

IN THE COMMONWEALTH COURT  
*of* PENNSYLVANIA

NO. 1075 CD 2022

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DYLAN SEGELBAUM *and*  
THE YORK DAILY RECORD,

*Appellants,*

v.

YORK COUNTY,

*Appellee.*

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**REPLY BRIEF OF APPELLANTS**

ON APPEAL FROM THE SEPTEMBER 6, 2022 ORDER AND OPINION OF THE  
COURT OF COMMON PLEAS OF YORK COUNTY

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## INTRODUCTION

This appeal boils down to one issue: is the “Verified CV of STL Garcia” (the “Verified CV”), which contains information on Joseph Garcia’s credentials and professional references, responsive to a Right-to-Know Law (“RTKL”) request for “a copy of the curriculum vitae (CV) for Joseph Garcia” (the “Request”)? The answer, plainly, is yes.

The County’s arguments to the contrary are baseless and confusing. First, this case presents a live controversy, as the parties continue to dispute whether the County must disclose the Verified CV. Second, requesters Dylan Segelbaum and the York Daily Record (“Requesters”) do not seek to modify the Request, but rather to obtain access to all records that are responsive to it, including the Verified CV. Third, the County was in actual, physical possession of the Verified CV and used it in connection with agency business months before the Request was submitted, making the Verified CV an agency record subject to disclosure. Fourth, the County has waived any claims that the Verified CV is exempt under the RTKL, including as a trade secret or confidential proprietary information (“CPI”). Fifth, the County and Mr. Garcia have received all the process they are due. And last, it is the County, not Requesters, who has acted in bad faith in these proceedings.

## ARGUMENT

### I. This matter presents a live controversy.

The County’s insistence that the dismissal of its own appeal was a victory—*i.e.*, that the dismissal effectively reversed the OOR’s order requiring disclosure of the Verified CV—is somewhat perplexing, but Requesters are prepared to accept it. Indeed, as explained in the Principal Brief, Requesters *agree* that the trial court considered, and intended to overturn, the OOR’s legal conclusion that the Verified CV is responsive to the Request. *See* Principal Br. at 12–13. Dismissing the County’s appeal as moot was the wrong way for the trial court to effectuate its intent. But, practically speaking, that is not important: if the trial court had, instead, entered an order reversing or vacating the OOR (consistent with its incorrect conclusion that the Verified CV is not responsive to the Request), then Requesters would have appealed.<sup>1</sup> The end result would have been the same.

Critically, however, the County not only contends that the trial court effectively reversed the OOR, but *also* that there is no live controversy between the

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<sup>1</sup> The County accuses Requesters of misrepresenting the trial court’s order of dismissal. County’s Br. at 19 (“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.”); *id.* at 13 (referring to unspecified “willful mis[s]tatements regarding the lower court[’]s order”) (capitalization altered). Requesters genuinely do not understand these accusations. The County does not identify, and Requesters are not aware of, *any* inaccuracies in the Principal Brief’s description of the trial court’s order.

parties. *See* County’s Br. at 19–20. The latter contention is incomprehensible. The question of whether the Verified CV is responsive to the Request—and whether it must, therefore, be disclosed pursuant to the RTKL—presents a live and justiciable controversy. In fact, because the County has abandoned any argument that the Verified CV is exempt from disclosure, the responsiveness of the Verified CV is the *only* question remaining in this matter, and the Court’s resolution of it will have an immediate, concrete effect on both the legal obligations of the County and the legal rights of the newspaper and Mr. Segelbaum.

