

November 22, 2022

Sent Via First Class Mail:

Noah Marlier, Prothonotary
Montgomery County Courthouse
Office of the Prothonotary
P.O. Box 311
Norristown, PA 19404-0311

RE: Submission of Record in:
Jonathan Alderfer v. Montgomery County,
Montgomery CCP No. 2022-21263

Dear Mr. Marlier:

We hereby submit the record in the above-referenced matter. Section 1303 of the Right-to-Know Law, 65 P.S. §§ 67.101, *et seq.*, (“RTKL”), defines the Record on Appeal as “the record before a court shall consist of the request, the agency’s response, the appeal filed under section 1101, the hearing transcript, if any, and the final written determination of the appeals officer.” Pursuant to *Department of Transportation v. Office of Open Records*, 7 A.3d 329 (Pa. Commw. Ct. 2010), this record includes all “evidence and documents admitted into evidence by the appeals officer pursuant to Section 1102(a)(2).” The record in this matter consists of the following:

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

1. The appeal filed by Jonathan Alderfer (“Requester”) with the Office of Open Records (“OOR”), received August 1, 2022.
2. Official Notice of Appeal dated August 1, 2022, sent to both parties by the OOR, advising them of the docket number and identifying the appeals officer for the matter.
3. Montgomery County (“County”) Entry of Appearance and Submission dated August 10, 2022.
4. Requester Submission dated August 15, 2022.
5. OOR’s email dated September 14, 2022, attaching a copy of the appeal and requesting additional information from the County.

6. County Submission dated September 19, 2022.
7. OOR email dated September 20, 2022, seeking additional time to issue the final determination if the Requester wants to respond to the County's submission.
8. OOR email dated September 22, 2022, seeking a copy of the 30-day extension letter for the underlying request.
9. County email dated September 22, 2022, providing the OOR with a copy of the 30-day extension letter.
10. Final Determination issued by the OOR, on September 30, 2022.

The OOR has discretion to hold a hearing on appeals filed but chose not to do so in this matter. Therefore, there is no transcript to transmit. Certification of the record in this case is attached to this letter. Please feel free to contact us for any reason in connection with this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Kyle Applegate". The signature is fluid and cursive, with the first name "Kyle" and last name "Applegate" clearly distinguishable.

Kyle Applegate
Chief Counsel

Attachments

cc: Joshua Stein, Esquire (County)
Jonathan Alderfer (Requester)

**IN THE COURT OF COMMON PLEAS OF
MONTGOMERY COUNTY, PENNSYLVANIA**

MONTGOMERY COUNTY	:	
Appellant,	:	Civil Action - Law
v.	:	
	:	
	:	No. 2022-21263
JONATHAN ALDERFER	:	
Appellee.	:	
	:	

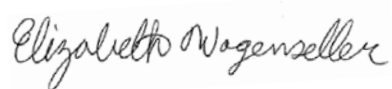
CERTIFICATION OF RECORD

I hereby certify the contents of the record transmitted with this Certification of Record pursuant to Pa.R.A.P. 1952 in *Jonathan Alderfer v. Montgomery County*, OOR Dkt. AP 2022-1779, which is the subject of this appeal.

The record transmitted with this certification is generated entirely from the Office of Open Records database. It is our practice to scan in each and every document submitted in an appeal. Thus, no originals are being transmitted to this Court.

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

Also, my signature on this Certification of Record and on all other correspondence directed to the Court in connection with this matter may be electronic and not original. I hereby certify that this is my true and correct signature and that I have approved the use thereof for these purposes.



Elizabeth Wagenseller, Executive Director
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
Phone: (717) 346-9903
Fax: (717) 425-5343
Email: OpenRecords@pa.gov

Dated: November 22, 2022

**IN THE COURT OF COMMON PLEAS OF
MONTGOMERY COUNTY, PENNSYLVANIA**

MONTGOMERY COUNTY

Appellant,

v.

JONATHAN ALDERFER

Appellee.

:
:
:
:
:
:
:
:

Civil Action - Law

No. 2022-21263

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the Certified Record upon the following persons via email at the address listed below:

Lauren Raikowski
Joshua M. Stein, Esquire
Montgomery County
PO Box 311
Norristown, PA 19404
lraikowski@montcopa.org
joshstein@montcopa.org

Jonathan Alderfer
624 School House Road
Telford, PA 18969
jalderfer@gmail.com



Faith Henry, Administrative Officer
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
Phone: (717) 720-7372
Fax: (717) 425-5343
Email: fahenry@pa.gov

November 22, 2022

**IN THE COURT OF COMMON PLEAS OF
MONTGOMERY COUNTY, PENNSYLVANIA**

MONTGOMERY COUNTY	:	
Appellant,	:	Civil Action - Law
v.	:	
	:	
	:	No. 2022-21263
JONATHAN ALDERFER	:	
Appellee.	:	
	:	

CERTIFIED RECORD

Kyle Applegate
Chief Counsel
Commonwealth of Pennsylvania
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
Phone: (717) 346-9903
Fax: (717) 425-5343
Email: Kyapplegat@pa.gov

Dated: November 22, 2022

**IN THE COURT OF COMMON PLEAS OF
MONTGOMERY COUNTY, PENNSYLVANIA**

MONTGOMERY COUNTY	:	
Appellant,	:	Civil Action - Law
v.	:	
	:	
	:	No. 2022-21263
JONATHAN ALDERFER	:	
Appellee.	:	
	:	

TABLE OF CONTENTS - RECORD

Jonathan Alderfer v Montgomery County, OOR Dkt. AP 2022-1779

1. The appeal filed by Jonathan Alderfer (“Requester”) with the Office of Open Records (“OOR”), received August 1, 2022.
2. Official Notice of Appeal dated August 1, 2022, sent to both parties by the OOR, advising them of the docket number and identifying the appeals officer for the matter.
3. Montgomery County (“County”) Entry of Appearance and Submission dated August 10, 2022.
4. Requester Submission dated August 15, 2022.
5. OOR’s email dated September 14, 2022, attaching a copy of the appeal and requesting additional information from the County.
6. County Submission dated September 19, 2022.
7. OOR email dated September 20, 2022, seeking additional time to issue the final determination if the Requester wants to respond to the County’s submission.
8. OOR email dated September 22, 2022, seeking a copy of the 30-day extension letter for the underlying request.
9. County email dated September 22, 2022, providing the OOR with a copy of the 30-day extension letter.
10. Final Determination issued by the OOR, on September 30, 2022.

00R Exhibit 1

From: no-reply@openrecordspennsylvania.com
To: jalderfer@gmail.com
Subject: [External] PA Office of Open Records - Appeal Confirmation
Date: Saturday, July 30, 2022 1:26:07 PM
Attachments: [oor_logo_email.png](#)

ATTENTION: This email message is from an external sender. Do not open links or attachments from unknown senders. To report suspicious email, use the [Report Phishing button in Outlook.](#)



You have filed an appeal of an agency's response to a request for records under the Right-to-Know Law.

