

Under 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.

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA  
CIVIL ACTION—LAW

MONTGOMERY COUNTY

*Appellant,*

v.

JONATHAN ALDERFER

*Appellee.*

:  
:  
:  
:  
:  
:  
:

RIGHT TO KNOW LAW APPEAL

Docket No.: 2022- 21263

**ORDER**

AND NOW, this                      day of                      , 2022, upon consideration of Montgomery County's Notice of Appeal and Petition for Judicial Review, it is ORDERED and DECREED that the Final Determination dated September 30, 2022, by Appeals Officer Lyle Hartranft, Esquire, of the Pennsylvania Office of Open Records is hereby REVERSED. The Appeal of Montgomery County in the above-captioned matter is GRANTED and that Montgomery County is not required to take any further action.

BY THE COURT:

\_\_\_\_\_, J.

RECEIVED

OCT 31 2022

OFFICE OF OPEN RECORDS

Case# 2022-21203-2 Docketed at Montgomery County Prothonotary on 10/28/2022 12:00 PM, Fee = \$0.00. The filer certifies 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.

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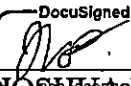
IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA  
CIVIL ACTION--LAW

MONTGOMERY COUNTY	:	
<i>Appellant,</i>	:	
v.	:	RIGHT TO KNOW LAW APPEAL
	:	
JONATHAN ALDERFER	:	Docket No.: 2022-_____
<i>Appellee.</i>	:	
	:	

**REQUEST FOR BRIEFING SCHEDULE/ORAL ARGUMENT**

Appellant, Montgomery County, respectfully requests a briefing schedule in order to submit a brief on the issues herein and oral argument on its Petition Requesting Judicial Review of a Final Determination dated September 30, 2022, of the Office of Open Records of the Commonwealth of Pennsylvania.

Respectfully submitted:

DocuSigned by:  
  
 JOSHUA M. STEIN, ESQUIRE  
*Solicitor for Montgomery County*

Dated: 10/28/2022

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.

**MONTGOMERY COUNTY SOLICITOR'S OFFICE**

By: Joshua M. Stein, Esquire  
Attorney I.D. No.: 90473  
One Montgomery Plaza, Suite 800  
P.O. Box 311  
Norristown, PA 19404-0311  
[Jstein1@montcopa.org](mailto:Jstein1@montcopa.org)  
(610) 278-3033

**IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA  
CIVIL ACTION—LAW**

MONTGOMERY COUNTY	:	
<i>Appellant,</i>	:	
v.	:	RIGHT TO KNOW LAW APPEAL
	:	
JONATHAN ALDERFER	:	Docket No.: 2022-_____
<i>Appellee.</i>	:	
	:	

**PETITION FOR JUDICIAL REVIEW OF A FINAL DETERMINATION OF THE  
OFFICE OF OPEN RECORDS FOR THE COMMONWEALTH OF PENNSYLVANIA**

Appellant, Montgomery County, ("County") by and through the County Solicitor, Joshua M. Stein, Esquire, respectfully files this Petition for Judicial Review and avers the following:

1. The County Appellant is a political subdivision of the Commonwealth of Pennsylvania and a Class 2A county, and governed by the County Commissioners. The County Appellant has a principal office at One Montgomery Plaza, Suite 800, Norristown, PA 19404-0311 and is a "Local Agency" as that term is defined in the Pennsylvania Right-to-Know Law ("RTKL") See 65 P.S. §67.102 and §67.302.
2. Based upon information and belief, the Appellee, Jonathan Alderfer, is an adult individual with a residential address of 624 School House Road, Telford, PA 18969.

3. This Court has jurisdiction to review a decision of the Office of Open Records pursuant to 65 P.S. §1302(a). The Court may exercise functions of a factfinder and has the discretion to create its own record. *Bowling v. Office of Open Records*, 75 A.3d 453 (Pa. 2013).

4. The following is a timeline of the communication between the Appellant, Jonathan Alderfer, and the Pennsylvania Office of Open Records ("OOR"), attached hereto, incorporated herein and labeled as follows:

a. On June 21, 2022, the Agency Open Records Officer received Appellee's RTKL Request pursuant to 65 P.S. §67.101 *et seq.*, with Montgomery County seeking "Pursuant Pennsylvania Right to Know Law, 65 §66.1 *et seq.*, I am requesting a copy of the Montgomery County county "Batch Manifest Report" also called the "Tabulator Batch Report" for all of the elections that were on the ballot for the November 3, 2020 General Election. The Pennsylvania Right to Know Law requires a response time within five business days. If access to the records I am requesting will take longer than this amount of time, please contact me with information about when I might expect copies or the ability to inspect the requested records."

A copy of the original RTK Request filed by Mr. Alderfer is attached hereto as Exhibit "A."

b. On June 27, 2022, the County requested a 30-day extension of time in which to respond to the Request. A copy of that letter is attached hereto as Exhibit "B."

c. On July 28, 2022, rather than simply denying access entirely and in the interest of being transparent as possible, the County issued a denial letter for the reasons set forth within that letter, and provided the Requester with a Voters Public

Information Data Request Form, which provides access to Public Records pursuant to the access provisions of the Election Code. A copy of that letter with its enclosure is attached hereto as Exhibit "C."

d. On August 10, 2022, Appellant County submitted two Affidavits signed by Solicitor, Joshua M. Stein, denying the Request pursuant to Sections 708(b)(3) and (4) of the RTKL (See, 65 P.S. §§ 67.708(b)(3)(i)-(iii) and 65P.S. § 67.708(b)(4)) and under Pennsylvania's Election Code, 25 P.S. § 2648. A copy of the Affidavits submitted are attached as Exhibits "D" and "E."

e. On September 19, 2022, after further inquiry from the Office of Open Records, Appellant County submitted a Supplemental Affidavit signed by Solicitor, Joshua M. Stein, reiterating "Batch Manifest Report" also called the "Tabulator Batch Report" is akin to the "SQL database back up from the Election Management System (EMS), in a digital format, for all of the elections that were on the ballot for the November 3, 2020 General Election" that Mr. Alderfer is requesting is arguably much more than "a text-file report generated from the County's Election Management Server" as he broadly contends. Stein Supp. Aff. ¶ 8.

f. A copy of the Affidavit submitted is attached as Exhibit "F".

g. On September 30, 2022, the OOR issued its Final Determination for the underlying RTK request under Docket No.: AP-2022-1779, which is attached hereto as Exhibit "G."

5. The Final Determination issued by the OOR Appeals Officer is erroneous as a matter of law and constitutes an abuse of discretion because the Appeals Officer at the Office of Open Records had no authority to grant access to documents that are governed by the plain language public access provisions of the Pennsylvania Election Code.

6. In his final determination, the Appeals Officer either contradicts himself by finding that, “There is no evidence demonstrating that Attorney Stein is a person without sufficient knowledge or expertise to credibly speak as to the contents of the records,”<sup>1</sup> but then goes on to say “it is not clear how individually identifiable voter information is implicated, or how such a record constitutes “the contents of ballot boxes and voting machines” and more detailed evidence from a person with knowledge would have been beneficial in determining whether the requested records are exempt under the Election Code.”

7. While the Appeals Officer determined, “There is no evidence demonstrating that Attorney Stein is a person without sufficient knowledge or expertise to credibly speak as to the contents of the records” they then go on to dismiss the facts submitted by Attorney Stein under penalty of perjury, though they apparently would be accepted if submitted by someone “better situation to explain how the Report works and what information it contains.”<sup>2</sup>

8. The Appeals Officer further overreaches his authority by opining that, “Attorney Stein appears to list information in the Report (i.e. “[t]he batch manifest report lists the scanner that was used, the batch number, the precincts, and the number of ballots scanned in a batch”) that does not appear to be covered by the Election Code.”