The County’s mootness argument, while difficult to follow, seems to hinge on its extremely belated production of the Partial CV—a *different*, albeit also responsive, record than the one at issue. In other words, so far as Requesters can tell, the County’s argument is: “They asked for a CV, and we produced one; therefore, this case is moot.” *See id.* at 19. But that is wrong as a matter of law. The County is legally obligated produce *all* records responsive to an RTKL request. *See, e.g., Uniontown Newspapers, Inc. v. Pa. Dep’t of Corr.*, 185 A.3d 1161, 1174 (Pa. Commw. Ct. 2018), *aff’d*, 243 A.3d 19 (Pa. 2020) (holding agency must disclose “all responsive records” and acted in bad faith by failing to do so). Producing *one* record responsive to an RTKL request does not render other records non-responsive, nor does it relieve an agency of its obligation to produce *all* responsive records. If the Verified CV is responsive to the Request—and it is—the

County must produce it. That is the root of the live controversy between the parties.

The County fails to make a coherent argument to the contrary. It cites only a single, unpublished case in support of its assertion that this matter is moot:

*Kutztown Univ. of Pa. v. Bollinger*, No. 5 C.D. 2019, 2019 WL 4390513, at \*2 (Pa. Commw. Ct. Sept. 13, 2019).<sup>2</sup> But *Kutztown* doesn't help the County, as it stands for two irrelevant propositions. *First*, when a requester appeals an agency's decision to withhold "information," and the agency then produces the very information that is the subject of the appeal, the appeal is rendered moot. *Id.* That proposition is irrelevant here because the County has not produced the Verified CV—the subject of its appeal to the trial court, and the subject of Requesters' appeal to this Court. *Second*, when the OOR determines that a requester's appeal is moot, it cannot order the agency to produce other records outside the scope of the appeal. *Id.* That proposition is irrelevant here because the OOR, which ordered the County to produce the Verified CV, did not conclude that Requesters'

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<sup>2</sup> Aside from being irrelevant, *Kutztown* is of limited persuasive value, because the Court in *Kutztown* lacked the benefit of full briefing: the *pro se* requester did not file a response to the agency's principal brief on appeal. *Id.* at \*1 n.2. Consequently, the agency's contentions—including its contention that the OOR had correctly deemed the matter moot—went unchallenged. *See* 210 Pa. Code Rule 2112 (stating that when the appellee fails to "challenge[] the matters set forth in the appellant's brief, it will be assumed the appellee is satisfied with them").

appeal was moot; conversely, the trial court, which concluded that the County's appeal was moot, did not require the county to produce the Verified CV.

The County cannot have its cake and eat it too. If the trial court correctly dismissed the County's appeal as moot, then the OOR's order requiring the County to disclose the Verified CV remains in effect. But if the trial court effectively reversed or vacated the OOR's order, then a live controversy exists: namely, whether the Verified CV is responsive to the Request. Those are the only two viable options. Adopting the County's third option—that the trial court reversed the OOR and the matter is now moot—would turn the trial court's order into a final disposition on the merits while also insulating it from this Court's review. The County fails to cite a single authority permitting that outcome, either in Pennsylvania or any other jurisdiction—and no such authority exists.

**II. The Verified CV is directly responsive to the plain language of the Request, which Requesters have not sought to modify.**

Contrary to the County's contentions, Requesters do not seek to "broaden or modify" the Request or ask the County "to look outside of" it. *Cf.* County's Br. at 11, 15–17. The Verified CV is responsive to the Request's plain language. Requesters have said so from the beginning. *See* R.292a (Requesters' argument, following evidentiary hearing, that "[u]nder any reasonable interpretation, Mr. Garcia's Verified CV is responsive to the [Request] for Mr. Garcia's CV"); *see also* R.030a (Mr. Segelbaum's confirmation that he was "seeking the entire 128-

page document that Mr. Garcia has described as his CV”); R.037a (OOR’s observation that Requesters had “submitted a position statement, arguing that the records identified by the County do constitute a curriculum vitae or ‘CV’”).<sup>3</sup>

To reiterate, 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.” R.001a. As the County concedes, “the request was crystal clear,” “succinct, very specific and easily interpreted.” County’s Br. at 18–19. The County was required to interpret this “crystal clear” Request reasonably pursuant to the RTKL’s remedial purpose, and it bore the burden of proving that no responsive records existed. *See*

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<sup>3</sup> That Mr. Segelbaum provided additional information about the Request during the OOR appeals process does not somehow render the Request unspecific or the Verified CV unresponsive. *Cf.* County’s Br. at 10, 13. He simply confirmed that the Request was indeed seeking the Verified CV (after the County acknowledged the Verified CV’s existence) and offered context for the Request. R.006a, R.0030a.