Name:	Jonathan Alderfer
Company:	
Address 1:	624 School House Rd
Address 2:	
City:	Telford
State:	Pennsylvania
Zip:	18969
Phone:	215-206-4178
Email:	jalderfer@gmail.com
Email2:	
Agency (typed):	Montgomery County Solicitor's Office
Agency Address 1:	Montgomery County Solicitor's Office
Agency Address 2:	
Agency City:	norristown
Agency State:	Pennsylvania

Agency Zip:	19404
Agency Phone:	610-278-3033
Agency Email:	Openrcrd@montcopa.org
Records at Issue in this Appeal:	Batch Manifest Report election information, refer to attached Appeal2.pdf
Request Submitted to Agency Via:	web form
Request Date:	06/20/2022
Response Date:	07/30/2022
Deemed Denied:	No
Agency Open Records Officer:	Joshua M. Stein County Solicitor
Attached a copy of my request for records:	Yes
Attached a copy of all responses from the Agency regarding my request:	Yes
Attached any letters or notices extending the Agency's time to respond to my request:	Yes
Agree to permit the OOR additional time to issue a final determination:	30 Days
Interested in resolving this issue through OOR mediation:	No
Attachments:	<ul style="list-style-type: none"> • Original request2.docx • OR22-381 (Alderfer) Response Letter.pdf • BoE Request for Public Lists (1).pdf • Appeal2.pdf

I requested the listed records from the Agency named above. By submitting this form, I am appealing the Agency's denial, partial denial, or deemed denial because the requested records are public records in the possession, custody or control of the Agency; the records do not qualify for any exemptions under § 708 of the RTKL, are not protected by a privilege, and are not exempt under any Federal or State law or regulation; and the request was sufficiently specific.

I requested the election record information from the Montgomery County Solicitor's Office. By submitting this form, I am appealing the Agency's denial because the requested information is part of public record and the reason given for the denial pertains to completely different information compared to my RTKL request.

The denial states (emphasis added) "Montgomery County is arguably prohibited from disseminating **voter records**, including the "copy of the Montgomery County [sic] 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." Nowhere in my request did I ask for voter record information or any data identifying the voter who cast the ballot. The Batch Manifest report does not contain any voter information. Refer to my original RTK request for the information requested; which stated specifically "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."

Pennsylvanians For Union Reform v. Pa. Dept. of State, 138 A.3d 727 (Pa. Cmwlth. Ct. 2016) pertains to voter record information is not applicable to the requested election information.

The Voters Public Information Data Request form that the county attached is for voter information and is not applicable for the requested election information

Section 308 of the Pennsylvania Election code states:

"Records and Documents to Be Open to Public Inspection; Proviso.--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 (sic) having duties to perform thereto: Provided, however, That such public inspection thereof shall only be in the presence of a member or authorized employee (sic) 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 election 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 computation and canvassing."

The three cases cited in which public access is not permitted are as follows:

1. **Contents of Ballot Boxes** A ballot box is a tangible enclosure whose purpose is to provide a repository for paper ballots and, in some cases, the envelopes containing these ballots. A "Cast Vote Record" is a digital file containing the record of the votes on the ballots, which are already publicly reported in aggregate form. The Cast Vote Record contains no image of said ballot, and

no information disclosing any information disclosing the voter who cast said ballot. Simply put, the Cast Vote Record is simply the results of the election presented in an alternate way, providing a critical ability to replay the election vote by vote to analyze trends and patterns.

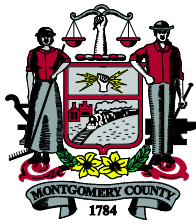
2. Voting Machines PA Statute § 3001 defines various terms used in election-related statutes. While the term “Voting Machine” is not itself defined, its definition can be inferred through usage. For instance: *(4) The words "irregular ballot" shall mean the paper or other material on which a vote is cast on a voting machine for persons whose names do not appear on the ballot labels;* Here it is plain that a voting machine is the machine on which a ballot is cast. *(9) The words "voting machine booth" shall mean the enclosure occupied by the voter when voting;* Here it is clear that the voting machine is the item within the voting machine booth on which voters cast their votes. The Cast Vote Record is produced from the County Election Management Server or its associated devices, and this Server clearly does not fall under the mantle of a “voting machine”.

3. Records of Assisted Voters The Batch Manifest Report contains no information about specific voters at all.

Based upon the statutes and definitions, a Batch Manifest Report in Pennsylvania cannot be denied from public release because the requested records are public records in the possession, custody or control of the Agency; the records do not qualify for any exemptions under § 708 of the RTKL, are not protected by a privilege, and are not exempt under any Federal or State law or regulation.

**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

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

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

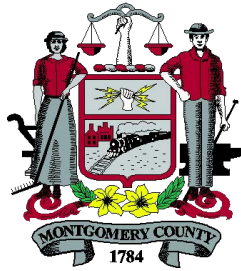
MONTGOMERY COUNTY

BOARD OF ELECTIONS

KENNETH E. LAWRENCE JR., CHAIR

JOSEPH C. GALE, VICE CHAIR VALERIE A.

ARKOOSH, MD, MPH



VOTER SERVICES

PO BOX 311
NORRISTOWN, PA 19404-0311
610-278-3280
FAX: 610-292-4527
WWW.MONTCOPA.ORG

INSTRUCTIONS TO REQUEST VOTER RECORDS

The following lists of public information are available to any qualified registered electors from the Montgomery County Board of Elections pursuant to 25 Pa.C.S. §§1403 and 1404, as well as the SURE Regulations at 4 Pa. Code §§183.13 and 183.14, relating to Street Lists and Public Information Lists.

All request forms must be accompanied by a photocopy of the requestor's government-issued identification in order to confirm registration.

If this request is being made on behalf of an official, a political party, or a candidate, please provide the name of the official, party, or candidate where requested.

Unless otherwise prescribed under the law, all requests will be responded to within ten (10) calendar days after receipt.

Requests submitted by mail should be addressed to:

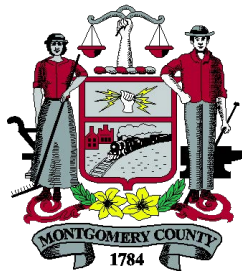
Montgomery County Voter Services
P.O. BOX 311
Norristown, PA 19404

Requests submitted by email should be sent to:

voters@montcopa.org

**MONTGOMERY COUNTY
BOARD OF ELECTIONS**

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



VOTER SERVICES

PO BOX 311
NORRISTOWN, PA 19404-0311
610-278-3280
FAX: 610-292-4527
WWW.MONTCOPA.ORG

REQUEST FOR VOTER RECORDS

Name

Address

Phone

Email

Request is made on behalf of

Public Information List: This is a listing of all voters in the county and contains name, residential address, mailing address, date of birth and date last voted.

