

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 710 CD 2022

PENNSYLVANIA STATE POLICE,
Petitioners,

v.

CARTER WALKER AND LNP MEDIA GROUP, INC.,
Respondents.

**BRIEF OF AMICUS CURIAE THE PENNSYLVANIA NEWSMEDIA
ASSOCIATION IN SUPPORT OF RESPONDENTS**

*Appeal from the Final Determination of the Office of Open Records, dated
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INTEREST OF THE AMICUS CURIAE

The Pennsylvania NewsMedia Association (“PNA”) is a Pennsylvania nonprofit corporation with its headquarters located in Harrisburg, Pennsylvania. Founded in 1925, the PNA represents the interests of over three hundred (300) daily and weekly newspapers and other media organizations across the Commonwealth of Pennsylvania in ensuring that the press can gather information and report to the public. A significant part of the PNA’s mission is to defend the media’s statutory and constitutional rights of access to public records in Pennsylvania. The media’s ability to access public records from government agencies plays an indispensable role in providing the oversight that is a foundational element of a democratic society.

The present case raises important issues regarding public access to records under Pennsylvania’s Right to Know Law (“RTKL”). The PNA seeks to participate pursuant to Rule 531 of the Pennsylvania Rules of Appellate Procedure, both to emphasize the important public access issues raised by this case, and to stress the importance of ensuring of agencies are not permitted to avoid disclosing public records by storing them with a third-party and charging excessive data retrieval fees.

No party, person or entity other than the PNA financed or authored this brief.¹

¹ PNA Legal Intern Rachel James, 2L Penn State Dickinson Law, made significant contributions to this brief, including legal research and drafting.

SUMMARY OF THE ARGUMENT

The present appeal will determine whether the RTKL allows an agency to charge a media requester the costs associated with storage and retrieval of complex data sets from a third party. Here, the Requester is seeking the data set for the state's hate crime report, which is gathered by law enforcement agencies across the commonwealth and reported to the Pennsylvania State Police ("PSP") to be used as part of the Uniform Crime Reporting system.

The Office of Open Records ("OOR") was correct in determining that PSP cannot pass along third-party labor charges to a Requester, and that labor costs are not necessarily incurred with the production of records. Not only does PSP have access to this data, as they are the party originally responsible for compiling the data set, but PSP's position in this case would encourage agencies to avoid disclosing public records by storing them with third-party contractors and passing along exorbitant third-party fees.

Furthermore, PSP has not demonstrated that the third-party labor cost is necessarily incurred in obtaining the requested data, and even if they could, they have not shown the cost is a reasonable authorized fee under the RTKL.

Finally, because the Requester is a journalist seeking records for newsgathering purposes, the RTKL requires PSP to waive any market-based fees that are associated with accessing complex data sets.

ARGUMENT

In January 2022, Carter Walker, a reporter for LNP Media Group, filed a Right-to-Know Law request with PSP seeking hate crime data for the time period between Jan. 1, 1997, to Dec. 31, 2021. This data is gathered and utilized by the Pennsylvania State Police in the creation of the state's hate crime report search function on the Uniform Crime Reporting system. *See* <https://www.ucr.pa.gov/PAUCRSPUBLIC/Home/Index>, last accessed February 28, 2023.

After a thirty-day extension, PSP denied the request, stating that it is not required to create a record which does not currently exist. PSP also claimed that it would cost approximately \$6,000 to compile the requested records.

Walker appealed the denial to the Office of Open Records, which determined that the extraction of data from the website does not constitute the creation of a new record and that PSP cannot require requesters to pay labor fees. OOR Decision, ¶ 10. PSP then petitioned this Court for review.

PSP argues that the third-party labor fees are necessarily incurred and therefore should apply. However, the clear language of the Right-to-Know Law prohibits labor costs and the application of unreasonable fees while also creating a fee exemption for media requesters seeking access to complex data sets in

recognition of the important role media plays in government oversight. 65 P.S. § 67.1307(b).