Likewise, that Mr. Segelbaum has left the York Daily Record is immaterial. *Cf.* County’s Br. at 12. Agencies must fulfill RTKL requests regardless of their purpose; requesters may seek access to public records for any reason, or none at all. 65 P.S. §§ 67.301, 67.703, 67.1308. Mr. Segelbaum has not submitted a second RTKL request because the Verified CV is responsive to the Request as filed, not because he is no longer interested in accessing it. *Cf.* County’s Br. at 11–12. And, of course, the York Daily Record continues to have a strong interest in obtaining records that would shed light on Mr. Garcia and his relationship with the County, which remains a topic of keen interest to readers. *See* Teresa Boeckel, *York County Ends Relationship with C-SAU, Its Controversial Prison Training Contractor*, York Daily Rec. (Jan. 18, 2023), <https://perma.cc/GL2C-ZVD8>. Requesters also have an interest in the proper application of the RTKL by the courts and the County, as access to public records is essential for the news media.

*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); *Off. of Dist. Att'y of Phila. v. Bagwell*, 155 A.3d 1119, 1143 (Pa. Commw. Ct. 2017); *Hodges v. Pa. Dep't of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

The County failed to meet its burden. The Verified CV is responsive to the Request because, *inter alia*, (1) Mr. Garcia titled it his “Verified CV”; (2) it contains the type of work history information CVs generally contain; (3) it was intended to serve the purpose CVs generally serve, of establishing Mr. Garcia’s professional credentials; and (4) it did serve the purpose CVs generally serve, in reassuring County officials he was qualified to continue working with the prison. Principal Br. at 12–17; *see also* R.290a–292a. As the OOR correctly held, the County interpreted the Request *unreasonably* when it claimed otherwise. R.039a–040a. The trial court’s opposite conclusion—that the Verified CV contains too many pages to be responsive to the Request—is contrary to both the weight of authority and common sense. Principal Br. at 14–15.

**III. The Verified CV is a record of the County, which it had in its possession and used in connection with agency business months before the Request was filed.**

The County’s claims regarding when it came into possession of the eight-page *Partial* CV, which it calls simply “the CV,” are irrelevant. *See* County’s Br.

at 8, 14–15, 21; SRR001b–SRR008b (providing Partial CV, in jumbled form).<sup>4</sup>

The Partial CV is not at issue here. The record pertaining to the *Verified* CV—the 128-page document at issue—is extremely clear. Commander Rohrbaugh, an employee of York County Prison, received the Verified CV as an email attachment from Mr. Garcia on September 19, 2021; Commander Rohrbaugh then opened the Verified CV, reviewed the Verified CV, printed a copy of the Verified CV, and stored the printed copy of the Verified CV in his office at York County Prison.

R.084a–085a, R.091a, R.097a–098a, R.113a, R.116a, R.126a. Of the two CVs Mr. Garcia sent Commander Rohrbaugh in September 2021—the Partial CV and the Verified CV—the Verified CV is in fact the *only* one that Commander Rohrbaugh accessed, printed, and used at that time. R.113a–115a, R.154a–156a.

