (R.R. p. 135a).

Appellant attempts to argue that the Court must consider a very broad definition or ability to encompass everything and to assume what the requester is after. The court further states:

> Doesn't -- that broader viewpoint, doesn't that place an unfair burden on an agency responding to a request to not just look at documents that are requested but try to assume what the requestor really wants to get at and provide those even though they may not be what was actually requested? (R.R. p. 136a).

What Appellants are attempting to do and which the OOR permitted them to do in its Final Determination, is to modify or broaden their request before the lower Court. They admit that they cannot refute that their request was for a CV or resume and attempt to argue that the "definition of a CV in the RTKL" is broad. (RR pp.135a-136a).

This is a misrepresentation of the RTKL. There is no definition of such in the RTKL and further "[n]owhere in the RTKL process has the General Assembly provided that OOR can refashion the request." *Pennsylvania State Police v. Office of Open Records*, 995 A.2d 515, 516 (Pa. Cmwlth. 2010). Additionally, neither the

OOR or the requester is entitled to either narrow or broaden the scope of the request on appeal to the OOR nor can they do so in an appeal before the lower court.

Once a RTKL request is submitted, the requester may not expand or modify the request on appeal. *McKelvey v. Off. of Att'y Gen.*, 172 A.3d 122, 125 (Pa. Commw. Ct. 2017) as quoting, *Smith Butz, LLC v. Department of Environmental Protection*, 142 A.3d 941, 945 (Pa. Cmwlth. 2016).

The Appellants continue to argue that the additional documents are to be produced without ever addressing the issue that they were simply not requested. Appellants continue to broaden their request by indicating that these additional materials were hiring materials, (R.R. p. 135a) or provided as part of the initial vetting process, but the testimony disproved their unsupported theory. (R.R. pp. 104a-105a, 126a-127a, 138a-139a).

Where a requester seeks to gain access to information under the RTKL, Section 703 of the RTKL puts the initial burden on the requester to provide a written request that "should identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested **…**" 65 P.S. § 67.703; *Mollick v. Twp. of Worcester*, 32 A.3d [859] ... [(Pa. Cmwlth. 2011)]. Here the request was succinct, very specific and easily interpreted. As a result, the County is not required to look outside of the request to determine any and all records that might be supportive to or similar to the exacting request.

In determining whether a request is sufficiently specific, an agency should rely on the common meaning of words and phrases, be mindful of the remedial purpose of the RTKL, and construe the specificity of the request in the context of the request, rather than envisioning everything the request might conceivably encompass. *Off. of the Dist. Att'y of Philadelphia v. Bagwell*, 155 A.3d 1119, 1143 (Pa. Commw. Ct. 2017) citing *Pa. State Police v. Office of Open Records*, 995 A.2d 515, 517 (Pa. Cmwlth. 2010).

The courts have been clear that the Open Records Offices of local agencies are not required to assume that they must produce every document that may or could possibly fall under the request, and in this matter, the request was crystal clear, defined and specific.

Additionally, the Appellants argue that the Court holding that the matter is moot and dismissing the appeal of the County results in the OOR's Final Determination being dispositive of the matter and requiring disclosure of additional documentation. The on the record discussions with counsel during the hearing and the Court Order clearly indicate that the intent of the Court is that as the request has been fulfilled, the matter has been resolved and as a result is deemed moot and that no additional documentation was to be provided by the County/Appellee.

As the Court stated in its Opinion, "we cannot consider the grant of a request that has not been made, **having determined the 128-page document is not part of Joseph Garcia's CV,** and the County having provided Joseph Garcia's CV to

Requestors, we cannot grant any further relief to Requestors." *Order of Court, 9/6/2022*, Appellants Exhibit "A" p. 5. (emphasis added).

Appellants' attempt to convince this reviewing Court of any other interpretation of the Order of the lower court and the applicability of the OOR Final Determination as binding is a misrepresentation of the facts.

A case is moot if, at any stage of the litigation, there is no actual controversy between the parties. *Phila. Pub. Sch. Notebook v. Sch. Dist. of Phila.*, 49 A.3d 445, 448 (Pa. Cmwlth. 2012).

In the RTKL context, an appeal from the OOR's determination becomes moot when the agency provides the requested records to the requester in full. *Id.* at 449.

In *Kutztown Univ. of Pennsylvania v. Bollinger*, the Court found that where the University had complied entirely with the request by providing Bollinger with the final outstanding record identified in the request during the appeal although redacted, there ceased to be any actual controversy in this matter. The Court held that the matter was to be affirmed as to the appeal being moot and vacated the OOR's determination that extended or granted relief beyond the request. *Id.*, No. 5 C.D. 2019, 2019 WL 4390513, at *2 (Pa. Commw. Ct. Sept. 13, 2019).