9. Despite the contorted reasoning underpinning the Final Determination of the Appeals Officer in this case, the RTKL by its own plain language does not apply, and the Final Determination should be reversed, as the access provisions of the Election Code control public access to the records requested. “If the provisions of the [RTKL] conflict with any other federal or state law, the provisions of the [RTKL] shall not apply.” See 65 P.S. §67.3101.1.

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<sup>1</sup> See Final Determination, *In the Matter of Jonathan Alderfer v. Montgomery County*, O.O.R. Dkt. No. AP-2022-1779, dated September 30, 2022.

<sup>2</sup> See Final Determination, *In the Matter of Jonathan Alderfer v. Montgomery County*, O.O.R. Dkt. No. AP-2022-1779, dated September 30, 2022.

10. 7. Attorney Stein is the Solicitor of the County of Montgomery. Attorney Stein also serves as the County's Agency Open Records Officer, and he is also the assigned Solicitor for the Department of Information Technology Services.<sup>3</sup>

11. After conferring with the County's Chief Information Officer, who had submitted an Affidavit in the instant appeal and a similar appeal by the same Requester, which was filed the same day as the underlying Request but docketed under AP-2022-1777, it was determined that the Batch Manifest Report/Tabulator Batch Report is a spreadsheet or a report that must be created; further, the Batch Manifest Report/Tabulator Batch Report lists each batch of ballots that were scanned in a voting precinct. Batches are limited to 200 ballots and all come from the same voting precinct. The batch manifest report lists the scanner that was used, the batch number, the precincts, and the number of ballots scanned in a batch of scanned, live ballots.

12. Under the RTKL, an agency is not required "to create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which the agency does not currently compile, maintain, format or organize the record." 65 P.S. § 67.705.

13. While the Pennsylvania Supreme Court has held that the Right-to-Know Law should be liberally construed to effectuate the purpose of promoting access to government information in order to scrutinize the actions of public officials, *Commonwealth Department of Public Welfare v. Eiseman*, 125 A.3d 19 (Pa. 2015), providing access to the Records at issue in this appeal under the RTKL is violative of the plain language public access provisions of Section 2648 of the Election Code, is violative of the conflict of law provisions under the RTKL at §67.3101.1, and raises constitutional questions regarding secrecy of voting and the protections afforded to ballot anonymity.

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<sup>3</sup> The Office of the Solicitor's Page on the County website at | Montgomery County, PA - Official Website (montcopa.org) (2022), <http://www.montcopa.org/459/Solicitor> (last visited October 12, 2022).

14. The Batch Manifest Report/Tabulator Report is an election record; it contains voter information, and Mr. Alderder's Request relates to matters most appropriately accessed under the Pennsylvania Election Code; therefore, the Pennsylvania Election Code controls the procedure in which to access the requested election records and what types of records are subject to inspection.

15. Section 2648 of the Pennsylvania Election Code, unambiguously states:

"The records of each county board of elections, general and duplicate returns, tally papers, affidavits of voters and others, nomination petitions, certificates and papers, other petitions, appeals, witness lists, *accounts, contracts, reports and other documents and records in its custody, except the contents of ballot boxes and voting machines and records of assisted voters*, shall be open to public inspection, except as herein provided, and may be inspected and copied by *any qualified elector of the county* during ordinary business hours, at any time when they are not necessarily being used by the board, or its employees having duties to perform thereto."

Act 3 of 2002, at 25 Pa.C.S. §2648. (Emphasis added).

16. Whether Mr. Stein has the authority or the knowledge to attest to information contained in the Batch Manifest report falls short of the fact that the Office of Open Records has no legal authority to grant access to the Batch Manifest Report as the Pennsylvania Election Code, by its plain language, perspicuously controls access to these records. *See Obernier v. Crawford Cnty.*, OOR Dkt. AP 2017-2107, 2018 PA O.O.R.D. LEXIS 110 (analyzing § 2648 of the Election Code and noting that it "creates a separate process for obtaining these records and conditions the public inspection and copying: 1) to qualified electors of the county, 2) during ordinary business hours, and 3) when the records are not being used by the elections board"); *see also Bloch v. Adams Cnty.*, OOR Dkt. AP 2018-2227, 2019 PA O.O.R.D. LEXIS 95; *See, Kathleen Gallagher and the Republican National Committee v. Montgomery County*, OOR Dkt. AP-2021-2945, (2021).

17. Furthermore, Section 2648 of the Election Code not only provides a separate process for access to election records and related materials, but also states that the "contents of



ballot boxes and voting machines” are not publicly accessible, obviously for constitutionally protected ballot anonymity conferred by Article VII, Section 4 of the Pennsylvania Constitution.

18. Finally, the Final Determination docketed under AP-2022-1779 must be reversed because it reaches a result contrary to the Office of Open Record’s own precedent on this issue. *See, generally, See Diane Houser v. Chester County*, OOR Dkt. AP 2022-2000, 2022 PA O.O.R.D. LEXIS \_\_\_\_; *Jeanne White v. Montgomery County*, OOR Dkt. AP 2022-1993, 2022 PA O.O.R.D. LEXIS \_\_\_\_; *Jeanne White v. Montgomery County*, OOR Dkt. AP 2022-1994, 2022 PA O.O.R.D. LEXIS \_\_\_\_; *Jeanne White v. Montgomery County*, OOR Dkt. AP 2022-1995, 2022 PA O.O.R.D. LEXIS \_\_\_\_; *Jeanne White v. Montgomery County*, OOR Dkt. AP 2022-1996, 2022 PA O.O.R.D. LEXIS \_\_\_\_; *Burkhand v. Cambria County*, OOR Dkt. AP 2022-1507, 2022 PA O.O.R.D. LEXIS 2052; *Buemi v. Chester County*, OOR Dkt. AP 2022-1484, 2022 PA O.O.R.D. LEXIS 1959; *Ball v. Washington County*, OOR Dkt. AP 2022-1223, 2022 PA O.O.R.D. LEXIS 1750; *Stroehmann v. Lycoming County*, OOR Dkt. AP 2022- 0885, 2022 PA O.O.R.D. LEXIS 1292.

19. Any request for access to election records must be made pursuant to the provisions of the Election Code and not under the RTKL. *See, Pennsylvanians For Union Reform v. Pa. Dept. of State*, 138 A.3d 727 (Pa. Cmwlth. 2016) (holding that access to voter registration records is governed exclusively by the PA Voter Registration Act). *See*, 25 P.S. § 2648. *See also, Bennett v. Lycoming Cty.*, OOR Dkt. AP 2021-2616, 2021 PA O.O.R.D. LEXIS 2680 (the RTKL does not apply since access to the records is governed by the Election Code, 25 Pa.C.S. § 2648).

20. Mr. Alderfer, upon information and belief and based on the information provided in his RTK request and subsequent appeal to the OOR, is a qualified elector of Montgomery County.

21. The OOR has found in previous cases that the Pennsylvania’s Election Code supersedes the provisions of the RTKL. *See Obernier v. Crawford Cnty.*, OOR Dkt. AP 2017-2107, 2018 PA O.O.R.D. LEXIS 110 (analyzing § 2648 of the Election Code and noting that it “creates a

separate process for obtaining these records and conditions the public inspection and copying: 1) to qualified electors of the county, 2) during ordinary business hours, and 3) when the records are not being used by the elections board"); *see also Bloch v. Adams Cnty.*, OOR Dkt. AP 2018-2227, 2019 PA O.O.R.D. LEXIS 95; *See, Kathleen Gallagher and the Republican National Committee v. Montgomery County*, OOR Dkt. AP-2021-2945, (2021).

