

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.	:	
	:	

**PETITIONER’S REPLY TO RESPONDENTS’ ANSWER TO
PETITIONER’S APPLICATION FOR LEAVE TO DISCONTINUE**

Petitioner, Pennsylvania State Police (PSP), filed this appeal objecting to the Office of Open Records’ (OOR) determination that the Petitioner could not charge for costs “necessarily incur[red] for complying” with the underlying request where the Respondents sought an element level breakdown of data represented within a third-party software generated report (the Hate Crime Report). *See* Petition for Review. Petitioner based this appeal upon the good faith belief and understanding that the granular specificity of the underlying Right-To-Know Law request required its third-party software vendor to compile, format, and organize Uniform Crime Reporting (UCR) data in a manner the agency does not currently compile, format or organize the data. R. 219a. In this case the misinterpretation of the underlying request, was whether PSP could comply by providing Uniform Crime Reporting

(UCR) data as maintained or whether the specificity of the request necessitated PSP's third-party software vendor to specifically code a search query to pull the requested raw data from the collected UCR data. A response tailored to the specific parameters of the underlying request in one cohesive format would require the agency to parse out a granular subset of data from the current UCR system. R.R.104a. PSP has the ability to provide UCR data as it is recorded within the current system but is not able to manipulate the data by date or organizational structures. *See* Petitioner's Application for Leave to Discontinue, Ex. B., Pg. 2. Following the OOR's Determination that this request did not necessitate the creation of a record under the RTKL, PSP worked to understand how the request may be fulfilled without the need for technical intervention by its' third-party software vendor. *See* OOR Final Determination at Docket No. AP 2022-0712.

Following extensive discussions with the agency personnel, PSP was able to identify a means to providing the data to "the extent it is maintained in [PSP's] databases" without necessitating third-party intervention. *See* Petitioner's Application for Leave to Discontinue, Exhibit B, Affidavit of Joshua Kembel. Accordingly, PSP provided data from both the Legacy PAUCRS system and current PAUCRS system in full compliance with the underlying request. *See* Petitioner's Application for Leave to Discontinue, Ex. B., Pg. 2. This change of facts obviates

the case in controversy and eliminates the need for the Court to review the issues PSP raised in its Petition for Review.

Here, the Respondent's Answer to Petitioner's Application for Leave to Discontinue clearly indicates an interest in exceeding this Court's appellate jurisdiction. Respondent does not contest that PSP complied with the OOR's Final Determination, instead Respondent now seeks sanctions against PSP, without due process, by asserting baseless bad faith claims. *See* Answer to Application for Leave to Discontinue. These claims are appropriately raised, defended, and briefed in an Enforcement Action pursuant to Pa. R.A.P. §3761(b).¹

In sum, the Pennsylvania Supreme Court has noted that "a legal question can become moot on appeal as a result of an intervening change in the facts of the case." *In Re Goss*, 382 A.3d 116, 119 (1978). That is what happened in the instant case. As such, the appeal should be discontinued.

WHEREFORE, Petitioner, the Pennsylvania State Police respectfully requests that its *Application for Leave to Discontinue* be granted.

¹ As this appeal is now moot, Petitioner respectfully reserves its arguments to the Respondents' bad faith claims for the appropriate forum.

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Respectfully Submitted,

By:


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Counsel for Petitioner

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[Proposed] 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 17th day of April 2023, I hereby served the preceding *Reply to Respondents' Answer Of Petitioner's Application for Leave to Discontinue*, upon the following counsel of record via electronic mail and via PACFILE:

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Respectfully Submitted:

Date: 4/17/2023


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: 4/17/2023


Kathryn B. Daczka, Esq.
Attorney for Petitioner