As in the *Kutztown* case, the County during the appeal to the lower court, provided precisely the information requested. Ordering the County to provide additional information would impermissibly broaden the request. Here, as in the *Kutztown* appeal, the lower court appropriately ended their analysis when

confirming that the requested information was provided. Here the lower court on de novo appeal found that the matter is moot as no controversy continues to exist once the request has been satisfied. Additionally, the limited exceptions to the mootness doctrine have not been raised here by the Appellant.

The purpose of the RTKL is to provide citizens with access to public records. *Bowling v. Office of Open Records,* 75 A.3d at 455.

The RTKL defines a "record" as "[i]nformation . . . that documents a transaction or activity of an agency and that is created, received, or retained pursuant to law or in connection with a transaction, business, or activity of the agency." RTKL 65 P.S. §67.102*; Commonwealth Dep't of Lab. & Indus. v. Simpson*, 151 A.3d 678, 682 (Pa. Commw. Ct. 2016).

Further, such documents must be within the agency's "legal custody and control". *United Healthcare of Pa v. Baron*, 171 A.3d 943, 958 (2017). As has been evidenced, this document was not in the legal custody of the County at the time of the request.

The County agrees with the Court's suggestion that such a broad view of what the Appellant is entitled to obtain places an unfair burden on an agency responding to a request to not just look at the documents that are requested but try to assume what the Appellant or requestor really wants to get at and provide those even though they may not be what was requested. (R.R. p. 136a). The Appellant in support of that broad view argues that it is the responsibility of the agency to locate and provide

all information that may be remotely related to or relevant to the request, on the thin basis that the vendor is providing a service for the County and that as a result the information directly relates to the work of the agency.

The Appellant even indicated to the Court that "it doesn't really matter why the agency has them." (R.R. p. 140a), referring to the CV and 129-page document. This is a complete misrepresentation of the statutory and case law related to third-party documents as referenced in 65 P.S. §67.506(d). This interpretation of the RTKL is not supported in the statute and not supported in the caselaw. The Court in *Allegheny Cnty. Dep't of Admin. Servs. v. Parsons* case, was clear that "we cannot permit the public's right to know to devolve from a matter of statutory interpretation into a subjective exercise that varies depending on the perspective of the beholder." *Id.*, p. 347. Additionally, the Appellant attempts to argue the speculative importance of the 129-page document. As stated in *Allegheny*, "the requested records must directly relate to carrying out the governmental function." *Id.*, at 341. The information and testimony presented evidenced that the Appellants argument regarding the additional documents do not meet the 'directly relates' test, as a result it cannot be considered by the Court.

More directly on point is the *Sheils v. Pennsylvania Dept. of Education* case, where a request to the Pa. Dept of Education (DOE) for CV's was denied. The DOE denied on the basis that they did not have possession of CV documents for the requested employees. The Appellant in *Sheils* as in the matter before the Court

argued that the because the DOE has biographical and employment information that the DOE should be required to produce that information even if not "in the form of a CV." *Id., No. 967 C.D. 2014, 2015 WL 5436770, at *5 (Pa. Commw. Ct. Apr. 10, 2015).*

The Commonwealth Court in this unreported but persuasive panel decision of *Sheils* determined, that "where a requestor requests a specific type of record ... the requestor may not, on appeal, argue that an agency must instead disclose different records in response to the request." *Sheils* citing *Michak v. Dep't of Pub. Welfare,* 56 A.3d 925, 930 (Pa.Cmwlth.2012). The Court found that the DOE had satisfied its burden to establish it did not have the CV's of the 24 employees, and the fact that the Department has the kind of information typically contained in a CV does not obligate the Department to provide it, as what was requested was a CV. 65 P.S. § 67.705; *Sheils v. Pennsylvania Dep't of Educ.,* No. 967 C.D. 2014, 2015 WL 5436770, at *5 (Pa. Commw. Ct. Apr. 10, 2015).

The CV of STL Garcia which was provided in a lightly redacted version specifically states that references would be available upon request. As a result, it is clear that even just the reference material in the supplemental document was never intended to be a part of the CV.

It must also be noted that the OOR was abundantly aware that such matter involved the records of a third-party contractor, since the request was specifically for records of an "organization based in Greenville, South Carolina." (R.R. p. 001a).

This is an important consideration as the OOR then violated the rights of the vendor in not permitting the vendor nor the Appellee sufficient time to properly respond to the appeal as is required pursuant to the RTKL, 65 P.S. § 67.1102.