I. PSP CANNOT REQUIRE THE REQUESTER TO PAY LABOR COSTS, AND MAY ONLY CHARGE FEES THAT ARE REASONABLE

The requested data set is utilized in the state’s hate crime report search function on the Uniform Crime Reporting system. This system is publicly accessible via a website maintained under the Uniform Crime Reporting Act, which requires local law enforcement agencies to report crime data to PSP each month or face penalties for noncompliance. 18 P.S. §§ 20.501 – 20.509. As part of this act, PSP must compile statistics from contributing law enforcement agencies and provide crime trend information based on the data reported. *Id.*

In implementing the Uniform Crime Reporting Act, PSP contracted with Optimum Technology, Inc. (“OTECH”), a third-party software provider. OTECH provides a database processing and management system for the data housed on PSP servers. Brief for the petitioner, at 12. PSP’s appeal asks whether an agency may charge a requester labor costs associated with the production of responsive records maintained by a third-party. PSP argues that providing the requested data will cost \$6,000 because the data set is beyond the scope of the contract that the PSP currently has with OTECH and the fee is necessarily incurred. *Id.* at 9. PSP’s

position fundamentally misconstrues the RTKL and the public policy that provides its foundation.

a) Labor costs cannot be passed along to the Requester

As established by the OOR in this case and RTKL jurisprudence, PSP cannot pass along labor fees to the Requester, regardless of whether the costs are for a third-party or PSP employees. RTKL Section 1307 clearly states that other than fees expressly authorized in RTKL, “no other fees may be imposed unless the agency necessarily incurs costs for complying with the request, and such fees must be reasonable.” 65 P.S. § 67.1307(g).

In *State Employees’ Ret. Sys. v. Office of Open Records*, this Court held that the time it takes an agency employee to respond to a request is not a proper charge to pass along to a requester under RTKL. *State Emples. Ret. Sys. v. Office of Open Records*, 10 A.3d 358, 360 (Pa. Commw. Ct. 2010). Because Section 1307 is clear that an agency cannot charge a fee except for what is expressly authorized by statute, this Court held that charging labor costs is not permitted. *Id.* at 361.

PSP’s appeal relies on the “necessarily incurred” language in Section 1307(b), claiming that the complex nature of the database requires the third-party software to produce readable data. PSP argues that it is not charging for its own labor, but rather for OTECH employee labor, at a cost of \$6,000 as the third-party

labor are costs “necessarily incurred as a result of complying with a request.” Brief for the petitioner, at 8. PSP also claims that *State Emples. Ret. Sys.* does not prohibit agencies from charging a fee for labor costs but instead requires that there must be sufficient evidence that any fee is necessarily incurred. However, PSP’s position is at odds with the holding of this Court interpreting the “necessarily incurred” language in the RTKL.

In *State Emples. Ret. Sys.*, this Court ruled that if a new record does not need be compiled, an agency cannot claim it is “necessarily incurred” to create one:

“If SERS compiled records in a manner it is not required to by section 705, it is not reasonable for SERS to pass that expense on to the Requester. An agency cannot circumvent the fee restriction by unilaterally creating a record from existing records and then charging more than the fee per page allowed under the RTKL . . . The OOR was correct in determining that SERS cannot charge for creating a record it was not required to create. Further, SERS' creation of such a record was not "necessarily" incurred, as it was not "necessary" for SERS to create such record.”

Id. at 363.

Here, PSP is the original compiler of the requested data set, as required by the Uniform Crime Reporting Act. The fact that it has stored its data with a third-party

does not require it to “create” a new record; the law simply requires PSP to provide the data set in the form in which it was collected by PSP from local law enforcement agencies pursuant to statute.

Further, the law is clear that extracting information from a database is not “creating a record” for RTKL purposes. *Commonwealth v. Cole*, 52 A.3d 541, 549 (Pa. Commw. Ct. 2012). Because drawing the responsive information from a database does not constitute creating a record, it cannot be deemed a “necessarily incurred” cost to retrieve the data held by a third-party.

