

NORTHAMPTON COUNTY, PENNSYLVANIA
DISTRICT ATTORNEY'S OFFICE

FINAL DETERMINATION

TRICIA MEZZACAPPA,	:	
Requester,	:	No. 3-ORA-2021
	:	
v.	:	
	:	
NORTHAMPTON COUNTY DISTRICT	:	
ATTORNEY'S OFFICE,	:	
Respondent.	:	

BACKGROUND

On or about August 12, 2021, Tricia Mezzacappa (“Requester”) submitted a written request to the Northampton County Solicitor’s Office, which forwarded the request to the Northampton County District Attorney’s Office (“Respondent”) pursuant to the Right to Know Law (“RTKL”). The Requester requested numerous documents, including, relevant to the instant appeal, emails between district attorney personnel and other individuals, and financial records. *See* Exhibit “A.” She also presents a series of nine (9) interrogatories. *Id.* The Respondent timely denied this request, after requesting a 30-day extension, on September 17, 2021. *See* Exhibit “B.” Relevant to the email communications, the Respondent relied on exemptions contained within Section 708 of the RTKL, the attorney work-product doctrine, and the Criminal History Record Information Act, 18 Pa.C.S.A. § 9106(c)(4) (“CHRIA”). *Id.* at 3-4. The Respondent further indicated that the Requester was not entitled to answers of the nine questions, as “a request can only seek access to existing records, rather than answers to questions.” *Id.* at 3.

The Requester appealed to the Northampton County District Attorney’s Office, dated September 23, 2021, and the appeal was received on September 27, 2021. *See* Exhibit “C.” Within the Requester’s appeal letter, she indicates that “attorney/client privilege” does not apply to protect

the information, that she is entitled to any documents that might relate to the interrogatories within her request, that the exemptions stated under Section 708 of the RTKL were not legitimate or supported by fact, and that financial records must be handed over. *Id.*

LEGAL ANALYSIS

Under Section 102, a “public record” is defined as:

A record, including a financial record, of a Commonwealth or local agency that: (1) is not exempt under 708; (2) is not exempt from being disclosed under any other Federal or State laws or regulation or judicial order or decree; or (3) is not protected by a privilege.

65 P.S. § 67.102. The burden of proving that the record is exempt rests with the public body by a preponderance of the evidence. Preponderance of the evidence requires proof “by a greater weight of the evidence.” *Commonwealth v. Williams*, 732 A.2d 1167, 1187 (Pa. 1999). In *Commonwealth v. McJett*, 811 A.2d 104, 110 (Pa. Commw. 2002), the Commonwealth Court explained that “preponderance of the evidence is tantamount to a ‘more likely than not’ standard.”

First, with respect to the nine interrogatory-style questions contained within the request, the Respondent contends that the Requester is not entitled to responses, because “a request can only seek access to existing records, rather than answers to questions.” Exhibit “B” at 3. This Appeals Officer agrees. Under the RTKL, agencies are only required to provide records in response to a request, rather than answer to questions. *See, generally*, 65 P.S. §§ 67.301-67.302 (providing that agencies are required to provide access to “public records” under the RTKL). These questions do not trigger a response under the RTKL, as “[t]he [RTKL does] not provide citizens the opportunity to propound interrogatories upon local agencies, rather it simply provides citizens access to existing public records.” *Stidmon v. Blackhawk Sch. Dist.*, No. 11605-2009 (C.C.P. Beaver Dec, 14, 2009); *see also Gingrich v. Pa. Game Comm’n*, 2012 WL 5236229 (Pa. Commw. 2012) (noting that portion of request “set forth as a question” did not “trigger a

response”) (unpublished memorandum). As the questions set forth by the Requester did not seek records, the RTKL is inapplicable.

