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**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

**Docket No. 227 CD 2023**

**THE CENTER FOR INVESTIGATIVE REPORTING**
**d/b/a Reveal,**
Petitioner,

**v.**

**PENNSYLVANIA DEPARTMENT OF HEALTH,**
Respondent.

# PRINCIPAL BRIEF OF THE CENTER FOR INVESTIGATIVE REPORTING

Appeal from the Final Determination of the Office of Open Records dated February 6, 2023 at Docket No. AP 2022-2282

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**Dated:** November 17, 2023

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## STATEMENT OF JURISDICTION

The Commonwealth Court has appellate jurisdiction over this matter pursuant to 65 P.S. § 67.1301(a) of the Right to Know Law ("RTKL"), Rule 1511 of the Pennsylvania Rules of Appellate Procedure, and Section 763(a)(2) of the Judicial Code, 42 Pa. C.S. § 763(a)(2).

## SCOPE AND STANDARD OF REVIEW

The Commonwealth Court exercises *de novo* and plenary review of both factual and legal findings made by the Office of Open Records. 65 P.S. § 67.1301(a); 42 Pa. C.S. § 763(a); *Bowling v. Off. of Open Recs.*, 75 A.3d 453, 474 (Pa. 2013). Under this standard, the Court may "adopt[] . . . the appeals officer's factual findings and legal conclusions when appropriate," but may affirm or reverse the decision below on the basis of any rationale. *Bowling*, 75 A.3d at 474. The Court is entitled to the broadest scope of review. *Id.* at 477.

## TEXT OF THE ORDER IN QUESTION

"For the foregoing reasons, [Requester's] appeal is **denied**, and the Department is not required to take any further action."

/s/ Lyle Hartranft

_____
APPEALS OFFICER
LYLE HARTRANFT, ESQ.

* * * * * * * * * * *

The full text of the February 6, 2023 Final Determination by Office of Open Records Appeals Officer Lyle Hartranft is attached as Exhibit A.

## STATEMENT OF THE QUESTIONS INVOLVED

1. Was the Office of Open Records correct in concluding that the DOH did not already possess the requested data?

   Suggested answer: No

2. Was the Office of Open Records correct in concluding that using a "custom query" to extract data that already exists in a database constitutes creating a "new record" pursuant to Section 705 of the RTKL?

   Suggested answer: No

3. Is Petitioner entitled to an award of reasonable attorney fees and litigation costs pursuant to the RTKL because the DOH denied its request based on an unreasonable interpretation of law and while acting in bad faith?

   Suggested answer: Yes

## INTRODUCTION

This case raises a recurring question of fundamental importance under the Right to Know Law ("RTKL"): As technology evolves and agencies increasingly store records in advanced databases, does the public's right to obtain information about their government's activities decrease? This Court has decisively rejected such an argument before, and it should do so again here. The Court should take this opportunity to clarify that agencies must search government databases for records and that such queries do not create "new records," as the government persistently claims.

## STATEMENT OF THE CASE

Petitioner seeks aggregated data from a database maintained by the Department of Health ("DOH") regarding neonatal abstinence syndrome ("NAS"), which is "a series of signs of withdrawal in a newborn following in utero exposure to prescribed medications (including medications used to treat substance use disorder) or illicit drugs." R.R. 21a. Healthcare facilities use an online portal to submit reports about individual NAS cases to the DOH's Internet Case Management System ("iCMS"). *Id.* Each year, the DOH compiles an annual report about NAS cases using aggregated data from the iCMS database. R.R. 85a.

On August 4, 2022, as part of a nationwide investigation of NAS[1], Petitioner submitted a RTKL request to the DOH seeking, in relevant part:

> a) Data indicating the number of reported NAS cases, on an aggregate statewide basis;
>
> b) Data for cases referred to ChildLine, the substance(s) to which infants were exposed, on an aggregate statewide basis;
>
> c) Data indicating the number of Plans of Safe Care initiated, the substance(s) to which infants were exposed, on an aggregate statewide basis;
>
> and

[1] Petitioner's reporting on the results of the nationwide investigation was featured in July 2023 in Petitioner's podcast, "Reveal," and in the *New York Times Magazine*. R.R. 184–191a.

> e) Data indicating to whom infants were discharged, the substance(s) to which infants were exposed, on an aggregate statewide basis.

R.R. 1a. Petitioner's request for NAS data was limited to data reported to the DOH in 2020 and 2021. *Id.* In response, the DOH provided a link to its NAS annual report for 2020, but it otherwise denied Petitioner's request on the grounds that "no additional responsive records exist within the Department's custody, possession, or control concerning your RTKL request. The Department is not required to create new records in response to an RTKL request." R.R. 3–4a.

On September 28, 2022, Petitioner appealed to the Office of Open Records ("OOR"). R.R. 5a. Petitioner argued that the DOH failed to conduct an adequate search, as demonstrated by the agency's possession of additional responsive records in the iCMS database. R.R. 10–12a. Petitioner also argued that pulling this aggregate data from the iCMS would not constitute creating a new record. R.R. 12–13a. In response, the DOH argued to the OOR that it conducted an adequate search and did not have any additional responsive records beside the annual NAS report. R.R. 65–72a. The DOH also argued that, although it could produce the requested NAS data by running "a new customized query" of the iCMS database, doing so would constitute creating a new record, which it asserted is not required pursuant to Section 705 of the RTKL. R.R. 78a.

On February 6, 2023, the OOR issued its Final Determination in the DOH's favor. Ex. A. The OOR found that, because the DOH would have to "create a custom query" to fulfill Petitioner's request, "the Department would be required to . . . create a record which does not otherwise exist." *Id.* at 11.

Petitioner timely appealed the OOR decision to this Court on March 8, 2023. R.R. 177a.