Allowing agencies to house data with third-party contractors and impose labor fees for facilitating access to said data would inappropriately limit access by making it so expensive that it is practically impossible for all but the wealthiest requesters. Interpreting the law in that manner would also encourage and incentivize agencies to limit access by contracting with third parties, resulting in conflict with both the letter of the law and the public policy that forms its foundation.

The RTKL is remedial legislation intended to improve government transparency and promote accountability. *Pennsylvania State Police v. Grove*, 640 Pa. 1, 161 A.3d 877, 892 (Pa. 2017); *Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Cmwlth. 2010) aff'd 621 Pa. 133, 75 A.3d 453 (Pa. 2013).

Furthermore, the RTKL is "designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials, and make public officials accountable for their actions." *Pennsylvania State Education Association v. Commonwealth Department of Community & Economic Development*, 637 Pa. 337, 148 A.3d 142, 155 (Pa. 2016). Accordingly, the law must be construed to maximize access to public records in an agency's possession. *McKelvey v. Pa. Dep't of Health*, 255 A.3d 385, 400 (Pa. 2021).

Additionally, our Supreme Court has been clear: government agencies cannot contract away the public's right to access public records. In *Tribune-Review Publ'g Co. v. Westmoreland Cty. Hous. Auth.*, 574 Pa. 661, 833 A.2d 112 (2003), the Court recognized that contracts involving public agencies cannot prohibit public access by agreeing to confidentiality terms because such a term would violate public policy. The holding in *Tribune-Review* is equally applicable here. There is no question that the requested data is public under the RTKL, and as such, PSP's contract cannot be used as a means of denying or discouraging public access.

PSP's position in this case fundamentally conflicts with the RTKL because it would allow PSP to restrict access by contract, imposing a narrow interpretation of the RTKL's access requirements undermining both the public's ability to access public records and the accountability that necessarily follows. PSP may contract

with a third-party to store public information, but its contract cannot be applied in a manner that thwarts public access or makes public records less accessible than they would be if PSP housed the records itself.

This concept is borne out by the plain text of the RTKL, which prohibits agencies from using third parties to conceal public records by expressly requiring them to facilitate access to public records in possession of third-party contractors. 65 P.S. § 67.506(d); *see also Dental Benefit Providers, Inc. v. Eiseman*, 86 A.3d 932, 938-39 (Pa. Commw. Ct. 2014), *aff'd* 124 A.3d 1214; *SWB Yankees L.L.C. v. Wintermantel*, 45 A.3d 1027, 1044 (Pa. 2012).

Public records, such as those requested in this case, allow civilians and journalists alike to understand government action, maintain an important check on public officials, and seek policy changes when necessary. None of these important functions is possible if access to records is prohibitively expensive under the terms of a government contract.

b) Any fee assessed must be reasonable

Even if the fees in this case are “necessarily incurred,” PSP has shown no evidence that the fee satisfies the other requirement of the law, namely that the fee is reasonable. Section 1307(b)(2) sets the manner in which fees are set by the OOR, as well as other branches of government. 67 P.S. § 67.1307(b)(2). As

previously addressed, the fee schedule already includes labor costs, making additional labor fees impermissible. *State Emples. Ret. Sys.*, 10 A.3d 358, 360. Even when Section 1307(g) permits necessarily incurred costs, those costs must still be “reasonable.” 67 P.S. § 67.1307(g).

There is no evidence showing the \$6,000 charge is based on a prevailing fee from similarly situated providers, and even if there was, there is no evidence that such a fee for access is “reasonable” under the law. Further, PSP has stipulated the fee estimate is for the labor costs of OTECH employees, while the only permissible fees under the RTKL are for duplication, postage, and certification. *Pa. Dep't of Educ. v. Bagwell*, 131 A.3d 638, 651 (Pa. Commw. Ct. 2016) 65 P.S. § 67.1307. Accordingly, PSP’s estimated fees for third-party extraction are inconsistent with both the letter and intent of the law.