Street List: This is a listing of all voters in the county and contain name and residential address.

Individual Voter Information: Please provide as much information as possible to ensure we locate the correct record.

Name

Address

D.O.B

Other: If the type of record you're looking for isn't listed above, please use the following box and describe the record you're looking for with as much detail as you can. A staff member may contact you if we require additional information.

Affirmation

I affirm that any information obtained from the records requested from the Montgomery County Board of Elections will not be used for commercial or other purposes, except for those related to elections, political activities and law enforcement as required by 25 Pa.C.S. §§ 1207(b) & 1404(c)(2). I further affirm that I will not publish any of the above lists on the Internet as such publication is prohibited by 4 Pa. Code §§ 183.13 (g) & 183.14 (k).

I verify that this statement is true and correct. I understand that false statements made are subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

Requestor's Signature

Date

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

Date of Request	6/20/2022
Name of Requester	Jonathan Alderfer
Address1	624 School House Rd
Address2	<i>Field not completed.</i>
City	Telford
State	Pennsylvania
Zip	18969
Telephone	2152064178
Email Address	jalderfer@gmail.com
Records Requested	<p>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.</p> <p>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.</p>
Do You Want Copies?	Yes

Do You Want To Inspect Yes
The Records?

Do You Want Certified No
Copies of Records?

(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

OOR Exhibit 2

NOTICE OF DEADLINES

The appeal has been docketed by the OOR and it has been assigned to an Appeals Officer. The docket number and the Appeals Officer's contact information are included in the attachments you received along with this notice.

The Final Determination is currently due on **September 30, 2022**.

The timeline for this RTKL appeal may be extended by the OOR during the appeal. This extension will allow the OOR the flexibility it requires to protect due process and to ensure that the agency and requester, along with any third parties, have a full and fair opportunity to meaningfully participate in the appeal.

Evidence, legal argument and general information to support your position must be submitted within seven (7) business days from the date of this letter, unless the Appeals Officer informs you otherwise. *Note: If the proceedings have been stayed for the parties to submit a completed mediation agreement, the record will remain open for seven (7) business days beyond the mediation agreement submission deadline.*

Submissions in this case are currently due on **August 10, 2022**.

If you are unable to meaningfully participate in this appeal under the above deadlines, please notify the Appeals Officer as soon as possible.

Due to delays in U.S. mail, we urge agencies and requesters to use email for all communications with the OOR to the extent possible.

Presently, the OOR is receiving postal mail on a limited basis. Accordingly, we urge agencies and requesters to use email for all communication with the OOR to the extent possible.

If you have any questions about this notice or the underlying appeal, please contact the Appeals Officer. The OOR is committed to working with agencies and requesters to ensure that the RTKL appeal process proceeds as fairly and as smoothly as possible.

August 1, 2022

Via Email Only:

Mr. Jonathan Alderfer
624 School House Rd
Telford, PA 18969
jalderfer@gmail.com

Via Email Only:

Joshua M. Stein, Esquire
Agency Open Records Officer
Montgomery County
One Montgomery Plaza
Norristown, PA 19404
openrcrd@montcopa.org
joshstein@montcopa.org

RE: OFFICIAL NOTICE OF APPEAL - Alderfer v. Montgomery County OOR Dkt. AP 2022-1779

Dear Parties:

Review this information and all enclosures carefully as they affect your legal rights.

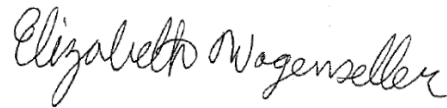
The Office of Open Records (“OOR”) received this appeal under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101, et seq. on August 1, 2022. A binding Final Determination (“FD”) will be issued pursuant to the timeline required by the RTKL, **please see the attached information for more information about deadlines.**

Notes for both parties (more information in the enclosed documents):

- The docket number above must be included on all submissions related to this appeal.
- Any information provided to the OOR must be provided to all parties involved in this appeal. Information that is not shared with all parties will not be considered.
- All submissions to the OOR, other than *in camera* records, will be public records. Do not include any sensitive information- such as Social Security numbers.

If you have questions about this appeal, please contact the assigned Appeals Officer (contact information enclosed), providing a copy of any correspondence to all parties involved in this appeal.

Sincerely,



Elizabeth Wagenseller
Executive Director

Enc.: Description of RTKL appeal process
 Assigned Appeals Officer contact information
 Entire appeal as filed with OOR

The Right-to-Know Law Appeal Process

Please review this information carefully as it affects your legal rights.

The Office of Open Records (“OOR”) has received the enclosed appeal, which was filed under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101, et seq. A binding Final Determination will be issued by the OOR pursuant to the statutory timeline, subject to the notice of deadlines enclosed herein. If you have any questions, please contact the Appeals Officer assigned to this case. Contact information is included on the enclosed documents.

Submissions to the OOR

Both parties may submit evidence, legal argument, and general information to support their positions to the assigned Appeals Officer. Please contact the Appeals Officer as soon as possible.

Any information provided to the OOR must be provided to all parties involved in this appeal. Information submitted to the OOR will not be considered unless it is also shared with all parties.

Include the docket number on all submissions.

The agency may assert exemptions on appeal even if it did not assert them when the request was denied (*Levy v. Senate of Pa.*, 65 A.3d 361 (Pa. 2013)).

Generally, submissions to the OOR — other than *in camera* records — will be public records. Do not include sensitive or personal information, such as Social Security numbers, on any submissions.

Agency Must Notify Third Parties

If records affect a legal or security interest of a third party; contain confidential, proprietary or trademarked records; **or** are held by a contractor or vendor, **the agency must notify such parties of this appeal immediately and provide proof of that notice by the record closing date set forth above.**

Such notice must be made by: (1) Providing a copy of all documents included with this letter; **and** (2) Advising relevant third parties that interested persons may request to participate in this appeal by contacting the Appeals Officer assigned to this case (see 65 P.S. § 67.1101(c)).

The Commonwealth Court has held that “the burden [is] on third-party contractors... to prove by a preponderance of the evidence that the [requested] records are exempt.” (*Allegheny County Dep't of Admin. Servs. v. A Second Chance, Inc.*, 13 A.3d 1025, 1042 (Pa. Commw. Ct. 2011)).

A third party's failure to participate in a RTKL appeal before the OOR may be construed as a waiver of objections regarding release of requested records.

NOTE TO AGENCIES: If you have questions about this requirement, please contact the Appeals Officer immediately.

Statements of Fact & Burden of Proof

Statements of fact must be supported by an affidavit or attestation made under penalty of perjury by a person with actual knowledge. Statements of fact or allegations submitted without an affidavit may not be considered.

Under the RTKL, the agency has the burden of proving that records are exempt from public access (see 65 P.S. § 67.708(a)(1)). **To meet this burden, the agency must provide evidence to the OOR.**

The law requires the agency position to be supported by sufficient facts and citation to all relevant sections of the RTKL, case law, and OOR Final Determinations.