## SUMMARY OF ARGUMENT

Through the RTKL, which is remedial in nature, the Pennsylvania Legislature greatly expanded access to public records, *Bowling v. Off. of Open Recs.*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), *aff'd*, 75 A.3d 453 (Pa. 2013), "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) (en banc); *see also SWB Yankees L.L.C. v. Wintermantel*, 45 A.3d 1029, 1041 (Pa. 2012). Pursuant to Section 705, the RTKL does not require agencies to create new records. 65 P.S. § 67.705. But as this Court ruled more than a decade ago, "drawing information from a database does not constitute creating a record under the Right-to-Know Law." *Dep't of Env't Prot. v. Cole*, 52 A.3d 541, 547 (Pa. Commw. Ct. 2012) (citing *Gingrich v. Pa. Game Comm'n*, No. 1254 C.D. 2011, 2012 WL 5286229 (Pa. Commw. Ct. Jan. 12, 2012)). "In short, to the extent requested information exists in a database, it must be provided; an agency cannot claim otherwise under Section 705[.]" *Id.* at 548. "To hold otherwise would encourage an agency to avoid disclosing public records by putting information into electronic databases." *Id.* at 549.

In its response to Petitioner's request, the DOH provided a link to the NAS annual report for 2020 but otherwise claimed that fulfilling the remainder of the

request would require it to create a new record. R.R. 3–4a. To fulfill the request, the DOH asserted that it would have to run a "custom query" of the iCMS database, which it argued "would amount to generating a new custom dataset." R.R. 86a, 88a. But that characterization is plainly wrong as it is only the ***search*** that is customized—as is true for ***all*** public records requests. The DOH outlined precisely how such a query would be executed, as is done with all other requests, *i.e.*, by using the parameters Petitioner provided to search the iCMS database and return aggregate, de-identified data. R.R. 88a. The DOH itself uses similar queries of the iCMS database to compile its NAS annual reports each year. R.R. 87a. The query that the DOH refused to run is thus the epitome of a search and "drawing information from a database," which this Court has long held "does not constitute creating a record." *Cole*, 52 A.3d at 547.

For these reasons, Petitioner respectfully asks the Court to reverse the OOR's February 6, 2023 Final Determination; or, in the alternative, allow Petitioner to supplement the record before this Honorable Court; or, in the alternative, remand the matter back to the OOR for a full evidentiary hearing pursuant to Pa. R.A.P. 1542, including testimony and argument on the matter of bad faith and attorney fees provided by Sections 1304 and 1305 of the RTKL.

## ARGUMENT

### I. Under the RTKL, querying a database for existing data does not create a new record.

In rejecting Petitioner's request, both the DOH and OOR fundamentally misapplied this Court's longstanding precedent that, in light of the RTKL's remedial purpose, retrieving responsive information from databases does not create new records. In *Cole*, the Court held that "pulling information from a database is not the creation of a record." *Cole*, 52 A.3d at 549. The Court drew heavily from the "persuasive analysis" of *Gingrich*, *id.*, an unreported decision, which "construe[d] the RTKL to give effect to its remedial purposes of ensuring access to *existing information*." *Gingrich*, 2012 WL 5286229, at *5 (citing *Bowling*, 990 A.2d at 818) (emphasis added). In *Gingrich*, the requester sought data from the Game Commission regarding the annual deer harvest. *Id.* at *1–2. The Court distinguished between data that already existed in the Commission's deer harvest database versus data which the agency did not maintain at all: "To the extent that the data exists in some format, the [agency] must provide it." *Id.* at *8. And since the agency already maintained some of the requested data, the Court ruled it "must disclose data responsive to the [RTKL requests] . . . in any format in which the information exists." *Id.* Similarly, in *Cole*, which concerned data about solar energy rebates, the government admitted "that the requested information exists in a raw form in its databases," *Cole*, 52 A.3d at 547–48. The Court accordingly

rejected the argument that providing such data pursuant to the RTKL would create a "new record." *Id*.

Since *Cole*, this Court has continued to focus its Section 705 analysis on whether the requested data ***already exists***, which is the essential question in RTKL cases. In *Paint Township v. Clark*, for example, the Court reiterated that "when requested information exists in a database, it must be provided, with certain conditions, to the requester." 109 A.3d 796, 805 (Pa. Commw. Ct. 2015) (citing *Cole*). In that case, however, the evidence supported that "the requested information does not currently exist," such that the agency could not be required to disclose it. *Id.* at 806. By contrast, in *School District of Philadelphia v. Calefati*, an unreported decision, the Court affirmed the trial court's ruling that providing de-identified data did not constitute creating a new record, particularly where the government made similar de-identified data publicly available, just as in this instant case. No. 1285 C.D. 2020, 2022 WL 108455 (Pa. Commw. Ct. Jan. 12, 2022). Similarly, in *Chester Housing Authority v. Polaha*, an unreported decision, this Court noted the government's admission that "the information requested exists in a searchable data base" and accordingly rejected its Section 705 argument. No. 2391 C.D. 2015, 2016 WL 4224910, at *3 (Pa. Commw. Ct. Aug. 11, 2016) (citing *Cole*). This Court has succinctly summarized *Cole* as an instance "where the agency possessed the information necessary to comply with a RTKL request but

simply did not take adequate steps to supply that information." *McGill*, 83 A.3d at 481. Similarly, our Supreme Court has recognized that the use of sophisticated technology carries with it a concomitant duty to use it in furtherance of transparency and public oversight. *Cent. Dauphin Sch. Dist. v. Hawkins*, 286 A.3d 726, 740 n.10 (Pa. 2022). Thus, where the agency is in possession of requested data that is accessible to the agency via a database query, running such a query does not create a "new record." Rather, running the query satisfies the agency's obligations under the RTKL to "take adequate steps to supply that information." *McGill*, 83 A.3d at 481; *see also* Decision at 22, *Laustsen v. Pennridge Sch. Dist.*, No. 2023-01022 (Bucks Cnty. Ct. Com. Pl. Oct. 20, 2023) ("Here, it is abundantly clear that the requested information exists in the District's database, and as such, the District must provide it." (citing *Cole*, 52 A.3d at 548–49)).

Although it failed to do so here, the OOR, for its part, has often applied this Court's binding reasoning regarding fulfillment of database requests faithfully. Pursuant to *Cole*, the OOR often notes that "querying and pulling data from a database does not constitute the creation of a record." *Bell v. Pa. Dep't of Labor & Indus.*, No. AP 2018-1433, 2018 WL 4453367, at *5 (Off. of Open Recs. Sept. 13, 2018). In one recent determination, the OOR found, "[p]ursuant to *Cole*," that because the government could query its database for requested information, "information in the Department's database is subject to access under the RTKL."