Second, with respect to the requested email communications from and received by personnel of the District Attorney’s Office, Respondent asserts that these records are protected from disclosure under the attorney work-product doctrine. *See* Exhibit “B” at 3-4. Again, this Appeals Officer agrees. The attorney work-product doctrine prohibits the disclosure of “mental impressions of a party’s attorney or his or her conclusions, opinions, memoranda, notes or summaries, legal research or legal theories.” Pa.R.C.P. 4003.3. The Supreme Court of Pennsylvania has found: “The purpose of the work-product doctrine is to protect the mental impressions and processes of an attorney acting on behalf of a client, regardless of whether the work product was prepared in anticipation of litigation.” *BouSamra v. Excelsa Health*, 210 A.3d 967, 976 (Pa. 2019) (citing *Lepley v. Lycoming Cty. Ct. of Common Pleas*, 393 A.2d 306, 310 (Pa. 1978)). The work-product doctrine also “protects materials prepared by agents for the attorney.” *Commonwealth v. Kennedy*, 876 A.2d 939, 945 (Pa. 2005). Here, as the Requester acknowledges in her request and appeal, these email communications occurred in the context of the Requester being prosecuted on criminal charges by the Respondent, who represented the Commonwealth of Pennsylvania. *See* Exhibit “A.” As such, these email communications, containing the mental impressions, strategy, and opinions of attorneys and personnel for the District Attorney’s Office, are protected from disclosure under the work-product doctrine.

Third, the Respondent indicates that the email communications contain material that is exempt from disclosure under the criminal investigation provision. Specifically, the Respondent contends that the requested records are criminal investigative records that are exempt from disclosure under 65 P.S. § 67.708(b)(16)(ii). In that Section, records of an agency relating to or

resulting in a criminal investigation, “including . . . [i]nvestigative materials, notes, correspondence, videos and reports,” are exempt from disclosure. *Id.* This Officer finds that the Respondent has proven that the requested records relate to a criminal investigation and are exempt.

In *Pennsylvania State Police v. Office of Open Records*, 5 A.3d 473, 479 (Pa. Commw. 2010), the Commonwealth Court held that incident reports which contain investigative materials are exempt from the definition of a public record and are not subject to disclosure or redaction. Further, Section 708 exempts release of “[a] record of an agency relating to or resulting in a criminal investigation.” 65 P.S. § 67.708(b)(16). The records at issue are communications related to a criminal investigation and criminal prosecution, as is admitted by the Requester. *See* Exhibit “A.” The Respondent indicated that there were criminal charges and that there was a criminal investigation filed against her. *See* Exhibits “A.” Accordingly, it is clear that the requested material falls within the definition of items that are exempt from disclosure.

Additionally, CHRIA prohibits the disclosure of the information requested. This information is “investigative information” which is defined by CHRIA as: “[I]nformation assembled as a result of the performance of any inquiry, formal or informal, into a criminal incident or an allegation of criminal wrongdoing and may include *modus operandi* information.” 18 Pa.C.S.A. § 9102. Importantly, 18 Pa.C.S.A. § 9106(c)(4) specifies that: “Investigative and treatment information shall not be disseminated to any department, agency or individual unless the department, agency or individual requesting the information is a criminal justice agency which requests the information in connection with its duties, and the request is based upon a name, fingerprints, *modus operandi*, genetic typing, voice print or other identifying characteristic.” The Requester is not a “criminal justice agency” as defined by 18 Pa.C.S.A. § 9102. Therefore, the requested information cannot be disseminated to the Requester under CHRIA.

Additionally, in *Barros v. Martin*, 92 A.3d 1243 (Pa. Commw. 2014), a prisoner who requested documents relating to the homicide investigation for which he was incarcerated was denied access because the documents were exempt under both the RTKL and CHRIA. The Commonwealth Court cited to *Sullivan v. City of Pittsburgh, Dept. of Public Safety*, 561 A.2d 863, 864-65 (Pa. Commw. 1989), and found that criminal investigative records remain exempt from disclosure even if the investigation is completed. *Barros*, 92 A.3d at 1250. The court held: “Thus, if a record, *on its face*, relates to a criminal investigation, it is exempt under the RTKL pursuant to Section 708(b)(16)(ii).” *Id.* (emphasis added) (citing *Coley v. Philadelphia Dist. Attorney’s Office*, 77 A.3d 694, 697 (Pa. Commw. 2013); *Mitchell v. Office of Open Records*, 997 A.2d 1262, 1264 (Pa. Commw. 2010)). Here, the email communication records regarding the pending and completed criminal investigation against the Requester are, on their face, related to a police investigation and prosecution, and are therefore exempt from disclosure.