22. Mr. Alderfer was provided with the Voter Services Public Information Request form to request records under the Election Code.

23. Appellant respectfully requests this Honorable Court issue an Order scheduling oral argument.

**WHEREFORE**, the Appellant prays that this Honorable Court reverse the determination of the OOR Appeals Officer and deny Appellee's request under the Right-to-Know Law, vacate the portion of the determination of the OOR Appeals Officer with respect to Montgomery County in addition to any other relief that this Honorable Court may deem appropriate.

Respectfully submitted:

DocuSigned by:



JOSHUA M. STEIN, ESQUIRE  
*Solicitor for Montgomery County*


Dated: 10/28/2022

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.

**VERIFICATION**

I, Joshua M. Stein, Esquire, am the Solicitor of Montgomery County, and I verify that the facts set forth in the foregoing Petition for Judicial Review of a Final Determination of the Office of Open Records for the Commonwealth of Pennsylvania are true and correct to the best of my knowledge, information and belief.

I understand that false statements herein made are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsifications to authorities.

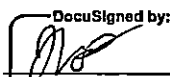
DocuSigned by:  
  
JOSHUA M. STEIN, ESQUIRE  
*Solicitor for Montgomery County*

Dated: 10/28/2022

**CERTIFICATE OF COMPLIANCE**

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by:

DocuSigned by:  


JOSHUA M. STEIN, ESQUIRE  
*Solicitor for Montgomery County*  
Attorney I.D. No.: 90473

Dated: 10/28/2022

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.

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA  
CIVIL ACTION—LAW

MONTGOMERY COUNTY	:	
<i>Appellant,</i>	:	
v.	:	RIGHT TO KNOW LAW APPEAL
	:	
JONATHAN ALDERFER	:	Docket No.: 2022-_____
<i>Appellee.</i>	:	
	:	

**CERTIFICATE OF SERVICE**

I, Joshua M. Stein, Esquire, Solicitor for Montgomery County, hereby certify that a true and correct copy of the within Petition for Judicial Review of Montgomery County was forwarded via e-mail and via U.S. First Class Mail to:

Jonathan Alderfer 624 School House Road Telford, PA 18969 <a href="mailto:jalderfer@gmail.com">jalderfer@gmail.com</a>	Lyle Hartranft, Esquire Appeals Officer Office of Open Records Commonwealth of Pennsylvania 333 Market Street, 16 <sup>th</sup> Floor Harrisburg, PA 17101-2234 <a href="mailto:LHartranft@pa.gov">LHartranft@pa.gov</a>
---	--

DocuSigned by:  
  
\_\_\_\_\_  
JOSHUA M. STEIN, ESQUIRE  
Solicitor for Montgomery County

Dated: 10/28/2022

**From:** Open Records  
**To:** Raikowski, Lauren  
**Subject:** FW: Online Form Submittal: Open Records Request Form  
**Date:** Monday, June 20, 2022 7:18:47 AM

**From:** noreply@civicplus.com <noreply@civicplus.com>  
**Sent:** Monday, June 20, 2022 7:18:35 AM (UTC-05:00) Eastern Time (US & Canada)  
**To:** Open Records <openrcrd@montcopa.org>  
**Subject:** Online Form Submittal: Open Records Request Form

**CAUTION:** This is an external message. Please think before you click on links or attachments.

## Open Records Request Form

County's Open Records Officer may be contacted as follows:

Joshua M. Stein  
County Solicitor  
Montgomery County Solicitor's Office  
One Montgomery Plaza  
Suite 800  
Norristown, PA 19404-0311  
Phone: 610-278-3033  
Fax: 610-278-3069  
[openrcrd@montcopa.org](mailto:openrcrd@montcopa.org)

Date of Request	6/20/2022
Name of Requester	Jonathan Alderfer
Address1	624 School House Rd
Address2	Field not completed.
City	Telford
State	Pennsylvania
Zip	18969
Telephone	2152064178
Email Address	jaldferfer@gmail.com

### Records Requested

Pursuant Pennsylvania Right to Know Law, 65 §66.1 et seq., I am requesting a copy of the Montgomery County county "Batch Manifest Report" also called the "Tabulator Batch Report" for all of the elections that were on the ballot for the November 3, 2020

EXHIBIT "A"

General Election.

The Pennsylvania Right to Know Law requires a response time within five business days. If access to the records I am requesting will take longer than this amount of time, please contact me with information about when I might expect copies or the ability to inspect the requested records.

Do You Want Copies? Yes

Do You Want To Inspect The Records? Yes

Do You Want Certified Copies of Records? No

(Section Break)

For Internal Use Only

Date Received By County Open Records Office:

Five (5)-Day Response Due Date:

Applicable Fees:

Noticed Required  
District Attorney: YES / NO

Other Law Enforcement: YES / NO

Proprietary or Trade Secret: YES / NO

Personal Privacy Interest: YES / NO

Email not displaying correctly? [View it in your browser.](#)

EXHIBIT "A"

**MONTGOMERY COUNTY  
BOARD OF COMMISSIONERS**

VALERIE A. ARKOOSH, MD, MPH, CHAIR  
KENNETH E. LAWRENCE, JR., VICE CHAIR  
JOSEPH C. GALE, COMMISSIONER



**OFFICE OF THE SOLICITOR**  
MONTGOMERY COUNTY COURTHOUSE • PO Box 311  
NORRISTOWN, PA 19404-0311  
610-278-3033  
FAX: 610-278-3069 • TDD: 610-631-1211  
[WWW.MONTCOPA.ORG](http://WWW.MONTCOPA.ORG)

June 27, 2022

**VIA E-MAIL**

Jonathan Alderfer  
624 School House Road  
Telford, PA 18969  
[jalderfer@gmail.com](mailto:jalderfer@gmail.com)

**Re: Right-to-Know Request No. OR22-381**

Dear Mr. Alderfer:

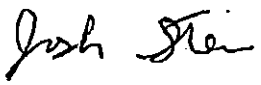
This letter responds to your Right to Know Request, which was received on June 21, 2022. Please note that requests for information to state and local agencies in Pennsylvania are governed by the Commonwealth's Right to Know Act ("Act"), 65 P.S. §§67.101-67.3104.

Be advised that the County will be asserting its right to (up to) an additional thirty (30) calendar days as provided for by the Act. This right is being asserted for the following reasons:

- a. a legal review is necessary to determine whether the record(s) is a record(s) subject to access under the Act;
- b. to determine if the request requires redaction of a public record(s); and
- c. bona fide staffing limitations in retrieving and reviewing the record(s) requested.

You will be contacted within thirty (30) calendar days as required by law.