An affidavit or attestation is required to prove that records do not exist.

Sample affidavits are on the OOR website, openrecords.pa.gov.

Any evidence or legal arguments not submitted or made to the OOR may be waived.

Preserving Responsive Records

The agency must preserve all potentially responsive records during the RTKL appeal process, including all proceedings before the OOR and any subsequent appeals to court.

Failure to properly preserve records may result in the agency being sanctioned by a court for acting in bad faith.

See *Lockwood v. City of Scranton*, 2019-CV-3668 (Lackawanna County Court of Common Pleas), holding that an agency had “a mandatory duty” to preserve records after receiving a RTKL request. Also see generally *Uniontown Newspapers, Inc. v. Pa. Dep’t of Corr.*, 185 A.3d 1161 (Pa. Commw. Ct. 2018), holding that “a fee award holds an agency accountable for its conduct during the RTKL process...”

Mediation

The OOR offers a mediation program as an alternative to the standard appeal process. To participate in the mediation program, both parties must agree in writing.

The agency must preserve all potentially responsive records during the RTKL appeal process. Mediation is a voluntary, informal process to help parties reach a mutually agreeable settlement. The OOR has had great success in mediating RTKL cases.

If mediation is successful, the requester will withdraw the appeal. This ensures that the case will not proceed to court — saving both sides time and money.

Either party can end mediation at any time.

If mediation is unsuccessful, both parties will be able to make submissions to the OOR as outlined on this document, and the OOR will have no less than 30 calendar days from the conclusion of the mediation process to issue a Final Determination.

Parties are encouraged to consider the OOR's mediation program as an alternative way to resolve disputes under the RTKL.



APPEALS OFFICER:

Lyle Hartranft, Esq.

CONTACT INFORMATION:

**Commonwealth of Pennsylvania
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234**

FACSIMILE:

(717) 425-5343

EMAIL:

lhartranft@pa.gov

**Preferred method of contact and
submission of information:**

EMAIL

**Please direct submissions and correspondence related to this appeal to the above Appeals Officer.
Please include the case name and docket number on all submissions.**

**You must copy the other party on everything you submit to the OOR. The Appeals Officer cannot
speak to parties individually without the participation of the other party.**

The OOR website, <https://openrecords.pa.gov>, is searchable and both parties are encouraged to review
prior final determinations involving similar records and fees that may impact this appeal.

The OOR website also provides sample forms that may be helpful during the appeals process. OOR staff
are also available to provide general information about the appeals process by calling (717) 346-9903.



IN THE MATTER OF

**JONATHAN ALDERFER,
Requester**

v.

**MONTGOMERY COUNTY,
Respondent**

:
:
:
:
:
:
:
:
:
:

Docket No.: AP 2022-1779

This correspondence confirms the above-referenced Requester's agreement to an additional thirty (30) day extension of time to issue a Final Determination in this matter as indicated in the Requester's appeal form. Accordingly, pursuant to 65 P.S. § 67.1101(b)(1), the Office of Open Records will now issue a Final Determination in the above-captioned matter on or before September 30, 2022.



IN THE MATTER OF

_____,
Requester

v.

_____,
Agency

:
:
:
:
:
:
:
:
:
:

OOR Dkt. AP _____

Please accept my appearance for the _____ in the above captioned case.
(Requester/Agency)

PUBLIC RECORD NOTICE: ALL FILINGS WITH THE OOR WILL BE PUBLIC RECORDS AND SUBJECT TO PUBLIC ACCESS WITH LIMITED EXCEPTION. IF YOU DO NOT WANT TO INCLUDE PERSONAL CONTACT INFORMATION IN A PUBLICLY ACCESSIBLE RECORD, PLEASE PROVIDE ALTERNATE CONTACT INFORMATION IN ORDER TO RECEIVE FUTURE CORRESPONDENCE RELATED TO THIS APPEAL.

Attorney: _____

Firm: _____

Address: _____

Email: _____

Phone #: _____

Please submit this form to the Appeals Officer assigned to the appeal. Remember to copy all parties on this correspondence. The Office of Open Records will not consider direct interest filings submitted after a Final Determination has been issued in the appeal.

REQUEST TO PARTICIPATE BEFORE THE OOR

Please accept this as a Request to Participate in a currently pending appeal before the Office of Open Records. The statements made herein and in any attachments are true and correct to the best of my knowledge, information and belief. I understand this statement is made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities.

NOTE: The requester filing the appeal with the OOR is a named party in the proceeding and is NOT required to complete this form.

OOR Docket No: _____

Today's date: _____

Name: _____

PUBLIC RECORD NOTICE: ALL FILINGS WITH THE OOR WILL BE PUBLIC RECORDS AND SUBJECT TO PUBLIC ACCESS WITH LIMITED EXCEPTION. IF YOU DO NOT WANT TO INCLUDE PERSONAL CONTACT INFORMATION IN A PUBLICLY ACCESSIBLE RECORD, PLEASE PROVIDE ALTERNATE CONTACT INFORMATION IN ORDER TO RECEIVE FUTURE CORRESPONDENCE RELATED TO THIS APPEAL.

Address/City/State/Zip _____

E-mail _____

Fax Number: _____

Name of Requester: _____

Address/City/State/Zip _____

Telephone/Fax Number: _____ / _____

E-mail _____

Name of Agency: _____

Address/City/State/Zip _____

Telephone/Fax Number: _____ / _____

E-mail _____

Record at issue: _____

I have a direct interest in the record(s) at issue as (check all that apply):

- ☐ An employee of the agency
- ☐ The owner of a record containing confidential or proprietary information or trademarked records
- ☐ A contractor or vendor
- ☐ Other: (attach additional pages if necessary) _____

I have attached a copy of all evidence and arguments I wish to submit in support of my position.

Respectfully submitted, _____ (must be signed)

Please submit this form to the Appeals Officer assigned to the appeal. Remember to copy all parties on this correspondence. The Office of Open Records will not consider direct interest filings submitted after a Final Determination has been issued in the appeal.

OOR Exhibit 3

From: [Raikowski, Lauren](#)
To: [Hartranft, Lyle](#)
Cc: [jalderfer@gmail.com](#); [Stein, Josh](#); [Open Records](#)
Subject: RE: Alderfer v. Montgomery Co: AP 2022-1779 - County submission
Date: Wednesday, August 10, 2022 3:26:43 PM
Attachments: [Alderfer v. MontCo. AP 2022-1779 Cover Letter.pdf](#)
[2022-1779 Alderfer-MontgomeryCo EOA.pdf](#)
[Alderfer Affidavit of Joshua Stein AP-2022-1779.pdf](#)
[Alderfer Affidavit of CIO AP-2022-1779 Signed.pdf](#)

Dear Appeals Officer Hartranft:

Good afternoon! Attached please find the County's submission in the above-referenced OOR appeal.