Fourth, the Respondent indicated that it did not have records that complied with the Requester’s request for financial documents. The Respondent, in response to this request, is “not . . . required to create a record which does not currently exist.” 65 P.S. § 67.705. In addition, the Requester is only required to provide records that exist at the time of the request, rather than records that might be created in the future. *See Lewellyn v. Penn Forest Township*, OOR DCT Ap. 2014-1831. As the requested financial records did not exist at the time the request was made, the RTKL does not require the release of any information.

CONCLUSION

For the foregoing reasons, and because the Respondent has met its burden of proof by the preponderance in showing that the requested records are exempt from disclosure, protected from disclosure, or are not governed by the RTKL, the Requester's appeal is denied. This Final Determination is binding on the parties. Within thirty (30) days of the mailing of this determination, any party may appeal to the Northampton County Court of Common Pleas under 65 P.S. §67.1302(a). All parties must be served with the notice of the appeal.



KATHARINE R. KURNAS, ESQUIRE
Appeals Officer for Northampton County
District Attorney's Office

Date: October 8, 2021

SENT TO:

ADA Nicole Cheskey, Open Records Officer
669 Washington Street
Easton, PA 18042
daopenrecords@northamptoncounty.org

AND

Tricia Mezzacappa
Monroe County Jail
#20210000429
4250 Manor Drive
Stroudsburg, PA 18360
Tricia817@ptd.net

Right To Know

RTK-01321

Owner



General

Contact Tricia Mezzacappa

Request

Dear Mr. Tim Brennan:

:
:
:

I have no form, so please accept this as a RTKL request. I am seeking the following records in the least costly medium, CD or flash drive, since I cannot pay for the paper copies due to incarceration. Do not incur fees prior to preparation of records.

Request Details

Copies	No	Inspect	No
Certified	No	Submitted Via	Mail
5 Days	8/19/2021	30 Days	9/18/2021

1. any document that shows departmental overtime costs, by budgetary line item from 1/1/2020 to present (annual summaries only by department)
2. all emails to and from Ken Kraft, Lamont McClure, Bernie O'Hare, District Attorney personnel and Art Frey (probation) from 6/18/21 to present that include the key words/ phrases Mezzacappa, constable, council meetings, committee meetings, mug shots, title searches, election (please forward this request to the DA RTK Officer so she can search for the emails).
3. The policy & procedure manual from 3rd party contractor PrimeCare Medical that includes information on correctional medical care, state regulations, pharmacy practices, out patient/ in patient surgery and medical appointments
4. any Budget summary from 1/1/2020 to present that shows all revenues received and disbursed, including variances and over/under budget expenses (both revenue and expenditures). The document should list the info by department, summaries only for the entire year (not monthly detail).
5. any document showing payments to Bernie O'Hare from 1/1/21 to present/
6. Any document/ record/ mem/ email that answers the attached 9 questions.

Responses: Verify Email EXISTS for email responses

Response	Reply Method
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Dates

Received On	8/12/2021 8:00 AM	Closed on	
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Responded On

Fees

Fees	Fees Paid
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Addendum to 8/9/21 RTK request. Here are the 9 questions: (forward to DA RTK Officer if needed)

1. who gave my mug shot to Bernie O'Hare. It was spread by O'Hare & his friend Matthew Dees in West Easton (West Easton Borough Council President) with such psychotic persistence that it appears on page 1 of Google searches in my name. You argued it is not public & protected by CHRIA, therefore I demand an answer to this

Write-Off

Exhibit "A"

state sponsored crime.