Very truly yours,

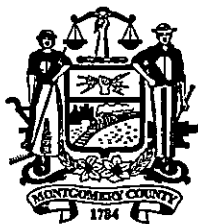
  
By: \_\_\_\_\_  
Joshua M. Stein  
County Solicitor  
Montgomery County Solicitor's Office  
One Montgomery Plaza  
Suite 800  
Norristown, PA 19404-0311  
Phone: 610-278-3033  
Fax: 610-278-3069  
[Openrcrd@montcopa.org](mailto:Openrcrd@montcopa.org)

**EXHIBIT "B"**



**MONTGOMERY COUNTY  
BOARD OF COMMISSIONERS**

VALERIE A. ARKOOSH, MD, MPH, CHAIR  
KENNETH E. LAWRENCE, JR., VICE CHAIR  
JOSEPH C. GALE, COMMISSIONER



**OFFICE OF THE SOLICITOR**

MONTGOMERY COUNTY COURTHOUSE • PO Box 311  
NORRISTOWN, PA 19404-0311  
610-278-3033  
FAX: 610-278-3069 • TDD: 610-631-1211  
WWW.MONTCOPA.ORG

July 28, 2022

**VIA E-MAIL**

Jonathan Alderfer  
624 School House Road  
Telford, PA 18969  
[jalderfer@gmail.com](mailto:jalderfer@gmail.com)

**Re: Right-to-Know Request No. OR22-381**

Dear Mr. Alderfer:

On June 21, 2022, the open-records officer of Montgomery County received your written request for information. The County is responding to your request under the Pennsylvania Right-To-Know Law, 65 P.S. §§ 67.101, *et seq.* (RTKL). You asked for the following:

"Pursuant Pennsylvania Right to Know Law, 65 §66.1 et seq., I am requesting a copy of the Montgomery County county SQL database backup from the Election Management System (EMS), in a digital format, for all of the elections that were on the ballot for the November 3, 2020 General Election. This request is for the backup that includes batch numbers, timestamps, votes cast for each candidate, cumulative votes for each candidate and other fields as available. This request is not for any software that should be covered by the IP of the vendor.

If the entire database backup is not possible, from other counties that have provided this information via FIOA requests, I would be most interested in the ResultContainer and ChoiceResult Tables of the EMS Database.

The Pennsylvania Right to Know Law requires a response time within five business days. If access to the records I am requesting will take longer than this amount of time, please contact me with information about when I might expect copies or the ability to inspect the requested records.

If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law..."

Under the RTKL, a written response to your request was due on or before June 28, 2022. On June 28, 2022, the County requested a 30-day extension of time in which to respond to your Request.

Your request is **denied** as the Montgomery County SQL database backup from the Election Management System (EMS), in a digital format requested at exempt from disclosure

**EXHIBIT "C"**

pursuant to Sections 708(b)(3) and (4) of the RTKL. 65 P.S. §§ 67.708(b)(3)(i)-(iii) and 65 P.S. § 67.708(b)(4). *Sheckler v. Pennsylvania Department of State*, OOR Dkt. No. AP-2022-0492 (the disclosure of the Department's Statewide Uniform Registry of Electors (SURE) Applications User Guide is likely to endanger the safety or physical security of public infrastructure and would jeopardize computer security). Furthermore, the information requested is exempt from disclosure under a federal law, outside of the RTKL; therefore, the RTKL does not apply. The U.S. Department of Homeland Security (DHS) designated Election Infrastructure (EI) part of the nation's critical infrastructure as a subsector within the Government Facilities sector in January of 2017. Critical Infrastructure is defined in the Critical Infrastructures Protection Act of 2001, as "systems or assets ... so vital to the United States that the incapacity or destruction of such systems or assets would have a debilitating impact on national security, national economic security, national public health or safety, or any combination of those matters." 42 U.S.C. § 5195c(e). The Department's SURE system is a computer database system that is the repository for voter registration data and information within the Commonwealth and the user manual cannot be released since it pertains to Critical Infrastructure. Any disclosure of the SURE manual/User Guide would potentially allow a user to manipulate the data within the SURE system if they were able to obtain access to the system.

Your request is further **denied as access to these records is provided under another statute other than the RTKL.** The information requested is exempt from disclosure pursuant to Pennsylvania's Election Code, 25 P.S. § 2648. Under 25 P.S. § 2648, Montgomery County is arguably prohibited from disseminating voter records, including the "a copy of the Montgomery County county SQL database backup from the Election Management System (EMS), in a digital format, for all of the elections that were on the ballot for the November 3, 2020 General Election." The Pennsylvania Election Code establishes the procedure to access election records and what types of records are subject to inspection, any request for access to these types of records must be made pursuant to the provisions of the Election Code and not under the RTKL. *See, Pennsylvanians For Union Reform v. Pa. Dept. of State*, 138 A.3d 727 (Pa. Cmwlth. Ct. 2016) (holding that access to voter registration records is governed exclusively by the PA Voter Registration Act). *See*, 25 P.S. § 2648. Furthermore, RTKL Section 305(a)(3) states that a record is NOT presumed to be a public record if the record is exempt from disclosure under any other State law. *See* 65 P.S. §67.3101.1 ("If the provisions of the [RTKL] conflict with any other federal or state law, the provisions of th[e] RTKL shall not apply."). Consistent with the Commonwealth Court's holding in *PFUR*, you may obtain records in accordance with the requirements outlined in the Act and the Department's regulations.

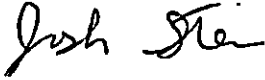
Enclosed please find the Voters Public Information Data Request for your convenience. You may fill out this form and remit it to the email address provided and someone from the Montgomery County Office of Voter Services will be in contact to regarding your request.

You have a right to appeal this denial of information in writing to Elizabeth Wagenseller, Executive Director, Office of Open Records (OOR), 333 Market Street, 16th Floor, Harrisburg, PA 17101-2234. If you choose to file an appeal you must do so within 15 business days of the mailing date of this response and send to the OOR:

1) this response; 2) your request; and 3) the reason why you think the agency is wrong in its reasons for saying that the record is not public (a statement that addresses any ground stated by the agency for the denial). If the agency gave several reasons why the record is not public, state which ones you think were wrong.

Also, the OOR has an appeal form available on the OOR website at:  
<https://www.dced.state.pa.us/public/oor/appealformgeneral.pdf>.

Very truly yours,



By: \_\_\_\_\_  
Joshua M. Stein  
County Solicitor  
Montgomery County Solicitor's Office  
One Montgomery Plaza  
Suite 800  
Norristown, PA 19404-0311  
Phone: 610-278-3033  
Fax: 610-278-3069  
[Openrcrd@montcopa.org](mailto:Openrcrd@montcopa.org)

**JONATHAN ALDERFER**  
**vs.**  
**COUNTY OF MONTGOMERY**

**PA Office of Open Records**  
**Docket No. AP 2022-1779**

**AFFIDAVIT OF JOSHUA STEIN**  
**SOLICITOR OF MONTGOMERY COUNTY**

I, Joshua Stein, being duly sworn, hereby depose and say that the statements made below are true and correct to the best of my knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

1. I am the Solicitor for the County of Montgomery.
2. I am aware of the Right-to-Know request submitted to Montgomery County by Jonathan Alderfer on June 21, 2022.
3. The June 21, 2022, request sought the following:

“Pursuant Pennsylvania Right to Know Law, 65 §66.1 et seq., I am requesting a copy of the Montgomery County county SQL database backup from the Election Management System (EMS), in a digital format, for all of the elections that were on the ballot for the November 3, 2020 General Election. This request is for the backup that includes batch numbers, timestamps, votes cast for each candidate, cumulative votes for each candidate and other fields as available. This request is not for any software that should be covered by the IP of the vendor.

If the entire database backup is not possible, from other counties that have provided this information via FIOA requests, I would be most interested in the ResultContainer and ChoiceResult Tables of the EMS Database.

The Pennsylvania Right to Know Law requires a response time within five business days. If access to the records I am requesting will take longer than this amount of time, please contact me with information about when I might expect copies or the ability to inspect the requested records.

**EXHIBIT "D"**

If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law...”

4. On June 28, 2022, the County requested a 30-day extension of time in which to respond to the Request.

5. On July 28, 2022, the County of Montgomery denied the Request pursuant to Sections 708(b)(3) and (4) of the RTKL (*See*, 65 P.S. §§ 67.708(b)(3)(i)-(iii) and 65P.S. § 67.708(b)(4)) and under Pennsylvania’s Election Code, 25 P.S. § 2648. Furthermore, the County provided Mr. Alderfer with the Voter Services Public Information Request form to request records under the Election Code.