As always, should you have any questions, please do not hesitate to contact us.

Sincerely,

Lauren Raikowski
RTK Administrator
County of Montgomery
One Montgomery Plaza
P.O. Box 311
Norristown, PA 19404-0311
(t) 610-292-6881
(f) 610-278-1158
lraikowski@montcopa.org

Please note that Montgomery County, Pennsylvania is in the process of transitioning from our old .ORG email address to our new .GOV email address.

Confidentiality Notice: This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure, forwarding, or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

From: DC, OpenRecords <RA-OpenRecords@pa.gov>
Sent: Monday, August 1, 2022 4:43:53 PM (UTC-05:00) Eastern Time (US & Canada)
To: Open Records <openrcrd@montcopa.org>; Stein, Josh <JStein1@montcopa.org>; jalderfer@gmail.com <jalderfer@gmail.com>
Cc: Hartranft, Lyle <lhtranft@pa.gov>
Subject: Alderfer v. Montgomery Co: AP 2022-1777, 2022-1779

Dear Parties,

Attached, find two appeals that have been filed with the Office of Open Records. The above mentioned matters have been assigned to Appeals Officer Lyle Hartranft (refer to the attachment for contact information). Please forward all future correspondence directly to the Appeals Officer (cc'd on this email) and all other parties.

Sincerely,



Dylan Devenyi
Administrative Officer
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
(717) 346-9903 | **Fax** (717) 425-5343
<https://openrecords.pa.gov>
@OpenRecordsPA



IN THE MATTER OF

Jonathan Alderfer

Requester

v.

Montgomery County

Agency

:
:
:
:
:
:
:
:
:
:

OOR Dkt. AP 2022-1779_____

Please accept my appearance for the Montgomery County in the above captioned case.
(Requester/Agency)

PUBLIC RECORD NOTICE: ALL FILINGS WITH THE OOR WILL BE PUBLIC RECORDS AND SUBJECT TO PUBLIC ACCESS WITH LIMITED EXCEPTION. IF YOU DO NOT WANT TO INCLUDE PERSONAL CONTACT INFORMATION IN A PUBLICLY ACCESSIBLE RECORD, PLEASE PROVIDE ALTERNATE CONTACT INFORMATION IN ORDER TO RECEIVE FUTURE CORRESPONDENCE RELATED TO THIS APPEAL.

Attorney: Joshua M. Stein, Esquire, County Solicitor

Firm: Montgomery County Solicitor's Office

Address: One Montgomery Plaza Suite 800

Norristown, PA 19404-0311

Email: Openrcrd@montcopa.org

Phone #: 610-278-3033

Please submit this form to the Appeals Officer assigned to the appeal. Remember to copy all parties on this correspondence. The Office of Open Records will not consider direct interest filings submitted after a Final Determination has been issued in the appeal.

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.

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:  _____

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

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.

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

OOR Exhibit 4

From: [Jon Alderfer](#)
To: [Raikowski, Lauren](#)
Cc: [Hartranft, Lyle](#); [Stein, Josh](#); [Open Records](#)
Subject: [External] Re: Alderfer v. Montgomery Co: AP 2022-1777 - County Submission
Date: Monday, August 15, 2022 1:05:42 PM
Attachments: [Appeal AP-2022-1777.pdf](#)
[Appeal AP-2022-1779.pdf](#)

ATTENTION: This email message is from an external sender. Do not open links or attachments from unknown senders. To report suspicious email, use the [Report Phishing button in Outlook](#).

Appeals Office Hartranft:

Please see my attached response to the County's submission.

Sincerely,

Jonathan Alderfer
624 Schoolhouse Rd,
Telford, PA 18969

On Wed, Aug 10, 2022 at 3:22 PM Raikowski, Lauren <L.Raikowski@montcopa.org> wrote:

Dear Appeals Officer Hartranft:

Good afternoon! Attached please find the County's submission in the above-referenced OOR appeal.

As always, should you have any questions, please do not hesitate to contact us.

Sincerely,

Lauren Raikowski
RTK Administrator
County of Montgomery
One Montgomery Plaza
P.O. Box 311
Norristown, PA 19404-0311
(t) 610-292-6881
(f) 610-278-1158
lraikowski@montcopa.org

Please note that Montgomery County, Pennsylvania is in the process of transitioning from our old .ORG email address to our new .GOV email address.

Confidentiality Notice: This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure, forwarding, or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

From: DC, OpenRecords <RA-OpenRecords@pa.gov>
Sent: Monday, August 1, 2022 4:43:53 PM (UTC-05:00) Eastern Time (US & Canada)
To: Open Records <openrcrd@montcopa.org>; Stein, Josh <JStein1@montcopa.org>; jalderfer@gmail.com <jalderfer@gmail.com>
Cc: Hartranft, Lyle <lhartranft@pa.gov>
Subject: Alderfer v. Montgomery Co: AP 2022-1777, 2022-1779

PRESERVATION OF RECORDS NOTICE:

Montgomery County shall preserve all records pertaining to the November 3, 2020 General Election until the Right to Know Request is resolved. The county must immediately suspend the normal document retention/destruction policies and preserve all documentation related to this request including, but not limited to: Electronic documents (e-mail, word docs, spreadsheets, databases etc.); and * All other electronic information maintained, created, or received by counties election computer systems, including desktop and laptop computers and flash or thumb drives.

RESPONSE:

In the August 10, 2022 Affidavit Stein did not correctly quote my request sought. Refer to the attached original request document included in both the original appeal and this letter which states (emphasis added):

” 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.”

Stein has not presented any bases for rejection of the requested “Batch Manifest Report” information. In my appeal I again reiterated my original request for the Batch Manifest Report. The Stein affidavit again did not address the information requested in my appeal and instead addressed other information not requested in this Right to Know Request.

Refer to JOSEF OBERNIER, SR., : Requester : : v. : Docket No.: AP 2017-2107 : CRAWFORD COUNTY, : The case determined that the County has not raised any exemptions under the RTKL or submitted evidence in support thereof, the requested information is subject to public access as set forth in the Election Code.

The county has not provided a valid exemption or evidence in support thereof. For this reasons, I believe the requested Batch Manifest Report information is subject to public access applicable to my request as permitted under the Pennsylvania Election Code 25 P.S. § 2648.

Jonathan Alderfer
624 School House Rd.
Telford, PA 18969

Attachments: Original Right to Know Request

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

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	jalderfer@gmail.com
Records Requested	<p>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.</p> <p>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.</p>
Do You Want Copies?	Yes

Do You Want To Inspect Yes
The Records?

Do You Want Certified No
Copies of Records?