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<sup>4</sup> The County inexplicably spends pages arguing that it did not possess the Partial CV until February 2022 and did not use that document in connection with agency business. *See* County’s Br. at 8, 14–15. In addition to the fact that the Partial CV is not at issue, the County’s arguments are perplexing because the record shows the County *did* obtain the Partial CV in September 2021, in the same email as the Verified CV. R.113a–114a, R.154a–156a. That Commander Rohrbaugh did not search his email for responsive documents until February 2022—three months after the Request was filed—and thus did not realize that he had the Partial CV until then, speaks to the County’s bad faith in failing to conduct an adequate search. *See* Principal Br. at 30–31. And, that Mr. Garcia unilaterally encrypted the Partial CV and declared it “confidential” likewise did not negate the County’s obligation to search for and produce it. *See* *Nay v. Morrisville Borough Sch. Dist.*, Dkt. No. AP 2019-2359, 2020 WL 469102, at \*6 (Pa. Off. Open Recs. Jan. 24, 2020) (finding confidentiality clauses are unenforceable under the RTKL).

It is equally clear that the Verified CV (1) “documents a transaction or activity of an agency,” and (2) was “created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency,” making it a “record” of the County subject to disclosure. 65 P.S. § 67.102. At the time Commander Rohrbaugh received and retained the Verified CV, Mr. Garcia was under contract to provide training services to the prison; these trainings were a subject of active controversy in York and elsewhere, and the County was considering whether to renew his contract. *See* Principal Br. at 5 n.1; *see also* R.283a at n.2 (citing extensive litigation and news coverage involving Mr. Garcia during that time). Mr. Garcia testified that he sent Commander Rohrbaugh the Verified CV for this very reason—to refute negative press coverage and assure prison officials he was competent to perform the contracted-for services. R.147a, R.149a–152a. And, Commander Rohrbaugh used the Verified CV to confirm Mr. Garcia’s suitability to continue fulfilling his duties at the prison. R.088a–090a.

That Mr. Garcia sent Commander Rohrbaugh the Verified CV of his own accord is immaterial. To determine whether records are “of” an agency, courts “only look to see if the subject-matter of the records relate to the agency’s operations”—thus, emails sent without active solicitation by the recipient are still agency records. *Pa. Off. Att’y Gen. v. Phila. Inquirer*, 127 A.3d 57, 63 (Pa. Commw. Ct. 2015). Nor is it relevant that the contract renewal was finalized and

signed a few days after the Request was submitted; Commander Rohrbaugh used the Verified CV to assess Mr. Garcia's qualifications to continue serving the prison at a time when Mr. Garcia was under contract to do so and that contract was up for renewal. *Cf.* County's Br. at 10; R.088a–090a. Because the County possessed and used the Verified CV in connection with agency activity, it is a record of the County subject to disclosure.

**IV. The County has waived its argument that the Verified CV is exempt from disclosure under the RTKL—and, in any event, none of the RTKL's exemptions apply.**

The County has waived any argument that the Verified CV is exempt from disclosure as a trade secret or CPI. *See* County's Br. at 10–25 (invoking no RTKL exemptions); *see also* 210 Pa. Code Rule 2112 (stating that when the appellee fails to “challenge[] the matters set forth in the appellant's brief, it will be assumed the appellee is satisfied with them”); *Aberts v. Verna*, No. 1214 EDA 2016, 2017 WL 319026, at \*3 (Pa. Super. Ct. Jan. 23, 2017) (finding issues appellee did not raise in appellate briefing were waived); *Wash. Post Co. v. U.S. Dep't of Health & Hum. Servs.*, 865 F.2d 320, 327 (D.C. Cir. 1989) (finding appellee agency abandoned argument as to public records exemption on appeal).

In any event, the Verified CV is not exempt from disclosure as either a trade secret or CPI. *See* Principal Br. at 20–29; R.041a. The County has not met its burden to prove by a preponderance of the evidence that any RTKL exemptions

apply, nor does it attempt to do so now. *See Bagwell*, 155 A.3d at 1130. Indeed, the record establishes that extensive information about Mr. Garcia’s clients and trainings is publicly available—often due to his own publicity efforts—thwarting any possible claims to secrecy. *See Principal Br.* at 21–28. Accordingly, the County must release the Verified CV in full. 65 P.S. § 67.305.