6. At issue in the instant appeal is whether the County erred in its denial of access.

7. The records requested in this Right-to-Know Request are neither public records nor are they subject to access under the Right-to-Know Law.

8. The “SQL database back up from the Election Management System (EMS), in a digital format, for all of the elections that were on the ballot for the November 3, 2020 General Election” that Mr. Alderfer is requesting is arguably much more than “a text-file report generated from the County’s Election Management Server” as he broadly contends.

9. The SQL database back up that the Requester is seeking is a large scale digital database which contains identifying information of the Montgomery County electorate; it is also the digital equivalent of the “Cast Vote Record,” which includes Ballot ID Numbers, Social Security Numbers, names, drivers’ license numbers, residential addresses, etc.

10. The information contained in the SQL database back up from the Election Management System (EMS) would be expressly exempt under Sections 708(b)(3) and (4) of the RTKL. 65 P.S. §§ 67.708(b)(3) and 65 P.S. § 67.708(b)(4).

11. As discussed in more detail in the submission by the County's Chief Information Officer, Mr. Anthony Olivieri, access to the information in the SQL database may be manipulated, the data relates to computer source files, software, and system networks that would expose a vulnerability in preventing, protecting against, mitigating or responding to a terrorist act or security incident. See, 65 P.S. §§ 67.708(b)(3).

12. As "[a] record regarding computer hardware, software and networks, including administrative or technical record, which if discloses, would be reasonably likely to jeopardize computer security," the SQL Database is exempt as a non-public record under Section 708(b)(4) of the RTKL. 65 P.S. § 67.708(b)(4).

13. The SQL Database is an election record; it contains voter information, and Mr. Alderder's Request relates to matters more suitably accessed under the Pennsylvania Election Code; therefore, the Pennsylvania Election Code controls the procedure in which to access the requested election records and what types of records are subject to inspection.

14. Any request for access to election records must be made pursuant to the provisions of the Election Code and not under the RTKL. See, *Pennsylvanians For Union Reform v. Pa. Dept. of State*, 138 A.3d 727 (Pa. Cmwlth. 2016) (holding that access to voter registration records is governed exclusively by the PA Voter Registration Act). See, 25 P.S. § 2648. See also, *Bennett v. Lycoming Cty.*, OOR Dkt. AP 2021-2616, 2021 PA O.O.R.D. LEXIS 2680 (the RTKL does not apply since access to the records is governed by the Election Code, 25 Pa.C.S. § 2648).

15. The RTKL is clear that "If the provisions of the [RTKL] conflict with any other federal or state law, the provisions of the [RTKL] shall not apply." See 65 P.S. § 67.3101.1.

16. Section 2648 of the Pennsylvania Election Code, unambiguously states:

"The records of each county board of elections, general and duplicate returns, tally papers, affidavits of voters and others, nomination petitions, certificates and papers, other petitions, appeals, witness lists, accounts, contracts, reports and other documents and records in its

custody, except the contents of ballot boxes and voting machines and records of assisted voters, shall be open to public inspection, except as herein provided, and may be inspected and copied by *any qualified elector of the county* during ordinary business hours, at any time when they are not necessarily being used by the board, or its employees having duties to perform thereto.”

Act 3 of 2002, at 25 Pa.C.S. §2648. (Emphasis added).

17. Furthermore, Mr. Alderfer, upon information and belief and based on the information provided in his RTK request and subsequent appeal to the OOR, is a qualified elector of Montgomery County.

18. The OOR has found in previous cases that the Pennsylvania’s Election Code supersedes the provisions of the RTKL. *See Obernier v. Crawford Cnty.*, OOR Dkt. AP 2017-2107, 2018 PA O.O.R.D. LEXIS 110 (analyzing § 2648 of the Election Code and noting that it “creates a separate process for obtaining these records and conditions the public inspection and copying: 1) to qualified electors of the county, 2) during ordinary business hours, and 3) when the records are not being used by the elections board”); *see also Bloch v. Adams Cnty.*, OOR Dkt. AP 2018-2227, 2019 PA O.O.R.D. LEXIS 95; *See, Kathleen Gallagher and the Republican National Committee v. Montgomery County*, OOR Dkt. AP-2021-2945, (2021).

19. Moreover, in addition to the public access provisions available under the purview of the Pennsylvania Election Code, the federal Critical Infrastructures Protection Act of 2001 also controls public access to the SQL Database; thus, the RTKL’s access provisions do not apply in this case. *See*, 42 U.S.C. § 5195c(e)

20. In January 2017, the U.S. Department of Homeland Security (DHS) designated Election Infrastructure (EI) as a part of the nation’s critical infrastructure as a subsector within the Government Facilities sector.

21. Critical Infrastructure is defined in the Critical Infrastructures Protection Act of 2001, as “systems or assets ... so vital to the United States that the incapacity or destruction of

such systems or assets would have a debilitating impact on national security, national economic security, national public health or safety, or any combination of those matters.” 42 U.S.C. § 5195c(e).

22. As outlined above, the SQL Database file is a computer database system that serves as a repository for voter registration data and information of electors who reside in Montgomery County, Pennsylvania.

23. As identified by the U.S. Department of Homeland Security (DHS), EI includes but is not limited to:

- *Voter registration databases and associated IT systems*
- IT infrastructure and systems used to manage elections (such as the counting, auditing and displaying of election results, and post-election reporting to certify and validate results)
- Voting systems and associated infrastructure
- Storage facilities for election and voting system infrastructure
- Polling places, to include early voting locations

24. The SQL database by its definition and scope falls under the EI definition by DHS that pertains to IT infrastructure and systems used to manage elections (such as the counting, auditing and displaying of election results, and post-election reporting to certify and validate results).

25. The disclosure of a copy of the SQL database file would enable someone to manipulate the data within the database and glean information from the metadata contained in the database and potentially compromise the state’s SURE system if the user were able to obtain access to the system.

26. The information requested is exempt from disclosure under a federal law, outside of the RTKL; therefore the access provisions of the RTKL do not apply.

27. RTKL Section 305(a)(3) states that a record is NOT presumed to be a public record if the record is exempt from disclosure under any other State law. *See* 65 P.S. §67.3101.1 (“If the



provisions of the [RTKL] conflict with any other federal or state law, the provisions of th[e RTKL] shall not apply.”).

28. For all of the above-stated reasons, Montgomery County believes this appeal should be denied.

By: Josh Stein

Joshua M. Stein  
County Solicitor  
Montgomery County Solicitor's Office  
One Montgomery Plaza Suite 800  
Norristown, PA 19404-0311  
Phone: 610-278-3033  
Fax: 610-278-3069  
[Openrcrd@montcopa.org](mailto:Openrcrd@montcopa.org)

Dated: August 10, 2022

**JONATHAN ALDERFER**  
**vs.**  
**COUNTY OF MONTGOMERY**

**: PA Office of Open Records**  
**: Docket No. AP 2022-1779**  
**:**  
**:**

**AFFIDAVIT OF ANTHONY OLIVIERI,**  
**CHIEF INFORMATION OFFICER OF MONTGOMERY COUNTY**

I, Anthony Olivieri, being duly sworn, hereby depose and say that the statements made below are true and correct to the best of my knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

1. I am the Chief Information Officer ("CIO") for the Department of Information and Technology Solutions ("ITS") for the County of Montgomery.