*Unger v. Pa. Dep't of Labor & Indus.*, No. AP 2020-0940, 2020 WL 5216613, at *6 (Off. of Open Recs. Aug. 28, 2020). Reviewing this Court's precedent, the OOR summarized: "The Court has not made any exceptions based upon the difficulty of querying the information or the possible inaccuracies of such information." *Id.* In another recent determination, the OOR ordered the government to extract certain data based on evidence that some of the requested information already existed in a certain database. *Xian v. Pa. State Police*, No. AP 2022-2545, 2023 WL 120500 (Off. of Open Recs. Jan. 3, 2023); *see also Brambila v. Pa. Dep't of Health*, No. AP 2017-0042, 2017 WL 971860 (Off. of Open Recs. Mar. 9, 2017) (where agency database tracks certain forms, providing data regarding how many of those forms were filed would not create a new record); *Wade v. Pa. Dep't of Transp.*, No. AP 2023-0505, 2023 WL 3452091 (Off. of Open Recs. May 8, 2023) (reviewing recent determinations in which OOR ordered the government to extract existing data from databases, even when doing so required programming or other forms of queries).[2]

This Court's decision in *Cole* was at the vanguard of bringing transparency and public accountability to advanced government databases. In fact, sister courts

[2] In response, the DOH may cite other OOR determinations which concluded that agencies were not required to search their databases using queries. *See, e.g.*, *Imburgia v. Phila. Sch. Dist.*, No. AP 2018-0635, 2018 WL 3416137 (Off. of Open Recs. July 9, 2018); *Gym v. Phila. Sch. Dist.*, No. AP 2022-0076, 2022 WL 836791 (Off. of Open Recs. Mar. 17, 2022). Many such OOR determinations are

grappling with similar issues have drawn from *Cole* as guidance. The Massachusetts Supreme Judicial Court, for example, cited this Court's analysis in *Cole* when it ruled that "a public records request that requires a government entity to search its electronic database to extract requested data does not mean that the extracted data constitute the creation of a new record under the public records law." *Att'y Gen. v. Dist. Att'y for Plymouth Dist.*, 141 N.E.3d 429, 441–43 (Mass. 2020) ("Several State courts have also held that conducting a query in an electronic database does not constitute the creation of a new record for purposes of their States' public records laws." (citing *Cole* and other cases)). The Supreme Court of New Jersey cited *Cole* in ruling that querying an email database to extract data about senders and recipients did not constitute creating a new record. *Paff v. Galloway Twp.*, 162 A.3d 1046, 1054 n.6 (N.J. 2017) (citing *Cole*). The Supreme Court of Nevada, sitting *en banc*, explicitly agreed with this Court in ruling that an agency is obligated "to query and search its database" and that "the search of a database or the creation of a program to search for existing information" does not

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distinguishable because the agencies did not actually possess the requested data and would have needed to carry out some additional step beyond querying the database, such as additional calculations. Regardless, to the extent these determinations reflect inconsistency in the OOR's application of *Cole*, that is all the more reason why the Court should take this opportunity to clarify decisively that Section 705 does not excuse agencies from using queries to search their databases for data that already exists.

create a new record. *Pub. Emps.' Ret. Sys. of Nev. v. Nev. Pol'y Rsch. Inst., Inc.*, 429 P.3d 280, 287 (Nev. 2018) (citing *Cole* and other cases).

Other state courts have come to the same conclusion when interpreting provisions similar to Section 705. For example, Maryland's counterpart excuses agencies from complying with requests that "require a custodian to create, compile, or program a new public record." Md. Code Ann., Gen. Provis. § 4-205(c)(4). But the Maryland Court of Special Appeals rejected the argument that querying a database for a subset of data triggered this provision. *Comptroller of Treasury v. Immanuel*, 85 A.3d 878, 885–86 (Md. Ct. Spec. App. 2014). *See also Hites v. Waubonsee Cmty. Coll.*, 56 N.E.3d 1049, 1066–67 (Ill. App. Ct. 2016), *as modified on denial of reh'g* (July 13, 2016) (applying "code or programming to retrieve stored information" from a database "does not create a new record").

Federal courts have agreed, as well, that under the federal Freedom of Information Act, "using a query to search for and extract a particular arrangement or subset of data already maintained in an agency's database does not amount to the creation of a new record." *Ctr. for Investigative Reporting v. U.S. Dep't of Just.*, 14 F.4th 916, 938 (9th Cir. 2021); *see also Am. C.L. Union Immigrants' Rts. Project v. U.S. Immigr. & Customs Enf't*, 58 F.4th 643, 659 (2d Cir. 2023) (adopting the Ninth Circuit's holding); *Stevens v. U.S. Dep't of Health & Human Servs.*, No. 22 C 5072, 2023 WL 6392407, at *6 (N.D. Ill. Oct. 2, 2023) (same).

As the Ninth Circuit recognized, "[t]he nature of electronic databases firmly grounds" this principle "in common sense," and accepting a contrary argument would "render FOIA a nullity in the digital age." *Ctr. for Investigative Reporting*, 14 F.4th at 939. *See also Rubman v. U.S. Citizenship & Immigr. Servs.*, 800 F.3d 381, 391 (7th Cir. 2015) ("We certainly don't want to discourage agencies from providing . . . database query results . . . when a FOIA request asks for them[.]"); *Am. Small Bus. League v. U.S. Small Bus. Admin.*, No. C 08-00829 MHP, 2008 WL 3977780, at *4 (N.D. Cal. Aug. 26, 2008) ("That a list was never printed out in hardcopy format or never exported and saved as a separate electronic file apart from the raw database does not imply that such records had not been 'created' at the time of the FOIA request."); *Schladetsch v. U.S. Dep't of Hous. & Urb. Dev.*, No. 99-0175, 2000 WL 33372125, at *3 (D.D.C. Apr. 4, 2000) ("Because HUD has conceded that it possesses in its databases the discrete pieces of information which [the requester] seeks, extracting and compiling that data does not amount to the creation of a new record.").

