

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PENNSYLVANIA STATE POLICE, :
Petitioner : No. 710 C.D. 2022
 :
v. :
 :
CARTER WALKER and : Electronically Filed
LNP MEDIA GROUP, INC. : Document
(OFFICE OF OPEN RECORDS) :
Respondents. :
 :

**APPLICATION FOR LEAVE
TO DISCONTINUE APPEAL**

Petitioner, by and through its undersigned counsel, hereby submits this *Application for Leave to Discontinue* pursuant to Pa. R.A.P. §123 and Pa. R.A.P. §1973 as follows:

1. On January 14, 2022, the Pennsylvania State Police (PSP) received a Right-To-Know Law request from Respondent/Requester seeking, from January 1, 1997 to December 31, 2021, the underlying data set which is used to create the Hate Crime Report search function on the Uniform Crime Reporting website, as well as any data dictionary, code tables, or other manuals that define the meaning of the column headers in the data or acronyms. (R.R. 1); OOR Final Determination.

2. On February 22, 2022, PSP provided its Final Response to Respondent/Requester wherein it denied the request pursuant to Section 705 of the RTKL asserting that PSP would have to create a record to comply with such a technical request. (R.R. 25a-34a).

3. On March 23, 2022, Respondent/Requester filed an appeal from PSP's Final Response with the Office of Open Records (OOR). (R075a).

4. The parties made various submissions to the OOR in support of their position in the appeal and on its Final Determination the OOR held that (1) PSP had not proven that it would have to create a record that does not currently exist; (2) PSP has not proven that the requested data constitutes or reveals a trade secret or confidential proprietary information; (3) PSP may not Require the Requester to pay labor costs. (OOR Final Determination).

5. The OOR granted the appeal and ordered PSP to "provide the Requester with requested data within thirty days." (OOR Final Determination).

6. On July 11, 2022 PSP filed a Petition for Review with the sole issue being that the OOR erred as a matter of law when it determined that PSP could not charge for costs "necessarily incur[red] for complying" with the underlying Right-to-Know Law Request, as authorized by 65 P.S. §67.1307(g), when those costs are not related to duplication, or normal labor costs associated with producing records routinely accessible by PSP employees.

7. Pursuant to this Court's December 23, 2022 briefing schedule, the Petitioner filed its brief on December 23, 2022, and Respondent filed its Reply on March 2, 2023.

8. On March 15, 2023, Petitioner sought an unopposed extension of time to file its Reply-Brief. This Court granted the extension to March 24, 2023.

9. On March 22, 2023, PSP provided Respondent's attorney with a compact disc containing the Hate Crime records from the Legacy System in table format (a single .xlsx file). The disc also contained the combined FBI standard Hate Crime and NIBRS data extracts from the current PAUCRS System in their respective FBI standard flat file format (multiple .txt files). *See Exhibit A Receipt of Records.*

10. The above-referenced items is the dataset underlying the PAUCRS Hate Crime Report from January 1, 1997 to March 16, 2023, "in its complete form" as "an export/extract of raw data" to "the extent it is maintained in [PSP's] databases."¹ *See Exhibit B, Affidavit of Joshua Kembel.*

11. The contents of the compact disc constitute full compliance with the Office Of Open Records Final Determination dated June 9, 2022.

12. Moreover, because the compact disc has been provided to the Requester, the issue appealed to this Honorable Court is now moot *i.e.*, because the

¹ As described in Footnote 10 of Respondent's Brief.

underlying data set has been provided to Requester the issue of whether PSP may charge Requester/Respondent labor costs to comply with the Request is not a live controversy. *Phila. Pub. Sch. Notebook v. Sch. Dist. of Phila.*, 49 A.3d 445, 448 (Pa. Cmwlth. 2012) (citing *Pap's A.M. v. City of Erie*, 812 A.2d 591, 599 (Pa. 2002)) (“Courts will not enter judgments or decrees to which no effect can be given.”).