2. I have served as the CIO for Montgomery County for the last 14 years.

3. In my capacity as CIO, I am familiar with the subject matter requested in the Right-to-Know Request in this matter.

4. I am aware of the Right-to-Know request submitted to Montgomery County by Jonathan Alderfer on June 21, 2022, which sought a copy of the "Montgomery County county SQL database backup from the Election Management System (EMS), in a digital format, for all of the elections that were on the ballot for the November 3, 2020 General Election" and "If the entire database backup is not possible, [sic] I would be most interested in the ResultContainer and ChoiceResult Tables of the EMS Database."

5. A SQL database stands for "Structures Query Language" Database, and also by its general definition, a SQL database allows users to access and manipulate databases. In other words, a SQL database is a larger version of Microsoft's Excel application, but on a significantly larger scale, which in this case, contains confidential information.

**EXHIBIT "E"**

6. The SQL database back up that the Requester is seeking contains identifying information of the Montgomery County electorate; it is also the digital equivalent of the "Cast Vote Record," which includes Ballot ID Numbers, Drivers' License Numbers, partial Social Security Numbers, names, residential addresses, etc.

7. The SQL database back up file is a local database snap shot of the Department of State's SURE system, which electronically stores information relating to voter registration within the Commonwealth in a computer system and database that is required to be extremely secure because it contains confidential personal identification information (PII) such as date of birth, home address, partial social security numbers, and driver's license numbers.

8. In my informed professional opinion, which is based upon my extensive experience as an IT and cybersecurity professional, disclosure of SQL Database Back up File would reasonably be likely to expose U.S. Critical Infrastructure, as defined by the Federal Government in the National Infrastructure Protection Plan, including the Commonwealth's SURE system to misuse and fraud due to the ability of a person to gain access to and manipulate the data within the SQL database and the SURE system.

9. To produce a copy of the SQL database back up file would undermine the integrity of the Montgomery County voter registration process while endangering the security of the information contained within the SQL database and the state's SURE system itself.

10. The record requested in this Right-to-Know Request is not a public record and is not subject to access under the Right-to-Know Law.

11. In the alternative, based upon my experience in information technology, and my review of the record requested, I have determined that the SQL database file copy at issue in this appeal is a record regarding computer hardware, software and computer networks, including

administrative or technical records whose disclosure would be reasonably likely to jeopardize computer security.

12. A copy of the SQL Database file, is not a public records as it is expressly exempt from public access under Sections 708(b)(3) and (4) of the RTKL. *See* 65 P.S. § 67.708(a).

13. For all of the above-stated reasons, in my informed professional opinion, which is based upon my extensive experience as an IT and cybersecurity professional, this appeal should be denied.

By: 

Anthony Olivieri  
Chief Information Officer  
Department of Information and Technology Solutions  
One Montgomery Plaza, P.O. Box 311  
Norristown, PA 19404-0311  
Phone: 610-278-5200  
Fax: 610-278-0229

Dated: August 10, 2022

**JONATHAN ALDERFER**  
**vs.**  
**COUNTY OF MONTGOMERY**

**PA Office of Open Records**  
**Docket No. AP 2022-1779**

**SUPPLEMENTAL AFFIDAVIT OF JOSHUA STEIN**  
**SOLICITOR OF MONTGOMERY COUNTY**

I, Joshua Stein, being duly sworn, hereby depose and say that the statements made below are true and correct to the best of my knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

1. I am the Solicitor for the County of Montgomery.
2. I am aware of the Right-to-Know request submitted to Montgomery County by Jonathan Alderfer on June 21, 2022.

3. The June 21, 2022, request sought the following:

"Pursuant Pennsylvania Right to Know Law, 65 §66.1 et seq., I am requesting a copy of the Montgomery County county "Batch Manifest Report" also called the "Tabulator Batch Report" for all of the elections that were on the ballot for the November 3, 2020 General Election. The Pennsylvania Right to Know Law requires a response time within five business days. If access to the records I am requesting will take longer than this amount of time, please contact me with information about when I might expect copies or the ability to inspect the requested records."

4. On June 28, 2022, the County requested a 30-day extension of time in which to respond to the Request.

5. On July 28, 2022, the County of Montgomery denied the Request pursuant to Sections 708(b)(3) and (4) of the RTKL (*See*, 65 P.S. §§ 67.708(b)(3)(i)-(iii) and 65P.S. § 67.708(b)(4)) and under Pennsylvania's Election Code, 25 P.S. § 2648. Furthermore, the County provided Mr. Alderfer with the Voter Services Public Information Request form to request records under the Election Code.

**EXHIBIT "F"**

6. At issue in the instant appeal is whether the County erred in its denial of access.

7. The records requested in this Right-to-Know Request are neither public records, nor are they subject to access under the Right-to-Know Law.

8. The "Batch Manifest Report" also called the "Tabulator Batch Report" is akin to the "SQL database back up from the Election Management System (EMS), in a digital format, for all of the elections that were on the ballot for the November 3, 2020 General Election" that Mr. Alderfer is requesting is arguably much more than "a text-file report generated from the County's Election Management Server" as he broadly contends.

9. A Batch Manifest Report/Tabulator Batch Report is a spreadsheet that must be created, and it lists each batch of ballots that were scanned in a precinct. Batches are limited to 200 ballots and all come from the same precinct. The batch manifest report lists the scanner that was used, the batch number, the precincts, and the number of ballots scanned in a batch.

10. Under the RTKL, an Agency is not required "to create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which the agency does not currently compile, maintain, format or organize the record." 65 P.S. § 67.705.

11. Similar to the SQL database back up from the Election Management System (EMS), the Batch Manifest report would be expressly exempt under Sections 708(b)(3) and (4) of the RTKL. 65 P.S. §§ 67.708(b)(3) and 65 P.S. § 67.708(b)(4).

12. As discussed in more detail in the submission by the County's Chief Information Officer, Mr. Anthony Olivieri, access to the information in the SQL database may be manipulated, the data relates to computer source files, software, and system networks that would expose a vulnerability in preventing, protecting against, mitigating or responding to a terrorist act or security incident. See, 65 P.S. §§ 67.708(b)(3).

13. As “[a] record regarding computer hardware, software and networks, including administrative or technical record, which if disclosed, would be reasonably likely to jeopardize computer security,” the Batch Manifest Report is exempt as a non-public record under Section 708(b)(4) of the RTKL. 65 P.S. § 67.708(b)(4).

14. The Batch Manifest Report/Tabulator Report is an election record; it contains voter information, and Mr. Alderder’s Request relates to matters more suitably accessed under the Pennsylvania Election Code; therefore, the Pennsylvania Election Code controls the procedure in which to access the requested election records and what types of records are subject to inspection.

15. Any request for access to election records must be made pursuant to the provisions of the Election Code and not under the RTKL. *See, Pennsylvanians For Union Reform v. Pa. Dept. of State*, 138 A.3d 727 (Pa. Cmwlth. 2016) (holding that access to voter registration records is governed exclusively by the PA Voter Registration Act). *See*, 25 P.S. § 2648. *See also, Bennett v. Lycoming Cty.*, OOR Dkt. AP 2021-2616, 2021 PA O.O.R.D. LEXIS 2680 (the RTKL does not apply since access to the records is governed by the Election Code, 25 Pa.C.S. § 2648).

16. The RTKL is clear that “If the provisions of the [RTKL] conflict with any other federal or state law, the provisions of the [RTKL] shall not apply.” *See* 65 P.S. §67.3101.1.

17. Section 2648 of the Pennsylvania Election Code, unambiguously states:

“The records of each county board of elections, general and duplicate returns, tally papers, affidavits of voters and others, nomination petitions, certificates and papers, other petitions, appeals, witness lists, accounts, contracts, reports and other documents and records in its custody, except the contents of ballot boxes and voting machines and records of assisted voters, shall be open to public inspection, except as herein provided, and may be inspected and copied by **any qualified elector of the county** during ordinary business hours, at any time when they are not necessarily being used by the board, or its employees having duties to perform thereto.”