## II. Since the requested data already exists, the DOH must query its database and produce it.

Unfortunately, this case shows that government agencies and the OOR still struggle to apply this Court's precedent regarding the RTKL and database searches consistently. Despite the DOH's own admission that its database already contains the requested NAS data, the OOR nonetheless excused the agency from complying

with Petitioner's request. The OOR's determination ultimately relied on the erroneous grounds that running a "custom query" was tantamount to "generat[ing] a custom dataset." Ex. A at 11. Such a determination is incorrectly circular and fundamentally incompatible with *Cole* and should be reversed. The Court should take this opportunity to refine and crystallize what has been clear for more than a decade: a database query to retrieve existing data does not "create a record" for purposes of Section 705 of the RTKL.

The OOR based its determination that Section 705 applied on mutually contradictory findings of fact and a misapplication of *Cole*. First, the OOR found that the DOH demonstrated that the requested data "could not be pulled directly from the existing NAS database." Ex. A at 11 (quoting Trego Attestation). In a contradictory finding, however, the OOR concluded that the DOH could, in fact, retrieve responsive data by running a "custom query" of the database. *Id.* Misapplying *Cole*, the OOR erroneously determined that such a "custom query" would "generate a custom dataset, which is not simply drawing information from [the DOH's] database." *Id.* This conclusion is fundamentally incorrect.

By the DOH's own admission, ***it already collects and possesses*** the precise data requested. Petitioner sought data regarding reported NAS cases, including the substances to which infants were exposed, referrals to ChildLine, plans of safe care, and to whom infants were discharged. R.R. 1a. As the DOH explained,

healthcare facilities submitted NAS data (including the kind requested) directly to the iCMS database. R.R. 85a. More specifically, facility-submitted NAS reports contain the precise data points Petitioner requested, as demonstrated by the iCMS report form, which the DOH provided as an exhibit to the OOR. R.R. 90–93a. The iCMS form contains the following fields:

- A dropdown menu to indicate whether "laboratory testing" was performed for "substance exposure," and, if so, a text box to indicate "which drug(s) did the infant test positive for?" R.R. 91a (in section titled, "Laboratory Testing Performed").

- A dropdown menu to indicate whether "a notification [was] made to Childline[.]" R.R. 92a (in section titled, "Infant's Discharge Plan").

- A dropdown menu to indicate whether "a plan of safe care [was] initiated[.]" *Id.* (in section titled, "Infant's Discharge Plan").

- A dropdown menu to indicate who "the infant [was] discharged to[.]" *Id.* (in section titled, "Infant's Discharge Plan").

Thus, contrary to the OOR's finding, the DOH's iCMS database contains the exact requested data, and these data points can, in fact, be "pulled directly from the existing NAS database." Ex. A at 11.

To fulfill this request, the DOH may need to use the kinds of database queries it already uses to compile the NAS annual reports each year. As the DOH explained to the OOR, "To prepare these annual reports, the Bureau of Family

Health creates and runs a customized data program to extract and analyze the raw data[.]" R.R. 87a. As it does when drafting the NAS annual reports, the DOH could fulfill Petitioner's request by, in its own description, "creat[ing] a custom query to be run on the reports of all 1,825 probable and confirmed NAS cases reported to the Department with the parameters requested." R.R. 88a.

Rather than run the query just as it explained, the DOH instead argued in protracted proceedings before the OOR that such a "custom query" would run afoul of Section 705 and "amount to generating a new custom dataset." R.R. 86a. This argument elides the facts and misunderstands this Court's precedent. Since *Cole*, the determinative question regarding Section 705 is whether the agency database does or does not contain the requested data: "to the extent requested information exists in a database," producing that data does not create a new record. 52 A.3d at 548. Most recently, in *Calefati*, the Court rejected arguments strikingly similar to the one the DOH now makes, *i.e.*, that an agency can invoke Section 705 to avoid extracting data that already exists in a database. *Calefati*, 2022 WL 108455, at *3–4. Similarly, in *Polaha*, the Court rejected the government's Section 705 argument because "the information requested exists in a searchable data base." *Polaha*, 2016 WL 4224910, at *3 (citing *Cole*, 52 A.3d at 547). Here, too, since the DOH acknowledged that the "requested information exists in [the

iCMS] database, it must be provided," and the DOH "cannot claim otherwise under Section 705 of the Right-to-Know Law." *Cole*, 52 A.3d at 548.

The DOH's argument that such a query would create a "custom dataset" also misrepresents the very nature of databases and queries. A query of the iCMS database would not "create, compile, or reorganize" the underlying data into a "custom dataset." R.R. 86a. Instead, querying a database—just like manually searching through paper records in a filing cabinet—identifies and retrieves responsive data that already exists.

Indeed, other courts have expressly confirmed this analogy that querying a database "is the modern day equivalent of physically searching through and locating data within documents in a filing cabinet," *Ctr. for Investigative Reporting*, 14 F.4th at 938, and further explained that "[t]he subset of data selected is akin to a stack of redacted paper records." *Id*. "[C]omputer records found in a database rather than a file cabinet may require the application of codes or some form of programming to retrieve the information." *Pub. Emps.' Ret. Sys. of Nev.*, 429 P.3d at 287 (citation omitted); *see also Hites*, 56 N.E.3d at 1064 (applying the "helpful" analogy between databases and file cabinets); *Williams L. Firm v. Bd. of Supervisors of La. State Univ.*, 878 So. 2d 557, 571–72 (La. Ct. App. 2004) (using a similar analogy between databases and filing cabinets; ruling querying database "does not constitute the writing of new computer programs to create the records").

Far from creating a new record, "extraction of the requested information from the existing fields" in an agency database "is instead the type of data recovery that is expected in a digital world under the public records law." *Dist. Att'y for Plymouth Dist.*, 141 N.E.3d at 443.