**V. The County and Mr. Garcia received all the process they were due.**

The County continues to press its frivolous accusation that the OOR violated the County’s due process rights—and Mr. Garcia’s—by failing to properly serve the County with notice of Requesters’ initial appeal. *See County’s Br.* at 23–24. Despite the gravity of this accusation, the County fails to explain *how* the OOR’s service was deficient. *Id.* at 4–5, 23–24. It was not: the OOR properly served the County with notice of Requesters’ initial appeal via the two email addresses listed for the County in the Agency Open Records Officers database. R.008a; *see also Agency Open Records Officer Info*, Off. Open Recs., <https://perma.cc/S7TX-RCD3>. One of those ([mpokrifka@yorkcountypa.gov](mailto:mpokrifka@yorkcountypa.gov)) is the email address that the County Solicitor has used throughout these proceedings, including in correspondence with the OOR. *E.g.*, R.008a, R.029a, R.044a.

The County’s unsupported claim of improper service is surprising because it has received multiple opportunities to make its case in this matter. Despite the County’s failure to explain its assertion that it “never received a copy of the

original appeal,” the OOR *granted* the County’s request to reopen the record, permitting the County to submit both evidence and argument. R.014a–015a. The trial court went even further, convening a full evidentiary hearing at which the County called multiple witness (including Mr. Garcia) and introduced hours of testimony. *See* R.019a–021a, R.027a–028a, R.068a–234a. It is not clear what additional process the County believes it should have received.

In attempting to find legal support, the County mistakenly relies on this Court’s opinions examining the due process rights of third-party intervenors (or would-be intervenors) in the RTKL context. *See* County’s Br. at 23–24. Crucially, however, this Court’s opinions examining third parties’ due process rights under the RTKL—including the opinions cited by the County—have involved third parties who formally appeared (or sought to appear) in the proceedings, and who asserted *their own* due process rights on appeal. *See Pa. Tpk. Comm’n v. Elec. Transaction Consultants Corp.*, 230 A.3d 548, 557–58 (Pa. Commw. Ct. 2020); *PharmaCann Penn LLC v. Ullery*, No. 172 C.D. 2018, 2019 WL 5208896, at \*13 (Pa. Commw. Ct. Oct. 16, 2019); *Highmark Inc. v. Voltz*, 163 A.3d 485, 491 (Pa. Commw. Ct. 2017); *Pa. Dep’t of Educ. v. Bagwell*, 131 A.3d 638, 645 (Pa. Commw. Ct. 2015); *Dep’t of Corr. v. Maulsby*, 121 A.3d 585, 588 (Pa. Commw. Ct. 2015); *Allegheny Cnty. Dep’t of Admin. Servs. v. Parsons*, 61 A.3d 336, 347 (Pa. Commw. Ct. 2013); *Off. of Governor v. Bari*, 20 A.3d 634, 648 (Pa. Commw.

Ct. 2011). These cases provide no support for the County’s assertion that *the County’s* due process rights have been violated. Nor do they support the County’s passing attempt to make a due-process argument on behalf of Mr. Garcia, who is not a County employee but an independent contractor. Unlike the third parties involved in this Court’s due process jurisprudence under the RTKL, Mr. Garcia has never attempted to participate as a party in this matter and has never claimed that the proceedings below infringed his rights.

Even if, *arguendo*, the County could assert a due process violation on Mr. Garcia’s behalf—and even if, *arguendo*, the County had adequately done so in its brief—the assertion would be meritless for at least two reasons. First, Mr. Garcia, like the County, has received all the process he is due. Mr. Garcia was aware of this litigation no later than February 2022.<sup>5</sup> *See, e.g.*, County’s Br. at 14–15. Accordingly, he had almost half a year before the June 3, 2022 evidentiary hearing in which to move to intervene or otherwise participate as a party in these proceedings. He did not. He did, however, appear as a witness at the hearing and testify at length, giving him ample “opportunity to be heard.” *Pa. Tpk. Comm’n*, 230 A.3d at 559; *see* R.143a–227a. He is not entitled to more.