Ultimately, the RTKL is designed to “promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials, and make public officials accountable for their actions.” *Pa. State Police v. McGill*, 83 A.3d 476, 479 (Pa. Commw. Ct. 2014). The statutory language imposing strict limitations on fees is clear, and it illustrates the General Assembly’s intent to prohibit agencies from using fees to make public information inaccessible. The very purpose behind making records public is to provide oversight of public officials’ actions, and that requires records to be accessible at a reasonable cost.

c) **Sending the data gathered by PSP to OTECH does not convert the requested data into confidential proprietary information**

PSP also argues that the third-party software provided by OTECH, if disclosed, would reveal a trade secret or confidential proprietary information. *See* 65 P.S. § 67.708(b)(11). According to the contract, the Commonwealth has licensed OTECH’s proprietary software, which administers all technical support related to the functionality of the database processing and management system software. Brief for the petitioner, at 12. The terms of the contract do not address the initial data set, which is gathered by PSP and then sent to OTECH for processing.

As addressed in the OOR’s final determination, PSP does not satisfy the necessary elements to illustrate that the data requested falls within the definition of confidential proprietary information. To meet the definitional test, PSP is required to show that the data are “[c]ommercial 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.” OOR Decision, ¶ 6; 65 P.S. §67.102.

The data set requested here is not commercial or financial information, and it was not “received by” PSP from OTECH. On the contrary, the data set was *gathered by* PSP from law enforcement agencies across the Commonwealth

pursuant to law, then transmitted to OTECH. Simply put, the data does not meet the definition of confidential proprietary information.

Further, the disclosure of data gathered by PSP does not infringe on OTECH proprietary software. OTECH software is the tool used to store and manipulate data, it is not the data itself. OTECH software is the technological equivalent of a filing cabinet that houses public records, with various drawers and folders to differentiate and categorize the stored information. Opening the relevant drawers and folders to retrieve records does not in any way compromise the function of the filing cabinet or make it commercially less valuable, it is simply using it for its intended purpose: to store and retrieve records. The same is true for the OTECH software.

Interpreting the RTKL in a manner that converts public data into confidential trade secrets when it is stored with a third-party would create a new and sweepingly broad exemption to the law where none was intended creating an illogical outcome that cannot be the result of the remedial the Right to Know Law. *Bowling*, supra.

II. AS A JOURNALIST, THE REQUESTER IS EXEMPT FROM MARKET-BASED FEES FOR THE REQUESTED DATA SET

The Requester, who identified himself as an LNP Media employee in the initial request, made the request on behalf of a news media organization as part of the

newsgathering process, and as such, the RTKL prohibits PSP from imposing any market-based commercial fee for access to the complex data set requested. Section 1307(b)(4) allows for the imposition of a reasonable market value fee to be imposed for access to complex data sets, but it also clearly exempts certain parties from the market-based fee. 65 P.S. § 67.1307(b)(4). Section 1307(b)(4)(ii)(A) prohibits agencies from imposing this fee to:

“(A) a request by an individual employed by or connected with a newspaper or magazine of general circulation, weekly publication, press association or radio or television station, for the purpose of obtaining information for publication or broadcast.”

Id.

Here, the Requester was clearly identified as a member of the media and PSP understood him to be one, as it addressed its response to the Requester at “LNP Media.” The Requester is seeking information as part of the newsgathering process for the purpose of obtaining information for publication, which falls within the clear language of the statute.