Although the OOR was unaware until the filing of the County's position statement that the County had wrongfully retained a 129-page document of background information regarding STL Garcia, they were aware that the request involved third-party information and they were required to provide sufficient time for the third-party to become involved in the process. The OOR providing a significantly reduced period of time was unreasonable and prejudicial to the County and to the third-party vendor. Such significantly shortened period is violative of 65 P.S. §67.1102. The Courts have held that "private third parties have no adequate process under the Right-to-Know Law to assert exemptions to disclosure …" and the OOR's failure to provide adequate time for the County and third parties to appropriately connect and respond to the improperly served appeal, was a violation of fundamental due process and was prejudicial to the parties. *Allegheny County Dept of Administrative Services v. Parsons,* 61 A.3d 336, 348 (Commw. Ct., 2013). As stated in *Pennsylvania Turnpike Commission v. Electronic Transaction Consultants Corporation*, 230 A.3d 548 (2020), where the OOR provided a third party who requested an extension two days to respond to an appeal the Court found that such time to respond was insufficient, that it violated RTKL, 65 P.S. 67 §1101(c) and that such action "constituted a manifest due process violation". *Id.*, at 560.

The same reasoning applies here, had the appropriate period of time been provided by the OOR, it reasons that it is highly likely the locked and time-barred electronic CV would have been discovered during the OOR appeal process and would have then been provided to the Requester avoiding the need for this protracted litigation. As the Court held in *Pennsylvania Department of Corrections v. Maulsby*, "[t]his is a clear violation of law and Section 1101(c) of the RTKL which guarantees that a direct-interest participant will have fifteen (15) days to submit such information," and that the courts in Pennsylvania have "consistently recognized the serious due process concerns implicated by [a] lack of notice, particularly where the confidential information of a private entity is at stake." *Department of Corrections v. Maulsby*, 121 A.3d 585, 590 (Pa. Commw. 2015).

Not all information necessary to properly respond to the OOR on appeal was able to be compiled due to the shortened period of time provided by the OOR in violation of 65 P.S. §67.1102. The electronic CV was not able to be located until the appeal to the lower court from the erroneous determination of the OOR.

If the OOR had provided the required statutory period of time to the County and to the third-party vendor to respond, an appropriate investigation would have uncovered the actual requested document and would have avoided the OOR's prejudicial determination which broadened the request and then required the release of documents that were never requested.

Under the RTKL, when the court of common pleas is the reviewing court, the Commonwealth Court's appellate review is limited to whether the trial court has committed an error of law and whether the findings of fact are supported by substantial evidence. 65 Pa. Stat. Ann. § 67.101, et seq., *Off. of the Dist. Att'y of Philadelphia v. Bagwell*, 155 A.3d 1119 (Pa. Commw. Ct. 2017). Here, the Appellant has not met its burden of evidencing an error of law or a lack of substantial evidence which supports the lower court ruling, and as a result the appeal must be denied.

The Appellants attempt to argue that the Court intended to reaffirm the Final Determination of the OOR and on two occasions contacted the York County Open Records Office to find out when the document would be released pursuant to the Court Order. Not only is that disingenuous as they were in Court and responded to the Court's questioning, but additionally, it is a willful misrepresentation of what they know is the Court's intention.

The Opinion of the Court clearly stated as follows:

> we cannot consider the grant of a request that has not been made. Having determined the 128-page document is not a part-of Joseph Garcia's CV, and the County having provided Joseph Garcia's CV to Requestors we cannot grant any further relief to Requestors. Order of Court, 9/6/2022. Appellants Exhibit "A" p. 5.

Any attempts by the Appellant to convince the reviewing Court otherwise is a complete misrepresentation of the facts of the case.

CONCLUSION

For the foregoing reasons, it is respectfully requested that this Honorable Court affirm the lower court's order granting Appellee's Petition for Review.

Respectfully submitted,

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Date: February 14, 2023

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

DYLAN SEGELBAUM and	**:**	
THE YORK DAILY RECORD	**:**	**No. 1075 CD 2022**
	:	
v.	**:**	
	:	
THE COUNTY OF YORK	**:**	

CERTIFICATES OF COMPLIANCE

I hereby certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that requires filing confidential information and documents differently than non-confidential information and documents.

I hereby certify that this filing complies with the word count limit set forth in Pennsylvania R.A.P §2135(a)(1). Based on the word count function, this brief contains 6,379 words.

s/ Michélle Pokrifka
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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

DYLAN SEGELBAUM and	**:**	
THE YORK DAILY RECORD,	**:**	**No. 1075 CD 2022**
	:	
v.	**:**	
	:	
THE COUNTY OF YORK,	**:**	

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing Appellee's Brief upon the persons and in the manner indicated below, which service satisfies the requirements of Pennsylvania R.A.P §121 and the Administrative Orders of the Supreme Court of Pennsylvania

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