2. Need to know why Judge Morganelli, DA Terry Houck & Judge Baratta allow O'Hare to have unfettered access to confidential records at the courthouse? while also allowing O'Hare to stalk, harass, dox, rob & abuse me & my family for over 10 years? Bernie O'Hare was suspended from the practice of Law in 1986 for forgery, fraud, dishonesty, conduct that is prejudicial to the practice of law, crimes of moral turpitude & other offenses.

(CONTINUED IN ATTACHMENT)



8/9/21

RTK-1321

Dear Mr. Tim Brennan,

I have no form, so please accept this as a RTKL request. I am seeking the following records in the least costly medium, CD or Flash Drive, since I cannot pay for paper copies due to incarceration. Do not incur fees prior to preparation of records.

- 1) any document that shows departmental overtime costs, by budgetary line item from 1/1/2020 to present (annual summaries only) by department
- 2) all emails to and from Ken Krafe, LaMont McClure, Bernie O'Hare, District Attorney personnel and art Frey (Probation) from 6/1/21 to present that include the key words/phrases Mezzacappa, Constable, Council meetings, committee meetings, mug shots, title searches, election. (Please forward this request to DA RTKL officer so she can search for the emails)
- 3) The policy & procedure manual from 3rd Party contractor Primecare Medical that includes information on correctional medical care, state regulations, pharmacy practices, out patient/inpatient surgery and medical appointments
- 4) any Budget summary from 1/1/2020 to present that shows all revenues received & disbursed, including variances and over/under budget expenses [Both revenue and expenditures] The document should list the info by department. Summaries only for the entire year (not monthly detail)
- 5) any document showing payments to Bernie O'Hare from 1/1/21 to present.

Thank you -

Tricia Mezzacappa, Political Prisoner
Monroe County Jail # 20210000429
4250 Manor Drive
Stroudsburg, PA 18360

RECEIVED

AUG 12 2021

NORTHAMPTON COUNTY
OFFICE OF THE SOLICITOR

- 6) any document/record/memo/email that answers the attached 9 questions. Sorry in advance, I know it will "offend" certain people. It is unfiltered, but necessary.

who gave my mug shot to ^{*}Bernie O'Haire
in contradiction of jail policy? was it the worthless
overpaid piece of shit
Ken Kraft?
asking for the
Comptenth (?)
10th time.

PENNSYLVANIA
OFFICE OF OPEN RECORDS

Tricia Mezzacappa,

Requester,

vs.

Northampton County,

Respondent.

Docket No.: AP 2021-2718

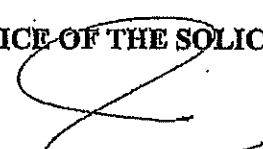
CERTIFICATE OF SERVICE

I, Timothy P. Brennan, Esquire, hereby certify that, on the date herein, I have caused a true and correct copy of the foregoing document to be served via First-Class Mail and electronic mail upon the following person(s):

Tricia Mezzacappa, Political Prisoner
c/o Lt. Megan Devers
Monroe County Correctional Facility
4250 Manor Drive
Stroudsburg, PA 18360

was the motion to
consolidate granted
or denied?

OFFICE OF THE SOLICITOR


Timothy P. Brennan, Esquire
Attorney ID No. 91798
669 Washington Street
Easton, PA 18042
P: (610) 829 - 6350
F: (610) 559 - 3001
tbrennan@northamptoncounty.org

Date: August 5, 2021

* IF I get the much needed PFA/restraining order against this
psychotic scumbag, and then get hired as the County RTK
officer, the O'Haire problem will be solved b/c he won't be
allowed at the courthouse. A friend of mine was banned from
a local hospital b/c his ex-wife worked there as an ER nurse,
anything is possible. Since the County destroyed my life,
reputation & livelihood, this seems like a reasonable solution, no?
Did Judge Barretta grab this case from Roscioli? SAD!

addendum to 8/9/21 RTK request. Here are the 9 questions: (Forward to DA RTK officer if needed).