Finally, the OOR and DOH's position is fundamentally at odds with the remedial nature of the RTKL, which requires interpreting the statute to favor public access. *Bowling*, 990 A.2d at 824; *see also Off. of Dist. Att'y of Phila. v. Bagwell*, 155 A.3d 1119, 1130 (Pa. Commw. Ct. 2017). Recognizing that the predecessor law created significant obstacles to public access, the General Assembly enacted the RTKL, and in doing so "significantly expanded public access to governmental records . . . with the goal of promoting government transparency." *Pa. State Police v. Grove*, 161 A.3d 877, 892 (Pa. 2017) (citation omitted). The remedial nature of the RTKL is its cornerstone, and all interpretations and applications of it must flow from that vantage. When analyzed in the context of the RTKL's remedial purpose as well as its clear mandate on expansive access to aggregated data under Section 708(d), 65 P.S. § 67.708(d), it is clear that both the DOH's and OOR's interpretations must fail. Rather than "significantly expand[] public access" to government data, *Grove*, 161 A.3d at 892, the DOH's interpretation of Section 705 would impermissibly shrink the public's access to government databases in ways this Court anticipated more than a decade

ago. If this Court accepts that a government agency can invoke Section 705 to avoid running a query to retrieve data it already has, this would further "encourage an agency to avoid disclosing public records by putting information into electronic databases." *Cole*, 52 A.3d at 549. Such an interpretation of Section 705 simply cannot be squared with the RTKL's remedial purpose.

Petitioner's request seeks data that already exists. To produce that data, the DOH may need to run a "custom query" on the iCMS database. But that query does not create a new record, and the DOH cannot hide behind Section 705. A query—even a "custom" one—is the essence of "drawing information from a database," which this Court has long held "does not constitute creating a record under the Right-to-Know Law." *Cole*, 52 A.3d at 547.

## III. Petitioner is entitled to attorney fees and costs under the RTKL.

Under the RTKL, when a court reverses an agency determination, a requester is entitled to "reasonable attorney fees and costs of litigation" if the court "finds either" that the agency's denial was "not based on a reasonable interpretation of law" or that the agency "acted in bad faith" under the RTKL. 65 P.S. § 67.1304(a). In the RTKL context, "[t]he lack of good faith compliance with the RTKL . . . rise[s] to the level of bad faith." *Uniontown Newspapers, Inc. v. Pa. Dep't of Corr*. ("*Uniontown I*"), 185 A.3d 1161, 1170 (Pa. Commw. Ct. 2018),

*aff'd*, 243 A.3d 19 (Pa. 2020). Petitioner is entitled to an award of attorney fees and litigation costs under both provisions.

First, an award of attorney fees and costs is appropriate because the DOH premised its denial of Petitioner's request on an unreasonable interpretation of this Court's longstanding precedent. 65 P.S. § 67.1304(a)(2). For more than a decade, the DOH and other agencies have been on notice that "to the extent requested information exists in a database, it must be provided; an agency cannot claim otherwise under Section 705[.]" *Cole*, 52 A.3d at 548. Far from a "reasonable interpretation" of the RTKL, the DOH's denial was premised on a directly contradictory reading of this Court's interpretation of Section 705, and thus justifies an award of fees and costs under Section 1304. *See Newspaper Holdings, Inc. v. New Castle Area Sch. Dist.*, 911 A.2d 644, 648–50 (Pa. Commw. Ct. 2006) (affirming award of attorney fees and costs under 65 P.S. § 66.4–1(a)(2), since recodified as 65 P.S. § 67.1304(a)(2), where agency's interpretation contradicted the Supreme Court's interpretation of the Right to Know Act and confidentiality clauses in settlement agreements) (citing *Trib.-Rev. Publ'g Co. v. Westmoreland Cnty. Hous. Auth.*, 833 A.2d 112, 120 (Pa. 2003)); *compare with E. Stroudsburg Univ. Found. v. Off. of Open Recs.*, 995 A.2d 496, 506 n.16 (Pa. Commw. Ct. 2010) ("Given the newness of this amended [RTKL], we cannot say that the [agency's] interpretation . . . was unreasonable."). Since the DOH relied on an

unreasonable interpretation of the RTKL to deny Petitioner's request, an award of attorney fees and litigation costs is appropriate.

Similarly, Petitioner is entitled to an award of attorney fees and costs because the DOH acted in bad faith in processing Petitioner's request. Under the RTKL, "an abnegation of mandatory duties by an agency, including performance of a detailed search and review of records . . . will support a finding of bad faith." *Uniontown Newspapers, Inc. v. Pa. Dep't of Corr*. ("*Uniontown III*"), 243 A.3d 19, 25 (Pa. 2020). In *Uniontown I*, this Court found bad faith based on the agency's denial without conducting a good faith search. 185 A.3d at 1172. "Critically, [the agency] did not perform any search for records in response to the Request." *Id.* Here, the DOH refused to perform ***any search*** of the iCMS database based on its unreasonable argument that doing so would create a "new record." R.R. 3–4a. Such refusal to conduct a search constitutes bad faith and is thus grounds for an award of reasonable attorney fees and costs. 65 P.S. § 67.1304(a)(1).

In summary, because of the DOH's unreasonable interpretation of its RTKL obligations and its bad faith refusal to conduct a search for responsive data, this Court should award Petitioner its reasonable attorney fees and costs.

## CONCLUSION

For these reasons, Petitioner respectfully asks the Court to REVERSE the OOR's February 6, 2023 Final Determination; or, in the alternative, allow

Petitioner to supplement the record before this Honorable Court; or, in the alternative, remand the matter back to the OOR for a full evidentiary hearing pursuant to Pa. R.A.P. 1542, including testimony and argument on the matter of bad faith and attorney fees provided by Sections 1304 and 1305 of the RTKL.

Respectfully submitted,
*/s/Paula Knudsen Burke*

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**Dated:** Nov. 17, 2023

## 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 5,284 words.
2. 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.