(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

OOR Exhibit 5

From: [Hartranft, Lyle](#)
To: [Raikowski, Lauren](#); jalderfer@gmail.com
Cc: [Stein, Josh](#); [Open Records](#)
Subject: RE: Alderfer v. Montgomery Co: AP 2022-1779 - County submission
Date: Wednesday, September 14, 2022 2:12:00 PM
Attachments: [2022-08-01 AppealNotice 2022-1779.pdf](#)
Importance: High

Dear Parties:

I just want to clarify what exactly is being requested. I attached a copy of the appeal notice and will refer to that. Page 19 appears to be the Request and it seeks the County's "Batch Manifest Report" also called the "Tabulator Batch Report" for all of the elections that were on the ballot for the November 3, 2022 General Election. However, when the County responded, page 14, it listed the Request, in quotes, as the "SQL database backup from the Election Management System (EMS), in digital format, for all of the elections that were on the ballot for the November 3, 2020 General Election." (SQL database backup). The County's attestations also seem to address this SQL database backup as opposed to the "Batch Manifest Report." While I recognize that the Requester is arguing that he is seeking "Batch Manifest Report" information and this was not addressed by the County, I want to give the County an opportunity to explain. For example, is the SQL database backup information the same information as a "Batch Manifest Report" or "Tabulator Batch Report." I am confused as to why the County quoted the Request but it does not appear to be the same Request as listed. Please see pages 19 (request) and 14 (County's response).

I would ask that the County provide a response at its earliest convenience or no later by the end of the day on Friday, September 16, 2022.

Thank-you for your attention in this matter,

Sincerely,

Lyle Hartranft, Esq.
Appeals Officer
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
lhtranft@pa.gov
<http://openrecords.pa.gov> | @OpenRecordsPA

From: Raikowski, Lauren <LRaikowski@montcopa.org>
Sent: Wednesday, August 10, 2022 3:26 PM
To: Hartranft, Lyle <lhtranft@pa.gov>
Cc: jalderfer@gmail.com; Stein, Josh <JStein1@montcopa.org>; Open Records <openrcrd@montcopa.org>
Subject: RE: Alderfer v. Montgomery Co: AP 2022-1779 - County submission

Dear Appeals Officer Hartranft:

Good afternoon! Attached please find the County's submission in the above-referenced OOR appeal.

As always, should you have any questions, please do not hesitate to contact us.

Sincerely,

Lauren Raikowski
RTK Administrator
County of Montgomery
One Montgomery Plaza
P.O. Box 311
Norristown, PA 19404-0311
(t) 610-292-6881
(f) 610-278-1158
lraikowski@montcopa.org

Please note that Montgomery County, Pennsylvania is in the process of transitioning from our old .ORG email address to our new .GOV email address.

Confidentiality Notice: This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure, forwarding, or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

NOTICE OF DEADLINES

The appeal has been docketed by the OOR and it has been assigned to an Appeals Officer. The docket number and the Appeals Officer's contact information are included in the attachments you received along with this notice.

The Final Determination is currently due on **September 30, 2022**.

The timeline for this RTKL appeal may be extended by the OOR during the appeal. This extension will allow the OOR the flexibility it requires to protect due process and to ensure that the agency and requester, along with any third parties, have a full and fair opportunity to meaningfully participate in the appeal.

Evidence, legal argument and general information to support your position must be submitted within seven (7) business days from the date of this letter, unless the Appeals Officer informs you otherwise. *Note: If the proceedings have been stayed for the parties to submit a completed mediation agreement, the record will remain open for seven (7) business days beyond the mediation agreement submission deadline.*

Submissions in this case are currently due on **August 10, 2022**.

If you are unable to meaningfully participate in this appeal under the above deadlines, please notify the Appeals Officer as soon as possible.

Due to delays in U.S. mail, we urge agencies and requesters to use email for all communications with the OOR to the extent possible.

Presently, the OOR is receiving postal mail on a limited basis. Accordingly, we urge agencies and requesters to use email for all communication with the OOR to the extent possible.

If you have any questions about this notice or the underlying appeal, please contact the Appeals Officer. The OOR is committed to working with agencies and requesters to ensure that the RTKL appeal process proceeds as fairly and as smoothly as possible.

August 1, 2022

Via Email Only:

Mr. Jonathan Alderfer
624 School House Rd
Telford, PA 18969
jalderfer@gmail.com

Via Email Only:

Joshua M. Stein, Esquire
Agency Open Records Officer
Montgomery County
One Montgomery Plaza
Norristown, PA 19404
openrcrd@montcopa.org
joshstein@montcopa.org

----- **RE: OFFICIAL NOTICE OF APPEAL - Alderfer v. Montgomery County OOR Dkt. AP 2022-1779** -----

Dear Parties:

Review this information and all enclosures carefully as they affect your legal rights.

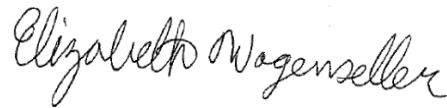
The Office of Open Records (“OOR”) received this appeal under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101, et seq. on August 1, 2022. A binding Final Determination (“FD”) will be issued pursuant to the timeline required by the RTKL, **please see the attached information for more information about deadlines.**

Notes for both parties (more information in the enclosed documents):

- The docket number above must be included on all submissions related to this appeal.
- Any information provided to the OOR must be provided to all parties involved in this appeal. Information that is not shared with all parties will not be considered.
- All submissions to the OOR, other than *in camera* records, will be public records. Do not include any sensitive information- such as Social Security numbers.

----- If you have questions about this appeal, please contact the assigned Appeals Officer (contact information enclosed), providing a copy of any correspondence to all parties involved in this appeal. -----

Sincerely,



Elizabeth Wagenseller
Executive Director

Enc.: Description of RTKL appeal process
Assigned Appeals Officer contact information
Entire appeal as filed with OOR

The Right-to-Know Law Appeal Process

Please review this information carefully as it affects your legal rights.

The Office of Open Records (“OOR”) has received the enclosed appeal, which was filed under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101, et seq. A binding Final Determination will be issued by the OOR pursuant to the statutory timeline, subject to the notice of deadlines enclosed herein. If you have any questions, please contact the Appeals Officer assigned to this case. Contact information is included on the enclosed documents.

Submissions to the OOR

Both parties may submit evidence, legal argument, and general information to support their positions to the assigned Appeals Officer. Please contact the Appeals Officer as soon as possible.

Any information provided to the OOR must be provided to all parties involved in this appeal. Information submitted to the OOR will not be considered unless it is also shared with all parties.

Include the docket number on all submissions.

The agency may assert exemptions on appeal even if it did not assert them when the request was denied (*Levy v. Senate of Pa.*, 65 A.3d 361 (Pa. 2013)).

Generally, submissions to the OOR — other than *in camera* records — will be public records. Do not include sensitive or personal information, such as Social Security numbers, on any submissions.