- ① Who gave my mugshot to Bernie Ottare? It was spread by Ottare & his friend Matthew Dees in West Easton (West Easton Borough Council President) with such psychotic persistence that it appears on page 1 of google searches in my name. You agreed it is not public & protected by CHRIA, therefore I demand an answer to this state sponsored crime.
- ② Need to know why Judge Marqanelli, DA Terry Heuck & Judge Barratta allow Ottare to have unfettered access to confidential records at the courthouse? ... while also allowing Ottare to stalk, harass, dox, rob & abuse me & my family for over 10 years? Bernie Ottare was suspended from the practice of Law in 1986 for Forgery, Fraud, dishonesty, conduct that is prejudicial to the practice of Law, crimes of moral turpitude & other offenses. His reinstatement was conditioned on the requirement that he submit a psychiatric report stating he is mentally stable enough to return to practice. He has NEVER been reinstated.
- ③ Why has Ottare not been arrested? PSP trooper Brian Finn said it was NOT Trooper Drew Hoffman who gave my confidential case record to Bernie Ottare, but rather, "The District Attorney's Office". Ottare uploaded the protected information to his blog, numerous times, and has never removed it, despite its content that mentioned a 2016 sexual assault by Mayor Dan DePaul of West Easton.
- ④ Who gave Bernie Ottare the date, location, place, make an model of my January 2021 gun purchase? Ottare posted this non-public → ^{over}

information on his blog in Jan. 2021. I reported this dangerous leak to PSP Belfast, Sheriff, BATFE, and DA, Judge Barratta (in court) but nothing was ever done about it. Why? My gun was stolen as a result.

(5) Why did Judge Barratta allow career criminal, disbarred Bernie Offere into courtroom to during my 4/21/21 sentencing? allowed in over my objections, with full knowledge that Offere extorted and terrorized my dying innocent mother, who paid Offere to go away, leave me alone, never come within 1000 feet of me or my family & to scrub my name off his disgusting hate blog? Why does Judge Barratta enable Offere's criminal conduct with these rewards? (See 2014 court order signed by Judge Barratta than BANS me from filing PFAs against Offere? Was the 2014 order vacated? I filed 3 PFAs from 2012-2014, and one by motion in 2021. all were denied.

(6) Why were 6 private criminal complaints that I filed against Bernie Offere from 2011 to present denied under "Prosecutorial Discretion" when any other person in this county would be arrested, charged, prosecuted & jailed for same conduct? (or far less conduct than Offere perpetrates daily)

(7) How many police reports in Northampton County were made against Offere for stalking, following, photographing and exploiting little boys? (from 2005 to present) and why has Morgarelli & Houck done nothing about this obvious pedophilic behavior, when Offere himself posts it on his blog www.lehighvalleyramblings.blogspot?

⑧ what is the dollar amount that Northampton County was forced to expend on Ottare related lawsuits, drama, leaks, firings, criminal matters & civil matters. (reference: Ottare lawsuit over Reihman 1999 bond issue \$100 million open space bond, Ottare lawsuit 2011 Grace date Ballot question, Mezzacappa False arrest & Malicious Prosecution 2015-2018, Mezzacappa mugshot case 2020-present, fired Sheriff(s), fired correctional officers, fired court officers, multiple complaints, etc including Bill Villa malicious prosecution, Tim Gregory false PFA, Carl Stryc matter, & Karen Dolan Grand Jury investigation, and all other matters where Ottare is involved)

⑨ why were no charges filed against West Easton Mayor Dan DePaul for sexually assaulting me in 2016? Despite my PSP report in 2018, and 2019 & was this because Terry Houck used Dan DePaul as a campaign worker in the 2019 District Attorney race? Why does DA Terry Houck look the other way (same as Judge John Morganelli) where DePaul is concerned? (Despite DePaul having a prior criminal expunged record for abusing women?) why are politics taking a front seat over public safety every day in the Northampton County DA's office, and when was the last time an M3 First offense, single charge, taken to Jury Trial? Or, was my case, first offense M3, the only time a case was taken to jury trial, without a lawyer to represent me, in the history of Northampton County from 1795 to present?