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<sup>5</sup> The County itself apparently failed to notify Mr. Garcia of the Request and the OOR appeal. *See* R.054a, R.059a–060a.

Second, this Court recognizes third parties' due process rights to participate in RTKL proceedings only in "two distinct scenarios": where the records allegedly contain "(1) individuals' home addresses under the personal security exception, Section 708(b)(1)(ii); and, (2) proprietary or trade secret information under the trade secrets exception, Section 708(b)(11)." *Bagwell*, 131 A.3d at 649–50. The County's relied-upon cases fall within these categories. *See Pa. Tpk. Comm'n*, 230 A.3d at 552, 557; *Maulsby*, 121 A.3d at 588; *Parsons*, 61 A.3d at 347; *see also Highmark Inc.*, 163 A.3d at 490; *Bari*, 20 A.3d at 648. Yet neither category is applicable, because the County has abandoned its argument that the Verified CV is exempt as a trade secret or CPI. *See generally* County's Br. Consequently, even if the County could, in theory, assert a due-process claim on Mr. Garcia's behalf (it cannot); and even if, in theory, the proceedings below had infringed Mr. Garcia's due process rights (they did not); the County's due-process claim would fail because the County has abandoned any arguments relevant to such a claim.

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

The County fails to respond meaningfully to Requesters' argument that the County acted in bad faith, entitling Requesters to an award of attorneys' fees and justifying sanctions against the County.<sup>6</sup> Principal Br. at 29–33; 65 P.S. § 67.1304.

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<sup>6</sup> In abandoning any argument that the Verified CV is exempt from disclosure under the RTKL, the County has made it all the more obvious that its initial denial

Instead, the County asserts that Requesters themselves have committed “a blatant act of bad faith.” County’s Br. at 3 (capitalization altered). In particular, the County marshals a mélange of cherry-picked quotations from colloquies with the trial court to suggest that Requesters’ arguments were misleading. County’s Br. at 15–17. But to the contrary, Requesters were forthcoming with the trial court, both during the evidentiary hearing and in their post-hearing brief. *See, e.g.*, R. 290a–292a (explaining why the Verified CV is responsive to the Request with extensive citations to authority); R. 287a (candidly pointing out that “dismissing the County’s appeal as moot would foreclose [the] relief [sought by the County]: 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”). The Court should not credit the County’s unfounded accusations of bad faith.

### CONCLUSION

For the foregoing reasons and those set forth in their principal brief, the newspaper and Mr. Segelbaum respectfully request that this Court (1) vacate the order of the Court of Common Pleas dismissing this matter as moot, (2) hold that Mr. Garcia’s Verified CV is responsive to the Request, (3) hold that the County has failed to establish that any of the RTKL’s exemptions apply to the Verified

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of the Request was baseless. *See* R.020a–021a (claiming that the Verified CV was subject to multiple RTKL exemptions).

CV, (4) hold that the newspaper and Mr. Segelbaum are entitled to an award of reasonable attorney fees as a result of the County's bad faith, and (5) remand with instructions to the Court of Common Pleas.

Dated: February 28, 2023

/s/ Paula Knudsen Burke

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## CERTIFICATES OF COMPLIANCE

I hereby certify that:

1. This filing complies with the word count limit set forth in Pennsylvania Rule of Appellate Procedure 2135(a)(1). Based on the word-count function of Microsoft Word, the filing contains 4,017 words.

2. This filing 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.

Dated: February 28, 2023

/s/ Paula Knudsen Burke  
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## **PROOF OF SERVICE**

I hereby certify that I am this day serving the foregoing document upon the persons and in the manner indicated below, which satisfies the requirements of Pennsylvania Rule of Appellate Procedure 121:

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Dated: February 28, 2023

*/s/ Paula Knudsen Burke*

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