Agency Must Notify Third Parties

If records affect a legal or security interest of a third party; contain confidential, proprietary or trademarked records; **or** are held by a contractor or vendor, **the agency must notify such parties of this appeal immediately and provide proof of that notice by the record closing date set forth above.**

Such notice must be made by: (1) Providing a copy of all documents included with this letter; **and** (2) Advising relevant third parties that interested persons may request to participate in this appeal by contacting the Appeals Officer assigned to this case (see 65 P.S. § 67.1101(c)).

The Commonwealth Court has held that “the burden [is] on third-party contractors... to prove by a preponderance of the evidence that the [requested] records are exempt.” (*Allegheny County Dep't of Admin. Servs. v. A Second Chance, Inc.*, 13 A.3d 1025, 1042 (Pa. Commw. Ct. 2011)).

A third party's failure to participate in a RTKL appeal before the OOR may be construed as a waiver of objections regarding release of requested records.

NOTE TO AGENCIES: If you have questions about this requirement, please contact the Appeals Officer immediately.

Statements of Fact & Burden of Proof

Statements of fact must be supported by an affidavit or attestation made under penalty of perjury by a person with actual knowledge. Statements of fact or allegations submitted without an affidavit may not be considered.

Under the RTKL, the agency has the burden of proving that records are exempt from public access (see 65 P.S. § 67.708(a)(1)). **To meet this burden, the agency must provide evidence to the OOR.**

The law requires the agency position to be supported by sufficient facts and citation to all relevant sections of the RTKL, case law, and OOR Final Determinations.

An affidavit or attestation is required to prove that records do not exist.

Sample affidavits are on the OOR website, openrecords.pa.gov.

Any evidence or legal arguments not submitted or made to the OOR may be waived.

Preserving Responsive Records

The agency must preserve all potentially responsive records during the RTKL appeal process, including all proceedings before the OOR and any subsequent appeals to court.

Failure to properly preserve records may result in the agency being sanctioned by a court for acting in bad faith.

See *Lockwood v. City of Scranton*, 2019-CV-3668 (Lackawanna County Court of Common Pleas), holding that an agency had “a mandatory duty” to preserve records after receiving a RTKL request. Also see generally *Uniontown Newspapers, Inc. v. Pa. Dep’t of Corr.*, 185 A.3d 1161 (Pa. Commw. Ct. 2018), holding that “a fee award holds an agency accountable for its conduct during the RTKL process...”

Mediation

The OOR offers a mediation program as an alternative to the standard appeal process. To participate in the mediation program, both parties must agree in writing.

The agency must preserve all potentially responsive records during the RTKL appeal process. Mediation is a voluntary, informal process to help parties reach a mutually agreeable settlement. The OOR has had great success in mediating RTKL cases.

If mediation is successful, the requester will withdraw the appeal. This ensures that the case will not proceed to court — saving both sides time and money.

Either party can end mediation at any time.

If mediation is unsuccessful, both parties will be able to make submissions to the OOR as outlined on this document, and the OOR will have no less than 30 calendar days from the conclusion of the mediation process to issue a Final Determination.

Parties are encouraged to consider the OOR's mediation program as an alternative way to resolve disputes under the RTKL.



APPEALS OFFICER:

Lyle Hartranft, Esq.

CONTACT INFORMATION:

**Commonwealth of Pennsylvania
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234**

FACSIMILE:

(717) 425-5343

EMAIL:

lhartranft@pa.gov

**Preferred method of contact and
submission of information:**

EMAIL

**Please direct submissions and correspondence related to this appeal to the above Appeals Officer.
Please include the case name and docket number on all submissions.**

**You must copy the other party on everything you submit to the OOR. The Appeals Officer cannot
speak to parties individually without the participation of the other party.**

The OOR website, <https://openrecords.pa.gov>, is searchable and both parties are encouraged to review
prior final determinations involving similar records and fees that may impact this appeal.

The OOR website also provides sample forms that may be helpful during the appeals process. OOR staff
are also available to provide general information about the appeals process by calling (717) 346-9903.



IN THE MATTER OF

**JONATHAN ALDERFER,
Requester**

v.

**MONTGOMERY COUNTY,
Respondent**

:
:
:
:
:
:
:
:
:
:

Docket No.: AP 2022-1779

This correspondence confirms the above-referenced Requester's agreement to an additional thirty (30) day extension of time to issue a Final Determination in this matter as indicated in the Requester's appeal form. Accordingly, pursuant to 65 P.S. § 67.1101(b)(1), the Office of Open Records will now issue a Final Determination in the above-captioned matter on or before September 30, 2022.



IN THE MATTER OF

_____,
Requester

v.

_____,
Agency

:
:
:
:
:
:
:
:
:
:

OOR Dkt. AP _____

Please accept my appearance for the _____ in the above captioned case.
(Requester/Agency)

PUBLIC RECORD NOTICE: ALL FILINGS WITH THE OOR WILL BE PUBLIC RECORDS AND SUBJECT TO PUBLIC ACCESS WITH LIMITED EXCEPTION. IF YOU DO NOT WANT TO INCLUDE PERSONAL CONTACT INFORMATION IN A PUBLICLY ACCESSIBLE RECORD, PLEASE PROVIDE ALTERNATE CONTACT INFORMATION IN ORDER TO RECEIVE FUTURE CORRESPONDENCE RELATED TO THIS APPEAL.

Attorney: _____

Firm: _____

Address: _____

Email: _____

Phone #: _____

Please submit this form to the Appeals Officer assigned to the appeal. Remember to copy all parties on this correspondence. The Office of Open Records will not consider direct interest filings submitted after a Final Determination has been issued in the appeal.

REQUEST TO PARTICIPATE BEFORE THE OOR

Please accept this as a Request to Participate in a currently pending appeal before the Office of Open Records. The statements made herein and in any attachments are true and correct to the best of my knowledge, information and belief. I understand this statement is made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities.

NOTE: The requester filing the appeal with the OOR is a named party in the proceeding and is NOT required to complete this form.

OOR Docket No: _____

Today's date: _____

Name: _____

PUBLIC RECORD NOTICE: ALL FILINGS WITH THE OOR WILL BE PUBLIC RECORDS AND SUBJECT TO PUBLIC ACCESS WITH LIMITED EXCEPTION. IF YOU DO NOT WANT TO INCLUDE PERSONAL CONTACT INFORMATION IN A PUBLICLY ACCESSIBLE RECORD, PLEASE PROVIDE ALTERNATE CONTACT INFORMATION IN ORDER TO RECEIVE FUTURE CORRESPONDENCE RELATED TO THIS APPEAL.

Address/City/State/Zip _____

E-mail _____

Fax Number: _____

Name of Requester: _____

Address/City/State/Zip _____

Telephone/Fax Number: _____ / _____

E-mail _____

Name of Agency: _____

Address/City/State/Zip _____

Telephone/Fax Number: _____ / _____

E-mail _____

Record at issue: _____

I have a direct interest in the record(s) at issue as (check all that apply):

- ☐ An employee of the agency
- ☐ The owner of a record containing confidential or proprietary information or trademarked records
- ☐ A contractor or vendor
- ☐ Other: (attach additional pages if necessary) _____

I have attached a copy of all evidence and arguments I wish to submit in support of my position.