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DISTRICT ATTORNEY'S OFFICE
2021 SEP 27 AM 11:54

First Assistant D.A.
RICHARD H. PEPPER

Chief Deputy D.A.
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REBECCA J. KULIK
PATRICIA F. MULQUEEN
TATUM WILSON

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ALEC COLQUHOUN
JULIANNE DANCHAK
ADRIANNE DOLL
AARON GALLOGLY
KATHARINE KURNAS
PATRICIA TURZYN

Tricia Mezzacappa
VIA MAIL & EMAIL:
Monroe County Jail
#20210000429
4250 Manor Drive
Stroudsburg, PA 18360

Tricia817@ptd.net

RE: Right to Know Request

September 17, 2021

Please be advised that this office acknowledges receipt of your request, forwarded to us by the solicitor's office, dated August 12, 2021, and received on the same date in which you requested the following information:

1. Any document that shows departmental overtime costs, by budgetary line item from 1/1/2020 to present (annual summaries only) by department.
2. All emails to and from Ken Kraft, Lamont McClure, Bernie O'Hare, district attorney personnel and Art Frey (probation) from 6/18/2021 to present that include the keywords/phrases Mezzacappa, Constable, council meetings, committee meetings, mug shots, title searches, election. (Please forward this request to DA RTK officer so she can search for the emails).
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4. Any budget summary from 1/1/2020 to present that shows all revenues received and disbursed, including variances and over/under budget expenses (both revenue and expenditures). The document should list the info by department. Summaries only for the entire year (not monthly detail).
5. Any document showing payments to Bernie O'Hare from 1/1/2021 to present.
6. Any document (record) memo/email that answers the attached 9 questions.
 1. Who gave my mug shot to Bernie O'Hare? It was spread by O'Hare and his friends Matthew Dees in West Easton (West Easton Borough Council President) with such psychotic persistence that it appears on page one of google searches in my name., You argued it is not public and protected by CHRIA, therefore I demand an answer to this state sponsored crime.
 2. Need to know why Judge Morganelli, DA Terry Houck and Judge Barratta allow O'Hare to have unfettered access to confidential records at the courthouse? While also allowing O'Hare to stalk, harass, dox, rob and abuse me and my family for over 10 years? Bernie O'Hare was suspended from the practice of law in 1986 for Forgery, Fraud, Dishonesty, conduct that is prejudicial to the practice of law, crimes of moral turpitude and other offenses. His reinstatement was conditioned on the requirement that he submit a psychiatric report stating he is mentally stable enough to return to practice. He has never been reinstated.



Exhibit "B"

