



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
PATRICIA BLEASDALE,	:	
Requester	:	
	:	
v.	:	Docket No.: AP 2022-2387
	:	
DELAWARE COUNTY,	:	
Respondent	:	

FACTUAL BACKGROUND

On August 26, 2022, Patricia Bleasdale (“Requester”) submitted a request (“Request”) to Delaware County (“County”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

[With reference to Pennsylvania Department of State Election Directives and Guidance regarding video surveillance of ballot return sites]:

1) All video surveillance (body camera, fixed source, etc.) of any and all [County] ballot drop boxes installed for use in the 2020 Election. The request encompasses the following video surveillance recording timespan for EACH drop box:

a. 24-hour surveillance, from the time/date of installation in 2020 through midnight of November 8, 2020.

2) The procedure for Board of Election review of video surveillance.

3) The name/vendor of the Software used to evaluate and identify repeat visitors to drop boxes across all drop box locations.

4) Policy/procedure, manuals, or memoranda addressing:

a. the video surveillance requirement (written and or verbal management/supervisory directions) governing the installation preparation and the actual installation of all drop boxes; and

b. the video surveillance requirement addressing the movement/storage of all drop boxes over the course of their usage, from installation through midnight of November 8, 2020.

On September 30, 2022, following a thirty-day extension, 65 P.S. § 67.902(b), the County denied the Request, arguing that all the records sought are subject to disclosure only under the Pennsylvania Election Code. 25 P.S. § 2600 *et seq.* On October 14, 2022, the Requester filed an appeal with the Office of Open Records (“OOR”), arguing that the Election Code made the records public and that other jurisdictions had granted these records pursuant to the RTKL. 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. *See* 65 P.S. § 67.1101(c).

On October 20, 2022, the County submitted a position statement reiterating the County’s rationale for denial and attaching two emails from the Pennsylvania Department of State advising the County’s Board of Elections to deny RTKL requests for elections records and to ask requesters to file requests through the Election Code instead. The County also submitted the affidavit of Anne Coogan, the County’s Agency Open Records Officer, who attested that the County Solicitor had determined that the records were elections records.

LEGAL ANALYSIS

The County is a local agency subject to the RTKL. 65 P.S. § 67.302. Records in the possession of a local agency are presumed to be public, unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. As an agency subject to the RTKL, the County is required to demonstrate, “by a preponderance of the evidence,”

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

The Request exclusively seeks records of the County’s Board of Elections that were produced during administration of the 2020 general election, including policies, procedures, vendor information and the footage captured of the drop boxes in service for the election themselves. The County does not argue that any of the records sought are not public, but instead states only that they are election records that must be accessed by writing to the County Board of Elections with the request. The Requester argues that the RTKL is an appropriate vehicle for the Request because two other counties provided video files requested in this fashion, and that the Election Code requires such records be provided.

The Election Code states that:

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 employes have duties to perform thereto: Provided, however, That such public inspection thereof shall only be in the presence of a member or authorized employe 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. The County has raised no argument on appeal that the responsive records are not public pursuant to Section 2648 of the Election Code, and the Requester agrees that the records are subject to the Election Code.

The OOR likewise concludes that the records sought are subject to Section 2648 of the Election Code. The Election Code controls all “records of each county board of elections”, including “other documents and records in its custody[.]” *Id.* The OOR has interpreted this catchall provision of the Election Code broadly, applying it to emails with the Pennsylvania Department of State about elections, procedures used by county agencies to train election workers, and internal communications involving elections. *See Giancola v. Allegheny Cnty.*, OOR Dkt. AP 2022-1177, 2022 PA O.O.R.D. LEXIS 1602; *Snead v. City of Philadelphia*, OOR Dkt. AP 2021-0160, 2021 PA O.O.R.D. LEXIS 426; *Gallagher v. Montgomery Cnty.*, OOR Dkt. AP 2021-2945, 2022 PA O.O.R.D. LEXIS 622. Here, all the requested records, including the video files sought, facially concern the County’s administration of the 2020 general election, and therefore qualify as “other documents and records” in the custody of the County’s Board of Elections.

When the RTKL conflicts with another state law, the other law’s provisions regarding access to records applies. *See* 65 P.S. § 67.3101.1 (“[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”). 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 § 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 Hall v. Butler Cnty.*, OOR Dkt. AP 2022-0508, 2022 PA O.O.R.D. LEXIS 1062; *Shepherd v. Phila. Office of City Commissioners*, OOR Dkt. AP 2021-2929, 2022 PA O.O.R.D. LEXIS 694. In addition, because the records are not unconditionally public under the Election Code, the OOR must examine any exemptions from disclosure under the RTKL that are asserted by the agency when records of a County Elections Board are sought. *See Pa. Dep’t of Labor & Indus. v. Heltzel*, 90 A.3d 823, 833 (Pa. Commw. Ct. 2014).

Here, the County has asserted no exemptions, but simply states that the records must be sought from the County Board of Elections directly, to be provided according to the provisions of the Election Code. The County has directed the Requester to submit a request to the County Board of Elections but did not demonstrate that a request to the County was not a sufficient request for records pursuant to the Election Code; therefore, the OOR directs the County to provide responsive records subject to the access provisions in the Election Code and according to any legal limitations thereof. *See Cornetti v. Butler Cnty.*, OOR Dkt. AP 2022-0364, 2022 PA O.O.R.D. LEXIS 807; *see also Shepherd v. Phila. Office of City Commissioners*, OOR Dkt. AP 2021-2929, 2022 PA O.O.R.D. LEXIS 694; *Churchwell v. Montgomery Cnty.*, OOR Dkt. AP 2021-1331, 2021 PA O.O.R.D. LEXIS 1383; 65 P.S. § 67.3101.1.

CONCLUSION

For the foregoing reasons, the appeal is **granted**, and the County is required to provide the responsive records in accordance with the procedures and requirements 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 Delaware County Court of Common Pleas. 65 P.S. § 67.1302(b). 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.¹ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: November 14, 2022

/s/ Jordan Davis
JORDAN C. DAVIS, Esq.
Senior Appeals Officer

Sent to: Patricia Bleasdale (via email only);
Anne Coogan (via email only)

¹ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).