Act 3 of 2002, at 25 Pa.C.S. §2648. (Emphasis added).

18. Furthermore, Mr. Alderfer, upon information and belief and based on the information provided in his RTK request and subsequent appeal to the OOR, is a qualified elector of Montgomery County.

19. The OOR has found in previous cases that the Pennsylvania's Election Code supersedes the provisions of the RTKL. *See Obernier v. Crawford Cnty.*, OOR Dkt. AP 2017-2107, 2018 PA O.O.R.D. LEXIS 110 (analyzing § 2648 of the Election Code and noting that it "creates a separate process for obtaining these records and conditions the public inspection and copying: 1) to qualified electors of the county, 2) during ordinary business hours, and 3) when the records are not being used by the elections board"); *see also Bloch v. Adams Cnty.*, OOR Dkt. AP 2018-2227, 2019 PA O.O.R.D. LEXIS 95; *See, Kathleen Gallagher and the Republican National Committee v. Montgomery County*, OOR Dkt. AP-2021-2945, (2021).

20. Moreover, in addition to the public access provisions available under the purview of the Pennsylvania Election Code, the federal Critical Infrastructures Protection Act of 2001 also controls public access to Election Records; thus, the RTKL's access provisions do not apply in this case. *See*, 42 U.S.C. § 5195c(e)

21. In January 2017, the U.S. Department of Homeland Security (DHS) designated Election Infrastructure (EI) as a part of the nation's critical infrastructure as a subsector within the Government Facilities sector.

22. Critical Infrastructure is defined in the Critical Infrastructures Protection Act of 2001, as "systems or assets ... so vital to the United States that the incapacity or destruction of such systems or assets would have a debilitating impact on national security, national economic security, national public health or safety, or any combination of those matters." 42 U.S.C. § 5195c(e).



23. As outlined above, the Batch Manifest Report/Tabulation Report file is a computer generated file that is created from the database system that serves as a repository for voter registration data and information of electors who reside in Montgomery County, Pennsylvania.

24. As identified by the U.S. Department of Homeland Security (DHS), EI includes but is not limited to:

- *Voter registration databases and associated IT systems*
- *IT infrastructure and systems used to manage elections (such as the counting, auditing and displaying of election results, and post-election reporting to certify and validate results)*
- Voting systems and associated infrastructure
- Storage facilities for election and voting system infrastructure
- Polling places, to include early voting locations

25. The Batch Manifest Report and/or Tabulator Batch Report by its definition and scope falls under the EI definition by DHS that pertains to IT infrastructure and systems used to manage elections (such as the counting, auditing and displaying of election results, and post-election reporting to certify and validate results).

26. The disclosure of a copy of the Batch Manifest Report and/or Tabulator Batch Report file could enable someone to manipulate the data within the database and glean information from the metadata contained in the database and potentially compromise the state's SURE system if the user were able to obtain access to the system.

27. The information requested is exempt from disclosure under a federal law, outside of the RTKL; therefore the access provisions of the RTKL do not apply.

28. RTKL Section 305(a)(3) states that a record is NOT presumed to be a public record if the record is exempt from disclosure under any other State law. *See* 65 P.S. §67.3101.1 ("If the provisions of the [RTKL] conflict with any other federal or state law, the provisions of th[e RTKL] shall not apply.").

29. For all of the above-stated reasons, Montgomery County believes this appeal should be denied.

By: Josh Stein

Joshua M. Stein  
County Solicitor  
Montgomery County Solicitor's Office  
One Montgomery Plaza Suite 800  
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[Openrcrd@montcopa.org](mailto:Openrcrd@montcopa.org)

Dated: September 19, 2022



# pennsylvania

## OFFICE OF OPEN RECORDS

### FINAL DETERMINATION

IN THE MATTER OF

JONATHAN ALDERFER,  
Requester

v.

MONTGOMERY COUNTY,  
Respondent

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Docket No: AP 2022-1779

### INTRODUCTION

Jonathan Alderfer ("Requester") submitted a request ("Request") to Montgomery County ("County") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq.*, a copy of the County "Batch Manifest Report" also called "Tabulator Batch Report" ("Report") for the November 3, 2020 General Election. The County denied the Request, arguing that the requested election records are confidential pursuant to the Pennsylvania Election Code ("Election Code"), 25 P.S. § 2648. The Requester appealed to the Office of Open Records ("OOR"). For the reasons set forth in this Final Determination, the appeal is **granted**, and the County is required to take further action as directed below.

### FACTUAL BACKGROUND

On June 21, 2022,<sup>1</sup> the Request was filed, stating:

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<sup>1</sup> The Request was dated June 20, 2022 but not received by the County until June 21, 2022.

Pursuant Pennsylvania Right to Know Law, 65 §66.1 et seq., I am requesting a copy of the Montgomery County county [sic] "Batch Manifest Report" also called the "Tabulator Batch Report" for all the elections that were on the ballot for the November 3, 2020 General Election.

The Pennsylvania Right to Know Law requires a response time within five business days. If access to the records I am requesting will take longer than this amount of time, please contact me with information about when I might expect copies or the ability to inspect the requested records.

On June 27, 2022,<sup>2</sup> the County invoked a thirty-day extension during which to respond. 65 P.S. § 67.902(b). On July 28, 2022, the County denied the Request, arguing that the records requested are confidential pursuant to the Election Code.

On August 1, 2022, the Requester appealed to the OOR, challenging the denial and stating grounds for disclosure.<sup>3</sup> The OOR invited both parties to supplement the record and directed the County to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On August 10, 2022, the County submitted the attestations of Joshua Stein, the County Solicitor, and Anthony Olivieri, Chief Information Officer for the Department of Information and Technology Solutions for the County.

On August 15, 2022, the Requester submitted a position statement arguing that the "requested information is subject to public access ...under the Pennsylvania Election Code 25 P.S. § 2648."

On September 14, 2022, the OOR, noting that the County submitted evidence relevant to OOR Dkt. AP 2022-1777, asked the County to submit additional evidence. See OOR

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<sup>2</sup> In response to the OOR's inquiry, on September 22, 2022, the County provided the OOR a copy of its thirty-day extension letter. See September 22, 2022 correspondence.

<sup>3</sup> The Requester granted the OOR a 30-day extension to issue a final determination. See 65 P.S. § 67.1101(b)(1).

Correspondence dated September 14, 2022. In response, on September 19, 2022, the County submitted the supplemental attestation of Attorney Stein.<sup>4</sup>

### LEGAL ANALYSIS

“The objective of the Right to Know Law ... is to empower citizens by affording them access to information concerning the activities of their government.” *SWB Yankees L.L.C. v. Wintermantel*, 45 A.3d 1029, 1041 (Pa. 2012). Further, this important open-government law is “designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials and make public officials accountable for their actions.” *Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), *aff’d* 75 A.3d 453 (Pa. 2013).

The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. § 67.503(a). An appeals officer is required “to review all information filed relating to the request” and may consider testimony, evidence and documents that are reasonably probative and relevant to the matter at issue. 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. The decision to hold a hearing is discretionary and non-appealable. *Id.* Here, neither party requested a hearing.

The County is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.302. Records in the possession of a local agency are presumed public unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. Upon receipt of a request, an agency is required to assess whether a record requested is within its possession, custody or control and respond within five business days. 65 P.S. § 67.901.

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<sup>4</sup> On September 20, 2022, the OOR asked the Requester for a two-week extension to issue the final determination and to provide the Requester with an opportunity to respond. Again, on September 22, 2022, the OOR contacted the parties indicating that the Requester had not responded and that, if more time is needed, to provide the OOR with additional time to issue a final determination. To date, the Requester has not contacted the OOR.