**TERENCE HOUCK
DISTRICT ATTORNEY**

**COUNTY OF NORTHAMPTON
OFFICE OF THE DISTRICT ATTORNEY**

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PATRICIA TURZYN

3. Why has O'Hare not been arrested? PSP Trooper Brian Finn said it was not Trooper Drew Hoffman who gave my confidential case record to Bernie O'Hare, but rather, "The District Attorney's Office." O'Hare uploaded the protected information to his blog, numerous times, and has never removed it, despite its content that mentioned a 2016 sexual assault by Mayor Dan DePaul of West Easton.
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5. Why did Judge Barratta allow career criminal disbarred Bernie O'Hare into courtroom ten during my 4/21/21 sentencing? Allowed in over my objections with full knowledge that O'Hare extorted and terrorized my dying innocent mother, who paid O'Hare to go away, leave me alone, never come within 1,000 feet of me or my family and to scrub my name off his disgusting hate blog? Why does Judge Barratta enable O'Hare's criminal conduct whit these rewards? (See 2014 court order signed by Judge Barratta that bans me from filing PFA's against O'Hare? Was the 2014 order vacated? I filed 3 PFA's from 2012-2014, and one by motion in 2021. All were denied.
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8. What is the dollar amount that Northampton County was forced to expend on O'Hare related lawsuits, drama, leaks, firings, criminal matters, and civil matters? (reference: O'Hare lawsuit over Reibman 1999 bond issue. \$100 Million open space bond, O'Hare lawsuit 2011 Gracedale Ballot question, Mezzacappa false arrest and malicious prosecution 2015-2018, Mezzacappa mugshot case 2020-present, fired sheriffs, fired correctional officers, fired court officers, multiple complaints, etc. including Bill Villa malicious prosecution, Jim Gregory false PFA, Carl Strye matter, and Karen Dolan grand jury investigation, and all other matters where O'Hare is involved).
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the only time a case was taken to Jury Trial, without a lawyer to represent me, in the history of Northampton County from 1795 to present?

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JULIANNE DANCAK
ADRIANNE DOLL
AARON GALLOGLY
KATHARINE KURNAS
PATRICIA TURZYN

We requested an extension Pursuant to section 902(a) of the Right to Know Law on August 19, 2021 and let you know that we expected to respond to your request by today.

As to your request listed in the section entitled (4.) for summaries of the entire year for revenues received and disbursed from 1/1/2020 to present, our calendar year for budgetary purposes runs until November of 2021. Therefore, we do not have an annual summary at this point in time, and therefore no record responsive to this request. We also possess no record responsive to your request for the overtime annual summaries from 1/1/2020 until present, the section entitled (1.) of your request, because none of our employees were paid overtime during the time period you requested. Additionally, in response to your request in section (5.), for payments made to Bernie O'Hare from 1/1/2021 to present, we possess no record of any payments to Bernie O'Hare from 1/1/2021 to present, as no payments were made and therefore no record exists.

Your request in section (3.) for the policy and procedure manual from the contractor PrimeCare Medical is misdirected. After receiving your request, we conducted a search of our records and determined that we do not possess any records pertaining to the above medical contract manual. As a result, the District Attorney's Office does not possess records responsive to your request. Your request is misdirected, because our office prosecutes criminal matters, but I am not aware of the entity that maintains these records.

As for your request entitled (6.) for answers to a series of nine numbered questions, a request can only seek access to existing records, rather than answers to questions. See Stidmon v. Blackhawk School District, No. 11605-2009 at 5 (C.P. Beaver December 14, 2019) (denying requestor the opportunity to propound interrogatories on local agency); Gingrich v. Pennsylvania Game Commissioner, No. 1254 C.D. 2011 (Pa. Cmwlth, January 12, 2012) (portion of a request "set forth as a question" did not "trigger a response"). Therefore the Right to Know Law does not apply to such questions.

Finally, based on your request in number (2.) for all emails to and from the designated parties from 6/18/2021 to present including the seven keywords, our IT Department conducted a search for said emails. After reviewing the emails, please be advised that the request for the emails containing said keywords must be denied. This office relies on Section 708 of the Right to Know Law, and the Attorney Work-Product Doctrine.



TERENCE HOUCK
DISTRICT ATTORNEY

**COUNTY OF NORTHAMPTON
OFFICE OF THE DISTRICT ATTORNEY**

Northampton County Government Center
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ADRIANNE DOLL
AARON GALLOGLY
KATHARINE KURNAS
PATRICIA TURZYN

The attorney work-product doctrine prohibits disclosure "of mental impressions of a party's attorney or his or her conclusions, opinions, memoranda, notes or summaries, legal research or legal theories." See Pennsylvania Rules of Criminal Procedure § 4003.3.