PSP argues that the Requester is not seeking a data set such as the hate crime report but “rather is seeking records and information that is used to create the data sets.” While the RTKL does not define “data sets,” courts have held that Section

708(d) of the RTKL expressly requires the disclosure of “aggregated data maintained or received by an agency” that is not otherwise exempt under the law. 65 P.S. § 67.708(d); *PublicSource v. Pa. Dep't of Health (Office of Open Records)*, 2021 Pa. Commw. Unpub. LEXIS 571 at *10 (Pa. Commw. Ct. 2021). Moreover, the definition of “complex and extensive data set” must be interpreted broadly and in a manner consistent with the remedial purpose of the RTKL. *Bowling* at *29.

Moreover, the suggestion that PSP does not have access to the requested data set is inconsistent with the responsibilities placed upon PSP in Uniform Crime Reporting Act, 18 P.S. §§ 20.501 – 20.509. The Act requires the PSP to collect, collate, format, and compile statistics received by contributing law enforcement agencies and then use the data to provide transparency in written reports and on the designated website. *Id.* Even if PSP does not have actual possession of the data, the RTKL expressly requires PSP to facilitate access to public records in possession of third parties contractors like OTECH. 65 P.S. § 67.506(d).

Furthermore, the fact that the Requester suggested a format is not outcome determinative. This Court held that when a requester suggests a format or provides examples of the records sought in a certain format, it does not mean that a requester seeks a special compilation or that the agency is not required to provide the information requested. *Gingrich v. Pa. Game Comm'n*, 2012 Pa. Commw. Unpub. LEXIS 38 at *21 (Pa. Commw. Ct. 2011). As addressed in *Gingrich*, there

is a benefit when a Requester provides suggestions about the requested data, as it is to better inform the agency and should not be discouraged. *Id.* The suggestion of a particular format does not change the fundamental nature of the requested records or set it outside the bounds of RTKL's provisions limiting market-based fees.

Furthermore, the RTKL must be construed to maximize access to government records. *Id.* at *16; *McKelvey* at 400. When public information is contained in a database, it must be accessible to requesters and provided in a format available to the agency, in whatever format that data exists. *Id.* at *22; *Feldman v. Pa. Comm'n on Crime & Delinquency*, 208 A.3d 167, 173 (Pa. Commw. Ct. 2019). The Requester is seeking the underlying data set, as well as any data dictionary, code tables, or other manuals that define the meaning of the column headers or acronyms, and it must be provided in whatever format PSP has available. It is undisputed that PSP has access to this data, as it is required to collect it under the Uniform Crime Reporting Act, and the public has a right to access and utilize the data in the same manner as PSP.

a) **Requiring media organizations to illustrate how requested data will be utilized for broadcast places a dangerous evidentiary burden on the Requester**

PSP also attempts to advance the argument that if this Court properly holds that the request is for complex data sets, the request must be made for the purpose of obtaining information for publication or broadcast to avoid fees as a media

requester, and this request is not. Brief for the petitioner, at 20. PSP also claims the specific information published in the format requested would not be understandable to any general audience, essentially arguing the Requester and the public are not sophisticated enough to understand the data. *Id.* at 21. PSP's position raises significant concerns of paternalism, and it conflicts with core the purpose of the RTKL.

In light of the plain language of Section 1307(b)(4)(ii)(A) and the fact that the Requester clearly identified himself as a reporter for LNP Media, PSP's position is both unreasonable and contrary to law. 65 P.S. § 67.1307(b)(4)(ii)(A). Nothing in Section 1307(b)(4) requires the data set to be published in complete or any other form. Moreover, nothing in the law limits public access to information an agency deems "understandable" to a general audience.

Furthermore, the implication that journalists would request records that don't aid in the investigation and formulation of a story is misguided, fundamentally misconstrues the constitutionally protected role of journalists, and imposes a dangerous burden on the press. The RTKL does not require journalists to explain a need for records related to news coverage or explain how public information will be used. On the contrary, the RTKL expressly prohibits agencies from denying access to records based on the intended use of a record. 65 P.S. § 67.310(b).