*/s/Paula Knudsen Burke*

Paula Knudsen Burke (No. 87607)

## CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of November 2023, I caused a true and correct copy of the foregoing Petitioner's Brief to be served via email and PACFile on the following, with consent, as required by Pennsylvania Rule of Appellate Procedure 121(c)(4):

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*/s/ Paula Knudsen Burke*
Paula Knudsen Burke (No. 87607)

# EXHIBIT A

pennsylvania
OFFICE OF OPEN RECORDS

# FINAL DETERMINATION

| | | |
|---|---|---|
| **IN THE MATTER OF** | : | |
| | : | |
| **SHOSHANA WALTER AND REVEAL NEWS FROM THE CENTER FOR INVESTIGATING REPORTING,** | : | |
| **Requester** | : | **Docket No: AP 2022-2282** |
| | : | |
| **v.** | : | |
| | : | |
| **PENNSYLVANIA DEPARTMENT OF HEALTH,** | : | |
| **Respondent** | : | |

## FACTUAL BACKGROUND

On August 5, 2022,[1] Shoshanna Walter and Reveal News from the Center for Investigative Reporting (collectively "Requester") submitted a request ("Request") to the Pennsylvania Department of Health ("Department") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq*., seeking:

> Aggregate data held by the Bureau of Epidemiology regarding cases of neonatal abstinence syndrome (NAS) reported to the Bureau of Epidemiology in the years 2020 and 2023, including:
> 1. Data indicating the number of reported NAS cases, on an aggregate statewide basis;
> 2. Data for cases referred to ChildLine, the substance(s) to which infants were exposed, on an aggregate statewide basis;
> 3. Data indicating the number of Plans of Safe Care initiated, the substance(s) to which infants were exposed, on an aggregate statewide basis; and

[1] The Request is dated August 4, 2022 but was not received by the Department until August 5, 2022.

4. Data indicating to whom infants were discharged, the substance(s) to which infants were exposed, on an aggregate statewide basis.

> Pursuant to 71 P.S. § 720.305, Reveal is seeking very limited data that the Bureau uses and/or maintains "for any rules, policies or actions taken … in relation to [the] disaster declaration" regarding the opioid epidemic, 71 P.S. § 720.305(1), and/or such "quantitative or predictive modes based on the data collected," 71 P.S. § 720.305(3), regarding NAS….
>
> As is clear from the request above, Reveal is not requesting any confidential or protected health information (PHI) and/or personally-identifiable information (PII), including (but not limited to): the treating facility; the mother's and infant's name; the mother's and infant's date of birth; the mother's address, race, and ethnicity; the infant's gender, birth weight, gestational age, and neonatal scoring information; the principal source of payment; the infant's medications and/or therapy; laboratory testing performed; mother's discharge plan, individual opioid use history and postpartum treatment; as well as any information about prenatal visits.

On September 12, 2022, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the Department granted the Request in part, providing a weblink to 2020 data responsive to the Request.[2] The Department denied the Request in part, arguing that it "does not have any specific policies or actions specific to the disaster declaration."

On September 28, 2022, the Requester appealed to the Office of Open Records ("OOR"), challenging the denial and stating grounds for disclosure.[3] Specifically, the Requester argues that the Department "failed to prove a reasonable search was done and that records responsive to [Items 2-4] do not exist[,] unjustifiably refused to provide the requested data from existing records [and] redacting the requested information from existing case reports would not constitute the 'creation of a record' under the RTKL."[4] The OOR invited both parties to supplement the record and

[2] The Department indicated on what page of the Report the responsive items to the Request could be found. A copy of the report was attached as Exhibit C to the appeal.
[3] The Requester granted the OOR additional time to issue a final determination. *See* 65 P.S. § 67.1101(b)(1) ("Unless the requester agrees otherwise, the appeals officer shall make a final determination which shall be mailed to the requester and the agency within 30 days of receipt of the appeal filed under subsection (a).").
[4] The Requester indicates that Item 1 "was fulfilled by data provided in [the] report…."

directed the Department to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On October 12, 2022, the appeal was stayed upon agreement of the parties.

On December 29, 2022, the Department submitted a position statement arguing that it conducted a good faith search, "provided all responsive aggregated data for 2020 [, and that it] does not possess additional responsive aggregated data." The Department further argues that "providing the specific data correlation sought by Requester would require the creation of a new record."[5] In support of its arguments, the Department submits the attestation of Tara Trego ("Trego Attestation"), Director of the Department's Bureau of Family Health, and Danica Hoppes ("Hoppes Attestation"), Legal Administrative Officer and Open Records Officer for the Department. The Department also submitted, as Exhibit B, the attestations of Dr. Lisa McHugh, Assistant Director of the Department's Bureau of Epidemiology ("Bureau"), and Zhen-qiang Ma, Epidemiologist, who is familiar with the information implicated in this matter and the methods of data collection and storage.[6]

On December 29, 2022, the Requester submitted a position statement arguing, among other things, that the "data requested is not a request for new information but simply a request for disclosure of information already contained in [the Department's] database."

## LEGAL ANALYSIS

The Department is a Commonwealth agency subject to the RTKL. 65 P.S. § 67.301. Records in the possession of a local agency are presumed to be public, unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. §

[5] The Department argues that the "creation of a new record" has been addressed in *Walter v. Pa. Dep.t of Health*, OOR Dkt. AP 2022-1553, 2022 PA O.O.R.D. LEXIS 1912 (*Walter I)*.
[6] The attestations in Exhibit B, including an additional attestation from Tara Trego, were submitted in *Walter I.*

67.305. As an agency subject to the RTKL, the Department is required to demonstrate, "by a preponderance of the evidence," that records are exempt from public access. 65 P.S. § 67.708(a)(1). Preponderance of the evidence has been defined as "such proof as leads the fact-finder … to find that the existence of a contested fact is more probable than its nonexistence." *Pa. State Troopers Ass'n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Pa. Dep't of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

**1. The Department proved it conducted a good faith search and that no additional records responsive to Items 2-4 of the Request exist.**

The Department contends that it provided records responsive to Items 2-4 of the Request and that it has no additional records in its possession that are responsive to the Request. In support of that position, the Hoppes Attestation states, in relevant part, as follows:

> 1. On August 5, 2022 [Hoppes] received this [R]equest. That same day reviewed it, logged it, and circulated the entire [R]equest to Department personnel who [Hoppes] believed most likely to possess responsive records.
>
> 2. This initially included personnel from the Bureau of Epidemiology as well as members of the office Legal Counsel.
>
> 3. [Hoppes] attached a copy of the [R]equest, and included the following in the email: […]
>
> 4. The week after the email was circulated, a recipient from the [Bureau] raised points for discussion and also suggested that the email be forwarded to Department personnel within the Bureau of Family Health since the NAS reporting had been transitioned to that Bureau.
>
> 5. Several individuals from the Bureau of Family Health then joined in on the discussion regarding interpretation of the [R]equest and potentially responsive records.
>
> 6. Once a consensus was reached about the scope of the [R]equest and the potentially responsive records in the Department's possession, [Hoppes] was advised by the Deputy Secretary for Health Promotion and Disease Prevention within the Bureau of Family Health that the 2021 data was not finalized.