13. Requester, through his attorney, has indicated that he opposes discontinuance of this appeal.

14. Requester has not provided a reason for opposing the discontinuance; however, assuming *arguendo*, it is an issue related to compliance, this appeal is not the proper vehicle as sole issue PSP appealed was whether or not PSP could charge labor costs that were necessarily incurred for comply with the underlying RTKL.²

15. Here, PSP did not charge Requester for any labor costs associated with its compliance with the RTKL Request or the OOR’s Final Determination.

WHEREFORE, Respondent, the Pennsylvania State Police respectfully requests that its *Application for Discontinuance* be granted.

² Issues pertaining to compliance are handled as enforcement actions filed in this Honorable Court’s original jurisdiction. *Uniontown Newspapers, Inc v. Pa. Dep’t of Corr.*, 151 A.3d 1196, 1202 (Pa. Cmwlth. 2016) (“Requester may seek enforcement of OOR’s Disclosure Order through a petition to enforce.”).

Pennsylvania State Police
Office of Chief Counsel
1800 Elmerton Avenue
Harrisburg, PA 17110
Phone: (717) 783-5568

Respectfully Submitted,

By:


Kathryn B. Daczka, Esq.

Assistant Counsel
PA S.C.I.D. 324074
Email: kdaczka@pa.gov
Counsel for Petitioner

Exhibit “A”



PENNSYLVANIA STATE POLICE
DEPARTMENT HEADQUARTERS
1800 ELMERTON AVENUE
HARRISBURG, PENNSYLVANIA 17110

**Pennsylvania State Police - Bureau of Records and Identification
Right to Know Law/Subpoena Processing Section**

Receipt of Records

Name (Print) Paula Knudsen Burke

Date March 22, 2023

Right to Know Law 2022-0085

Audio/Visual Request _____

Signature Paula K Burke

William A. Rozier, J.D.,
Agency Open Records Officer

W. A. Rozier

Exhibit “B”

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA STATE POLICE
BUREAU OF RESEARCH AND DEVELOPMENT

Commonwealth of Pennsylvania :
: County of Dauphin :
:

AFFIDAVIT OF
JOSHUA KEMBEL
BUSINESS ANALYST
POLICY AND PROGRAM SERVICES DIVISION

BEFORE ME, the undersigned notary public, appeared the affiant, JOSHUA KEMBEL, on this 27th day of March 2023, who being duly sworn by me according to the law, stated the following:

1. My name is Joshua Kembel. Being over eighteen years of age, I am fully competent to execute this Affidavit, which avers as true and correct only the facts known to me personally and only such opinions as I am qualified to express.

2. I am a Business Analyst 2 with the Pennsylvania State Police (“PSP” or “Department”), presently serving in the Bureau of Research and Development Policy and Program Services Division (“BRD”).

3. I assumed the duties of my present position on February 5, 2015. My duties include coordination of the technical administrative requirements of the PAUCRS system (PA Uniform Crime Reporting Website) that PSP administers. This database provides Statewide information on crime trends and volume based on the reporting and statistics by law enforcement agencies throughout the Commonwealth. This database is available to the public.

4. I have prepared this Affidavit in support of Petitioner’s March 29, 2023, Application to Discontinue Appeal in the matter of *Pennsylvania State Police v. Carter Walker and LNP Media Group, Inc.* presently before the Commonwealth Court at Docket No. 710 C.D. 2022.

5. The Right-To-Know Law request underlying this appeal sought “the underlying dataset which is used to create the “Hate Crime Report” search function on the Uniform Crime Reporting website....” (R.R.001a).