An agency bears the burden of proving the applicability of any cited exemptions. *See* 65 P.S. § 67.708(b).

Section 708 of the RTKL places the burden of proof on the public body to demonstrate that a record is exempt. In pertinent part, Section 708(a) states: “(1) The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence.” 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)).

The County, through Attorney Stein’s supplemental attestation,<sup>5</sup> argues that the requested records are confidential pursuant to the Election Code, which provides:

The records of each county board of elections, general and duplicate returns, tally papers, affidavits of voters and others, nomination petitions, certificates and papers, other petitions, appeals, witness lists, accounts, contracts, reports and other documents and records in its custody, except the contents of ballot boxes and voting machines and records of assisted voters, shall be open to public inspection, except as herein provided, and may be inspected and copied by any qualified elector of the county during ordinary business hours, at any time when they are not necessarily being used by the board, or its employees have duties to perform thereto: Provided, however, That such public inspection thereof shall only be in the presence of a member or authorized employee of the county board, and shall be subject to proper regulation for safekeeping of the records and documents, and subject to the further provisions of this act: And provided further, That general and duplicate returns, tally papers, affidavits of voters and others, and all other papers required to be returned by the elections officers to the county board sealed, shall be open to public inspection only after the county board shall, in the course of the computation and canvassing of the returns, have broken such seals and finished for the time, their use of said papers in connection with such and canvassing.

25 P.S. § 2648.

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<sup>5</sup> *See* Stein Supplemental Attestation at ¶¶ 5-20.

Section 3101.1 of the RTKL states that “[i]f the provisions of this act regarding access to records conflict with any other federal or state law, the provisions of this act shall not apply.” 65 P.S. § 67.3101.1. When examining the conflict between the Election Code and the RTKL, the OOR has found that, while the Election Code makes many records in the custody of the Election Board subject to public inspection by qualified electors, 25 P.S. § 2648, it does not make these records unconditionally available to the public. *See Obernier v. Crawford Cnty.*, OOR Dkt. AP 2017-2107, 2018 PA O.O.R.D. LEXIS 110 (analyzing that section of the Election Code and noting that it “creates a separate process for obtaining these records and conditions public inspection and copying: 1) to qualified electors of the county, 2) during ordinary business hours, and 3) when the records are not being used by the elections board”); *see also Bloch v. Adams Cnty.*, OOR Dkt. AP 2018-2227, 2019 PA O.O.R.D. LEXIS 95. In addition, because the records are not unconditionally public under the Election Code, the OOR would be required to examine any exemptions from disclosure under the RTKL asserted by an agency when records of a County Elections Board are sought by a RTKL request. *See Pa. Dep’t of Labor & Indus. v. Heltzel*, 90 A.3d 823, 833 (Pa. Commw. Ct. 2014).

In support of the County’s position, Mr. Stein attests, in relevant part, as follows:

8. The “Batch Manifest Report” also called the “Tabulator Batch Report” is akin to the “SQL database back up from the Election Management System (EMS), in a digital format, for all of the elections that were on the ballot for the November 3, 2020 General Election” that Mr. Alderfer is requesting is arguably much more than “a text-file report generated from the County’s Election Management Server” as he broadly contends.
9. A Batch Manifest Report/Tabulator Batch Report is a spreadsheet that must be created, and it lists each batch of ballots that were scanned in a precinct. Batches are limited to 200 ballots and all come from the same precinct. The batch manifest report lists the scanner that was used, the batch number, the precincts, and the number of ballots scanned in a batch.

...

14. The Batch Manifest Report/Tabulator Report is an election record; it contains voter information, and Mr. Alderfer's Request relates to matters more suitably accessed under the Pennsylvania Election Code; therefore, the Pennsylvania Election Code controls the procedure in which to access the requested election records and what types of records are subject to inspection.

...

23. As outlined above, the Batch Manifest Report/Tabulation Report file is a computer generated file that is created from the database system that serves as a repository for voter registration data and information of electors who reside in Montgomery County, Pennsylvania.

Under the RTKL, a statement made under 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 County acted in bad faith, "the averments in [the attestation] should be accepted as true." *McGowan v. Pa. Dep't of Env'tl. 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)).

Here, the County was provided additional time to submit evidence in support of its position and the County submitted the attestation of Attorney Stein who is the County Solicitor. The County did not submit any additional evidence either from its Chief Information Officer for the Department of Information and Technology Solutions<sup>6</sup> or from an individual in the County's Election Office, who would be better situated to explain how the Report works and what information it contains. There is no evidence demonstrating that Attorney Stein is a person without sufficient knowledge or expertise to credibly speak as to the contents of the records. Further, while Attorney Stein concludes that "[t]he Batch Manifest Report/Tabulator Report is an election

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<sup>6</sup> See evidence submitted at OOR Dkt. AP 2022-1777 and discussion on the County's SQL database.



record ... [that] contains voter information,” he also states that the record “lists each batch of ballots that were scanned in a precinct ... [and] the scanner that was used, the batch number, the precincts, and the number of ballots scanned in a batch.”<sup>7</sup> Attorney Stein appears to list information in the Report (i.e. “[t]he batch manifest report lists the scanner that was used, the batch number, the precincts, and the number of ballots scanned in a batch”) that does not appear to be covered by the Election Code. Based on that description, it is not clear how individually identifiable voter information is implicated, or how such a record constitutes “the contents of ballot boxes and voting machines” and more detailed evidence from a person with knowledge would have been beneficial in determining whether the requested records are exempt under the Election Code.

As such, the County failed to meet its burden of proof that the responsive records are exempt from access under the Elections Code. Since there is no dispute between the parties that the Requester is a qualified elector within the County, the Requester is able to access the records through the Election Code. Therefore, based on the evidence provided and a lack of an explanation from an individual qualified to explain with sufficient detail what a Report entails,<sup>8</sup> the responsive records are to be provided to the Requester, subject to the access provisions set forth in the Election Code. *See Shepherd v. Phila. Office of City Commissioners*, OOR Dkt. AP 2021-2929, 2022 PA O.O.R.D. LEXIS 694; *see also Churchwell v. Montgomery County*, OOR Dkt. AP 2021-1331, 2021 PA O.O.R.D. LEXIS 1383; 65 P.S. 67.3101.1.

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<sup>7</sup> Attorney Stein has submitted affidavits in other appeals before the OOR, which the OOR has accepted as credible evidence. However, due to the technical nature of the records at issue here (i.e. specifically seeking different records the “Batch Manifest Report” or “Tabulator Batch Report”), evidence submitted by someone with specialized knowledge explaining how those Reports qualify as the contents of a ballot is necessary. *See* OOR Dkt. AP 2022-1777. No additional affidavits have been submitted here.

<sup>8</sup> *See Ball v. Washington County*, OOR Dkt. AP 2022-1223, 2022 PA O.O.R.D. LEXIS 1750 (finding that the OOR will not substitute its judgment for that of someone (i.e. the County’s Elections Director) with far more familiarity with the issue).

## CONCLUSION

For the foregoing reasons, the appeal is **granted**, and the County is required to provide the Requester with access to the responsive records in accordance with the access provisions of the Election Code. 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 Montgomery County Court of Common Pleas. 65 P.S. § 67.1302(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.<sup>9</sup> This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: September 30, 2022**

*/s/ Lyle Hartranft*

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APPEALS OFFICER  
LYLE HARTRANFT, ESQ.

Sent to: Jonathan Alderfer (via email only);  
Joshua Stein, Esq., (via email only);  
Lauren Raikowski, AORO (via email only)

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<sup>9</sup> *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).