7. [Hoppes] reviewed responses to the above-described email as well as the records provided in response to this email.

8. [Hoppes] was advised that the 2020 NAS Annual Report of the Bureaus of Family Health and Epidemiology (Annual Report) contained the only responsive records in the Department's possession.

9. It was further explained that the data contained in the Annual Report was "not stratified to include to substances the infant was exposed to."

10. There was no indication that any additional records existed and none of the recipients of the email suggested additional custodians of records beyond those discussed above.

11. Accordingly, based on the inter-bureau discussions and information provided to [Hoppes], [Hoppes] concluded that the Annual Report was the only responsive record in the possession of the Department.

12. [Hoppes] included a link to the Annual Report in the Department's final response to the RTKL request, which [Hoppes] sent to the [R]equester on September 12, 2022. [Hoppes] also explained that the 2020 data was not stratified in the manner requested, and that the 2021 data was not finalized was therefore not available.

13. [Hoppes has] no information or reason to believe that the Department is possession of responsive records beyond those already provided to the [R]equester.

The Trego Attestation states, in relevant part:

1. The 2020 NAS Annual report constitutes the aggregated version of the data sought by the [R]equester, i.e., it provides the total number of cases, the total number of plans of safe care initiated, the total number of ChildLine referrals, and the total number of each category of discharge plan. The Bureau does not have additional aggregated data reflecting these categories of information.

2. The 2020 NAS Annual report is the only record in the Bureau's possession reflecting the aggregated data requested for 2020.

3. Other than the 2020 NAS Annual Report, the Bureau does not maintain an aggregated or de-identified set of data containing the requested information for the year 2020.

Under the RTKL, an attestation or statement made under the penalty of perjury may serve as sufficient evidentiary support. *See Sherry v. Radnor Twp. Sch. Dist*., 20 A.3d 515, 520-21 (Pa.

Commw. Ct. 2011); *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). In the absence of any evidence that the Department has acted in bad faith or that additional responsive records exist, "the averments in [the supplemental attestation] should be accepted as true." *McGowan v. Pa. Dep't of Envtl. Prot*., 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014) (citing *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)).

In response to a request for records, "an agency shall make a good faith effort to determine if … the agency has possession, custody or control of the record[.]" 65 P.S. § 67.901. While the RTKL does not define the term "good faith effort," in *Uniontown Newspapers, Inc. v. Pa. Dep't of Corr.*, the Commonwealth Court stated:

> As part of a good faith search, the open records officer has a duty to advise all custodians of potentially responsive records about the request, and to obtain all potentially responsive records from those in possession… When records are not in an agency's physical possession, an open records officer has a duty to contact agents within its control, including third-party contractors ... After obtaining potentially responsive records, an agency has the duty to review the records and assess their public nature under … the RTKL.

185 A.3d 1161, 1171-72 (Pa. Commw. Ct. 2018) (citations omitted), *aff'd*, 243 A.3d 19 (Pa. 2020). An agency must show, through detailed evidence submitted in good faith from individuals with knowledge of the agency's records, that it has conducted a search reasonably calculated to uncover all relevant documents. *See Burr v. Pa. Dep't of Health*, OOR Dkt. AP 2021-0747, 2021 PA O.O.R.D. LEXIS 750; *see also Mollick v. Twp. of Worcester*, 32 A.3d 859, 875 (Pa. Commw. Ct. 2011).

Here, the Hoppes Attestation states that the Department's Open Records Officer circulated an email of the Request to relevant Department personnel, including personnel from the Bureau of Epidemiology as well as members of the Legal Counsel. The Hoppes Attestation further states that records that were deemed responsive were provided to the Requester and that "[t]here was no

indication that any additional records existed and none of the recipients of the email suggested additional custodians of records beyond those discussed [in the Hoppes Attestation]." Therefore, a review of the evidence, including the "Neonatal Abstinence Syndrome: 2020 Report" reflecting the responsive data to Items 2-4 (page 34 of the Report)[7] and the Department's Open Records Officer's attestation stating that records responsive to the Request have been provided and that no further records responsive to the Request exist within the possession of the Department, the Department has met its burden that no additional records responsive to the Request exist within its possession, custody or control. *Hodges*, 29 A.3d at 1192; *see also Pa. Dep't of Health v. Mahon*, _A.3d_, (Pa. Commw. Ct. 2022) (an affidavit of open records officer who was advised that no records exist was found sufficient to prove nonexistence of records).

**2. The Department is not required to create a record that does not exist**

The Requester asserts that additional information responsive to Items 2-4 already exists because "the Department publicly acknowledged it collects data submitted by individual health facilities reporting all confirmed and probable NAS cases in infants across the state of Pennsylvania and … this information is compiled and stored on an electronic database that the Department refers to as its Internet Case Management System (iCMS)." The Department maintains that it "does not possess responsive aggregated data correlating individual substance(s) to which infants were exposed for each of the subparts of the [R]equest beyond that contained in the NAS Annual Report.

Under the RTKL, an agency is not required to create a record which does not otherwise exist. *See* 65 P.S. § 67.705; *see also Bell v. Pa. Dep't of Labor & Industry*, OOR Dkt. AP 2018-1433, 2018 PA O.O.R.D. LEXIS 1151 (finding that the agency was not required to provide

[7] Information on substances an infant was exposed to can be found on page 29 of the Report.

responsive information when doing so would require aggregating and correlating the data in a "complex, multi-step task"); *Imburgia v. Phila. Sch. Dist*., OOR Dkt. AP 2018-0635, 2018 PA O.O.R.D. LEXIS 799 (finding that the agency was not required to respond to a request where a response would require the generation of a report based on calculations made from data from various tables).