6. On March 22, 2023, PSP provided Respondent with a compact disc containing the Hate Crime records from the Legacy System in table format (a single .xlsx file). The disc also contained the combined FBI standard Hate Crime and NIBRS data extracts from the current

PAUCRS System in their respective FBI standard flat file format (multiple .txt files). This is the dataset underlying the PAUCRS Hate Crime Report from January 1, 1997 to March 16, 2023, “in its complete form” as “an export/extract of raw data” to “the extent it is maintained in [PSP’s] databases.”¹


7. The technical nature of the aforementioned system and file structures required PSP to pull data from both the Legacy PAUCRS system and the current PAUCRS system. The Legacy data required PSP to reactive the Legacy system database temporarily to have the ability to pull the data. As mentioned, the difference in export formats between the Legacy and current PAUCRS systems would have required a technical intervention from OTECH to produce one standard format and file with the requested information. To satisfy this request without any need for additional development, PSP has included the legacy Hate Crime data tables with all gathered data elements collected, the current FBI standard extract flat file formats for both Hate Crime and NIBRS with all FBI standard data elements, and has recorded all of the information on to a compact disc for the purposes of satisfying this request. Data is provided in recorded order within the system, includes information since the previous extract was last produced, does not contain date parameters or other organizational structure, and also contains information not sought by the Requestor for 2022 and 2023 due to the inability to further sort or manipulate the data within the extract.

8. Based on the above, the compact disc provided to Respondent fully complies with the Respondent’s RTKL request and the Office of Open Records Final Determination dated June 9, 2022.

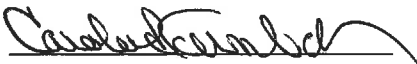
9. To the extent that Requester needs additional information to interpret or understand the raw data, Requester would need to consult the FBI’s Uniform Crime Reporting Program’s Technical Specifications, User Manuals, and Data Tools. These resources are publicly available on the FBI’s website.

10. PSP did not provide the responsive records because the lengthy request was misinterpreted the request to be seeking more than “PSP’s data set ‘in its complete form’ as ‘an export/extraction of raw data’ and that “PSP should *not* ‘manually input or alter any information into the data for the purposes of fulfilling [the] request.”

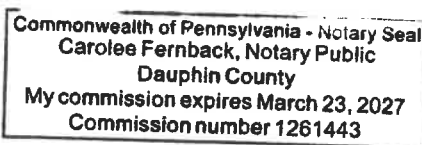
FURTHER AFFIANT SAYETH NOT, UNDER PENALTY OF PERJURY.


Joshua Kembel
Pennsylvania State Police
Bureau of Research and Development

SUBSCRIBED AND SWORN TO BEFORE ME on this 29th day of March 2023 to certify which witness my hand and seal.



¹ As described in Footnote 10 of Respondent’s Brief.



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ORDER

AND NOW, this _____ day of _____, 2023, upon consideration of the Petitioner Pennsylvania State Police’s *Application for Leave to Discontinue this Appeal* (Application), is hereby GRANTED. Accordingly, Petitioner shall file and serve its *Praecipe to Discontinue* pursuant to Pa. R.A.P. §1973.

By: _____, J.

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CERTIFICATE OF SERVICE

I, Kathryn B. Daczka, Esq. do hereby certify that this 30th day of March 2023, I hereby served the preceding *Application for Leave to Discontinue Appeal*, upon the following counsel of record via electronic mail and via PACFILE:

Paula Knudsen Burke, Esq.
pknudsen@rcfp.org
Attorney for Respondent
Reporters Committee for
Freedom of the Press
PO Box 1328
Lancaster, PA 17608

Heather E. Murray, Esq.
hem58@cornell.edu
Attorney for Respondent
Cornell Law School
First Amendment Clinic
Myron Taylor Hall
Ithaca, NY 14853

Respectfully Submitted:

Date: 3/30/2023


Kathryn B. Daczka, Esq.
Attorney for Petitioner

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CERTIFICATE OF COMPLIANCE

I, Kathryn B. Daczka, Esq. do 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 require filing confidential information and documents differently than non-confidential information and documents.

Respectfully Submitted:

Date: 3/30/2023


Kathryn B. Daczka, Esq.
Attorney for Petitioner