Section 708 of the Right to Know Law provides that certain records are subject to an exemption for disclosure as follows:

- ... (16) A record of an agency relating to or resulting in a criminal investigation, including:
- (i) Complaints of potential criminal conduct other than a private criminal complaint.
 - (ii) Investigative materials, notes, correspondences, videos, and reports.
- ... (vi) A record that, if disclosed, would do any of the following: endanger the life or physical safety of an individual.

The information you request involves a criminal investigation. As such, it is exempt from disclosure. See *Coley v. Philadelphia District Attorney's Office*, 77 A.3d 694, 696 (Pa. Commw. 2013) (denying access to investigative materials because criminal investigation records are still exempt after investigation is completed).

Additionally the Criminal History Record Information Act 18 Pa.C.S. § 9106(c)(4) states that "investigative and treatment information shall not be disseminated to any department, agency or individual unless the department, agency, or individual requesting the information is a criminal justice agency."

Investigative information is "information assembled as a result of the performance of any inquiry, formal or informal, into a criminal incident or allegation of criminal wrongdoing and may include modus operandi information." 18 Pa.C.S. § 9102. The information you have requested is "investigative information" and you are not a criminal justice agency, so the information you requested cannot be released.

If you choose to appeal this decision, it must be filed with the Office of Open Records as follows, within fifteen (15) business days of this date pursuant to 65 P.S. § 67.1101:

Commonwealth of Pennsylvania
Office of Open Records
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg PA 17120-0225



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DISTRICT ATTORNEY**

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AARON GALLOGLY
KATHARINE KURNAS
PATRICIA TURZYN

You may also appeal to the Northampton County Court of Common Pleas within thirty days (30) of the mailing date of this decision. See 65 P.S. § 67.1302(a). All parties must be served with notice of the appeal.

Sincerely,



Nicole A. Cheskey
Open Records Officer
District Attorney's Office



DISTRICT ATTORNEY COPY

Tricia Mezzacappa

v.

Northampton County

District Attorney's
Office

Right to know Law appeal
for denial of records

PETITION FOR APPEAL OF DENIAL
OF RECORDS SOUGHT UNDER RTK LAW

1. I, Tricia Mezzacappa, inmate at Monroe County Jail, submit to Northampton County Court, a Petition for Review of the District Attorney's office denial of records dated September 17th, 2021.

2. The request dated 8/19/21 was received by the DA's Office, to which they submitted a timely response after the allowable 30 day delay for legal review.

3. Their response is a blanket denial⁽¹⁾ of all records requested and amounts to an abuse of discretion which includes the following:

A. "Attorney/Client privilege" which is not applicable because I was forced to self represent my matters before a jury.

B. Right to know Law states that exemptions taken under section 708, subsection 16 must be legitimate and supported by fact in order to be used as a reason to deny records. The office of open records does not have jurisdiction in this matter.

C. I did not ask questions, rather sought "any document, email/memo" which supports answers to 9 questions within the request.

D. Financial records are available and must be produced.

(over) →

Exhibit "C"

DISTRICT ATTORNEY'S OFFICE
FILED
SEP 27 2021

(1) The Primercare Medical records is being appealed to the Office of Open Records and is not part of this petition for review; county financial records also under appeal at OOR.

VERIFICATION

I, Tricia Mezzacappa, inmate at Monroe County Jail, swear under penalties of perjury that the handwritten petition for review is true & correct to the best of my knowledge & belief. I understand that false statements can subject me to punishment including jail time, I have no access to funds to pay docketing fee.

Sincerely-

Tricia Mezzacappa # 20210000429

CERTIFICATE OF SERVICE

I, Tricia Mezzacappa, inmate at Monroe County jail, certify & swear that an original handwritten copy of the Petition For Review was sent on September 23, 2021 via regular First Class mail to:

Nicole A. Cheskey
Open Records Officer
Northampton County District Attorney's Office
1669 Washington St.
Easton, PA 18042

Sincerely-

Date: 9/23/21

Tricia Mezzacappa # 20210000429
Monroe County Jail
4250 Manor Drive
Stroudsburg, PA 18360