Throughout our nation's history, journalists have used complex information from and about government to convey news that is understandable to the average audience. The First Amendment prohibits abridging freedom of the press, and it has been interpreted to create special protections to prevent a prior restraint on speech. *Neb. Press Ass'n v. Stuart*, 427 U.S. 539, 556; 96 S. Ct. 2791, 49 L.Ed.2d 683 (1976). PSP's suggestion that the Requester must explain how the data will be utilized in news coverage implies a need for PSP approval of the intended use. Moreover, PSP's suggestion that data must be published in its entirety to access the statutory fee waiver could amount to compelled speech. *Miami Herald Pub. Co., Div. of Knight Newspapers, Inc. v. Tornillo*, 418 U.S. 241, 94 S. Ct. 2831, 41 L.Ed.2d 730 (1974). Both positions would impose a dangerous and constitutionally suspect framework under the RTKL and cause a chilling effect on the free flow of information, hampering the press' constitutionally protected role and the public's right to receive information. *Richmond Newspapers v. Virginia*, 448 U.S. 555, 576 (1980).

The data requested in this case has a clear connection with the newsgathering process and news coverage related to crime. In Pennsylvania and nationwide, there have been concerted efforts to access hate crime data similar to the data requested here. Carter Walker, *Hate crime reporting in Pa. is inconsistent, but trends clearly show an increase*, LANCASTERONLINE (May 15, 2022),

https://lancasteronline.com/news/local/hate-crime-reporting-in-pa-is-inconsistent-but-trends-clearly-show-an-increase/article_51c0af38-d2ef-11ec-bca4-0fe6a1c0a473.html; see also Sandhya Dirks, *Analysts say hate crimes are increasing but that's not reflected in FBI data*, NPR (December 26, 2022), <https://www.npr.org/2022/12/26/1145509230/analysts-say-hate-crimes-are-increasing-but-thats-not-reflected-in-fbi-data>; Patrick Keck, *Full picture of Illinois hate crimes unknown due to underreporting, advocates say*, STATE JOURNAL-REGISTER (Aug. 29, 2022), <https://www.sjr.com/story/news/politics/state/2022/08/29/task-force-calls-for-new-tactics-in-addressing-increase-in-hate-crimes/65457195007/>. As society sees a rise in hate crime incidents and public concern increases, access to hate crime data is especially important in informing the public.

Further, LNP Media Group, Inc. and associated media organizations have historically used data like the data in this case to report to the public. For example, LancasterOnline reported that the Pennsylvania State Police had not collected race data on traffic stops by troopers since 2012, and just recently planned on resuming the practice. LancasterOnline Editorial Board, *Pennsylvania State Police should never have stopped analyzing its traffic stops [opinion]*, LANCASTERONLINE (Jan. 30, 2020), https://lancasteronline.com/opinion/editorials/pennsylvania-state-police-should-never-have-stopped-analyzing-its-traffic-stops-opinion/article_d9fe1f16-

[42e6-11ea-a3fd-8346474d1fbf.html](https://www.spotlightpa.org/news/2021/01/pa-state-police-traffic-stops-racial-profiling-data-collection/); Daniel Simmons-Ritchie, *Pa. State Police resume tracking racial data during traffic stops in response to Spotlight PA report*, SPOTLIGHT PA (Jan. 12, 2021), <https://www.spotlightpa.org/news/2021/01/pa-state-police-traffic-stops-racial-profiling-data-collection/>. Access to data on crime and PSP’s practices is necessary to hold law enforcement agencies accountable and to duly inform the public about their actions, and news coverage based on that data has directly resulted in policy changes.

Moreover, stories that utilize police data occur across the country, from reporting that Detroit police reported an 11 percent decrease in violent crime to the Tacoma, Washington Police Union stating that their crime reporting data report was “misleading.” Jessica Dupnack & Amber Ainsworth, *'We are not satisfied': Detroit police report 11% decrease in violent crime, property crime spike in 2022*, FOX 2 DETROIT (Jan. 09, 2023), <https://www.fox2detroit.com/news/detroit-crime-stats-police-chief-james-white-shares-2022-data>; Michael Lee, Tacoma, Washington, *police union calls out department chief over 'misleading' crime data report*, FOX NEWS (Nov. 16, 2022), <https://www.foxnews.com/us/tacoma-washington-police-union-calls-out-department-chief-misleading-crime-data-report>.