The Commonwealth Court has held that while an agency cannot be made to create a record that does not exist, "drawing information from a database does not constitute creating a record under the Right-to-Know Law." *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010); *see also Commonwealth v. Cole*, 52 A.3d 541, 549 (Pa. Commw. Ct. 2012)); *Gingrich v. Pa. Game Comm'n*, No. 1254 C.D. 2011, 2012 Pa. Commw. Unpub. LEXIS 38, *21 (Pa. Commw. Ct. 2012) ("[P]ulling information from a database is not the creation of a record"). "To hold otherwise would encourage an agency to avoid disclosing public records by putting information into electronic databases." *Cole*, 52 A.3d at 549. "An agency need only provide the information in the manner in which it currently exists." *Id*. at 547. An agency is not required to create a list or spreadsheet containing the requested information; "the information ... must simply be provided to requestors in the same format that it would be available to agency personnel." Id. at 549 n.12.

In support of its argument that it would be required to create a record, the Trego Attestation states, in relevant part, as follows:

> 6. With respect to the information requested in [Items 1-4] of the [R]equest for 2020, the aggregated statewide data reflecting the number of neonatal abstinence syndrome ("NAS") cases, the number of cases referred to ChildLine, number of Plans of Safe Care initiated and data regarding discharge plans can be found in the 2020 NAS Annual Report.

7. Because this is where the responsive aggregated data are located, [Trego] advised the [Departments AORO] to provide the 2020 NAS Annual Report in response to the above-referenced RTKL [R]equest.

8. Any information beyond the NAS Annual Report, specifically including the data underlying the reports that are maintained by the Department (NAS Database) are not aggregated but rather consist of individual case reports of NAS.

…

11. Beginning on January 1, 2020, NAS case report data have been reported to the Bureau of Family Health, where case data are integrated with newborn screening data reported to the Bureau, in an electronic database known as the internet case management system (iCMS).

12. In response to the above-referenced [R]equest, the Department provided the 2020 NAS Annual Report, prepared jointly by the Bureaus of Family Health and Epidemiology.

13. The 2020 NAS Annual Report contains aggregated, de-identified statistics generated using the raw, self-reported data submitted by reporting facilities in the attached form, referred to as the iCMS NAS report form ….

14. The iCMS NAS case report form required highly granular, patient-specific information including mothers' and infants' full names, sex, dates of birth, medical tests performed, test results, symptoms, treating physician information, and information about discharge plans.

15. The Bureau of Family Health receives the completed iCMS NAS case report forms containing data for each of these fields.

16. AS a result, the NAS dataset in iCMS consists of thousands of individual patient records consisting of detailed biographical, demographic, and medical information gleaned from individual iCMS NAS case report forms.

17. In order to provide the Requester with data that are more granular than what is contained in the 2020 NAS Annual Report while still upholding patient confidentiality, records in the NAS database would have to be completely reconfigured. This would amount to generating new custom dataset that would ultimately omit or redact much of the information that is collected on the NAS case report form and maintained by the Bureau within the Department.

18. To provide the underlying data rather than the requested statewide aggregated data would require the Department to create, compile, or reorganize records in

a format that the Bureau does not currently maintain for purposes of carrying out its public health functions.

19. While the Bureau of Family Health uses NAS database to generate Annual Reports that further public health objectives, the instant [R]equest asks the Bureau to generate an *additional* custom record that provides a greater level of detail than is necessary to meet the Department's public health responsibilities. The aggregated data have already been provided in the form of the 2020 NAS Annual report; providing the underlying facility-submitted data as simply is not possible without disclosing the detailed biographical, demographic and medical information contained in the iCMS NAS case report form.

…

24. The [R]equester now asks that NAS data for 2020 be correlated in a manner that is not presently done, specifically the [R]equester would like each of the three categories of requested information to be further broken down by specific substance(s) to which the infant(s) were exposed.

25. The Bureau does not presently correlate the NAS data in that manner. An accurate correlation of these categories of information is not currently necessary for purposes of the Department's designated public health response to the reports of NAS within the Commonwealth. All NAS probable and confirmed cases reported to the Bureau were exposed to an opioid, barbiturate, benzodiazepine, or some combination of the same, consistent with the Department's NAS case definition. While other substances may be reported on the NAS case report form, exposure to those substances is not further verified. Another limitation of the data is that data are self-reported by hospitals and information received by the Bureau of Family Health regarding notifications to Childline and initiation of plans of safe care has not been verified by the Department of Human Services.

26. The requested data stratified by substances of exposure could not be pulled directly from the existing NAS database; the Bureau would have to create a custom query to be run on the reports of all 1,825 probable and confirmed NAS cases reported to the Department with the parameters requested.

27. Providing aggregate results to correlate to the substances to which infants were exposed, as requested in [Items 2-4] is also complicated by the fact that frequently more than one substance is reported. [8]

[8] Under the RTKL, an affidavit may serve as sufficient evidentiary support. *Sherry*, 20 A.3d at 520-21; *Moore*, 992 A.2d at 909.

Here, the Trego Attestation demonstrates that the "requested data stratified by substances of exposure could not be pulled directly from the existing NAS database […]" and to do so the "Bureau would have to create a custom query [….]" Thus, the Department would be required to generate a custom dataset, which is not simply drawing information from its database. Accordingly, the Department is not required to create a record which does not otherwise exist. *See* 65 P.S. § 67.705.

## CONCLUSION

For the foregoing reasons, the appeal is **denied**, and the Department is not required to take any further action. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to the Commonwealth Court. 65 P.S. § 67.1301(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond as per Section 1303 of the RTKL. 65 P.S. § 67.1303. However, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.[9] This Final Determination shall be placed on the OOR website at: http://openrecords.pa.gov.

**FINAL DETERMINATION ISSUED AND MAILED: February 6, 2023**

*/s/ Lyle Hartranft*

_____

APPEALS OFFICER
LYLE HARTRANFT, ESQ.

Sent via portal to: Shoshana Walter; Dara Gray; Danica Hoppes, AORO; Anna LaMano, Esq.

[9] *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).