Hate crime data has also provided the basis for coverage about increases in violence against certain communities, leading to calls for change. Felicia Alvarez, *'An epidemic of hate': Anti-Asian hate crimes in California jumped 177%*, Los

Angeles Times (June 28, 2022), <https://www.latimes.com/california/story/2022-06-28/anti-asian-hate-crimes-in-california-jumped-177-in-2021>; Rocco Parascandola, Elizabeth Keogh and John Annese, *Antisemitic hate crimes in NYC are on the rise, NYPD stats show*, NEW YORK DAILY NEWS (Dec 05, 2022), <https://www.nydailynews.com/new-york/nyc-crime/ny-nypd-crime-statistics-shootings-hate-crimes-20221205-scmippnn75dg5lpvv6wkrknvuu-story.html>.

None of this news coverage provided access to a full underlying data set, as PSP suggests is necessary to be considered “for the purpose of obtaining information for publication or broadcast.” 65 P.S. § 67.1307(b)(4(ii)(A). On the contrary, the coverage used data gathered from and about government agencies to distill the information and present it in a context and format intended for a wide audience. The press functions as the public’s “eyes and ears” into the criminal justice system, and to do so, they must have access to data that illustrates how the system is functioning. *Houchins v. KQED, Inc.*, 438 U.S. 1, 98 S. Ct. 2588, 2593 (1978).

Data like that requested in this case has been used to further contextualize and report on important stories about crime, policing, and how taxpayer dollars are spent. Stories like these result in important policy changes and they are necessary as a check on government.

These stories matter and the data is an essential component that helps give them meaning. PSP's suggestion that a journalist who requests a data set must explain how it will be utilized in reporting or agree that it will be published in its totality places a significant, and inappropriate, burden on the Requester. The fee exemption in Section 1307(b) does not require or countenance prepublication disclosure of newsgathering materials to the government, nor does it require public records to be published in their totality, and such a result would likely be constitutionally infirm.

CONCLUSION

In the end, allowing PSP to use third-parties to store data and then charge excessive data retrieval fees under the concept of a "necessarily incurred" cost—despite the preexisting nature of the records and the prohibition of charging labor fees— inappropriately limits and prohibits access to public information.

Furthermore, suggesting that a media Requester needs to explain how the data will be used in news coverage or agree that it be published in its entirety to be exempt from market-based fees creates an unnecessary and potentially unconstitutional burden on the Requester and reaches far beyond the intentions of the RTKL.

The law is clear on its face about which fees, if any, may be charged for access. Here, PSP is attempting to charge unreasonable fees that go beyond the scope of the law, which if allowed, would encourage other agencies to use third parties to hinder access to public records and create inappropriate barriers to access.

The crime reporting data sought in this case will enable the Requester to do his job, the benefits of which are manifold. The Requester seeks to use the RTKL for its core purpose of providing transparency about government, enabling the accountability that necessarily follows.

For all the foregoing reasons, we respectfully request this Court to affirm the Final Determination of the Office of Open Records.

Dated: March 02, 2023

Respectfully submitted,

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**CERTIFICATION OF COMPLIANCE WITH WORD COUNT
LIMITATION**

I hereby certify that the content of the foregoing *amicus* brief falls within the word limits enumerated in Pa.R.A.P. 531(b)(3).

Dated: March 02, 2023

/s/ Melissa Bevan Melewsky

CERTIFICATE OF COMPLIANCE WITH PUBLIC ACCESS POLICY

I 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.

Dated: March 02, 2023

/s/ Melissa Bevan Melewsky