Respectfully submitted, _____ (must be signed)

Please submit this form to the Appeals Officer assigned to the appeal. Remember to copy all parties on this correspondence. The Office of Open Records will not consider direct interest filings submitted after a Final Determination has been issued in the appeal.

From: no-reply@openrecordspennsylvania.com
To: jalderfer@gmail.com
Subject: [External] PA Office of Open Records - Appeal Confirmation
Date: Saturday, July 30, 2022 1:26:07 PM
Attachments: [oor_logo_email.png](#)

ATTENTION: This email message is from an external sender. Do not open links or attachments from unknown senders. To report suspicious email, use the [Report Phishing button in Outlook.](#)



You have filed an appeal of an agency's response to a request for records under the Right-to-Know Law.

Name:	Jonathan Alderfer
Company:	
Address 1:	624 School House Rd
Address 2:	
City:	Telford
State:	Pennsylvania
Zip:	18969
Phone:	215-206-4178
Email:	jalderfer@gmail.com
Email2:	
Agency (typed):	Montgomery County Solicitor's Office
Agency Address 1:	Montgomery County Solicitor's Office
Agency Address 2:	
Agency City:	norristown
Agency State:	Pennsylvania

Agency Zip:	19404
Agency Phone:	610-278-3033
Agency Email:	Openrcrd@montcopa.org
Records at Issue in this Appeal:	Batch Manifest Report election information, refer to attached Appeal2.pdf
Request Submitted to Agency Via:	web form
Request Date:	06/20/2022
Response Date:	07/30/2022
Deemed Denied:	No
Agency Open Records Officer:	Joshua M. Stein County Solicitor
Attached a copy of my request for records:	Yes
Attached a copy of all responses from the Agency regarding my request:	Yes
Attached any letters or notices extending the Agency's time to respond to my request:	Yes
Agree to permit the OOR additional time to issue a final determination:	30 Days
Interested in resolving this issue through OOR mediation:	No
Attachments:	<ul style="list-style-type: none"> • Original request2.docx • OR22-381 (Alderfer) Response Letter.pdf • BoE Request for Public Lists (1).pdf • Appeal2.pdf

I requested the listed records from the Agency named above. By submitting this form, I am appealing the Agency's denial, partial denial, or deemed denial because the requested records are public records in the possession, custody or control of the Agency; the records do not qualify for any exemptions under § 708 of the RTKL, are not protected by a privilege, and are not exempt under any Federal or State law or regulation; and the request was sufficiently specific.

I requested the election record information from the Montgomery County Solicitor's Office. By submitting this form, I am appealing the Agency's denial because the requested information is part of public record and the reason given for the denial pertains to completely different information compared to my RTKL request.

The denial states (emphasis added) "Montgomery County is arguably prohibited from disseminating **voter records**, including the "copy of the Montgomery County [sic] 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." Nowhere in my request did I ask for voter record information or any data identifying the voter who cast the ballot. The Batch Manifest report does not contain any voter information. Refer to my original RTK request for the information requested; which stated specifically "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."

Pennsylvanians For Union Reform v. Pa. Dept. of State, 138 A.3d 727 (Pa. Cmwlth. Ct. 2016) pertains to voter record information is not applicable to the requested election information.

The Voters Public Information Data Request form that the county attached is for voter information and is not applicable for the requested election information

Section 308 of the Pennsylvania Election code states:

"Records and Documents to Be Open to Public Inspection; Proviso.--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 (sic) having duties to perform thereto: Provided, however, That such public inspection thereof shall only be in the presence of a member or authorized employee (sic) 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 election 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 computation and canvassing."

The three cases cited in which public access is not permitted are as follows:

1. **Contents of Ballot Boxes** A ballot box is a tangible enclosure whose purpose is to provide a repository for paper ballots and, in some cases, the envelopes containing these ballots. A "Cast Vote Record" is a digital file containing the record of the votes on the ballots, which are already publicly reported in aggregate form. The Cast Vote Record contains no image of said ballot, and

no information disclosing any information disclosing the voter who cast said ballot. Simply put, the Cast Vote Record is simply the results of the election presented in an alternate way, providing a critical ability to replay the election vote by vote to analyze trends and patterns.

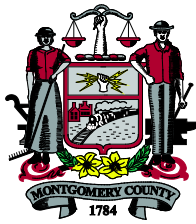
2. Voting Machines PA Statute § 3001 defines various terms used in election-related statutes. While the term “Voting Machine” is not itself defined, its definition can be inferred through usage. For instance: *(4) The words "irregular ballot" shall mean the paper or other material on which a vote is cast on a voting machine for persons whose names do not appear on the ballot labels;* Here it is plain that a voting machine is the machine on which a ballot is cast. *(9) The words "voting machine booth" shall mean the enclosure occupied by the voter when voting;* Here it is clear that the voting machine is the item within the voting machine booth on which voters cast their votes. The Cast Vote Record is produced from the County Election Management Server or its associated devices, and this Server clearly does not fall under the mantle of a “voting machine”.

3. Records of Assisted Voters The Batch Manifest Report contains no information about specific voters at all.

Based upon the statutes and definitions, a Batch Manifest Report in Pennsylvania cannot be denied from public release because the requested records are public records in the possession, custody or control of the Agency; the records do not qualify for any exemptions under § 708 of the RTKL, are not protected by a privilege, and are not exempt under any Federal or State law or regulation.

**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

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

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

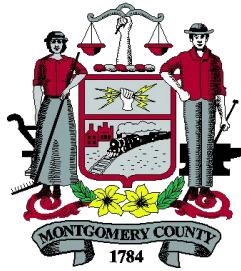
MONTGOMERY COUNTY

BOARD OF ELECTIONS

KENNETH E. LAWRENCE JR., CHAIR

JOSEPH C. GALE, VICE CHAIR VALERIE A.

ARKOOSH, MD, MPH



VOTER SERVICES

PO BOX 311
NORRISTOWN, PA 19404-0311
610-278-3280
FAX: 610-292-4527
WWW.MONTCOPA.ORG

INSTRUCTIONS TO REQUEST VOTER RECORDS

The following lists of public information are available to any qualified registered electors from the Montgomery County Board of Elections pursuant to 25 Pa.C.S. §§1403 and 1404, as well as the SURE Regulations at 4 Pa. Code §§183.13 and 183.14, relating to Street Lists and Public Information Lists.

All request forms must be accompanied by a photocopy of the requestor's government-issued identification in order to confirm registration.

If this request is being made on behalf of an official, a political party, or a candidate, please provide the name of the official, party, or candidate where requested.

Unless otherwise prescribed under the law, all requests will be responded to within ten (10) calendar days after receipt.

Requests submitted by mail should be addressed to:

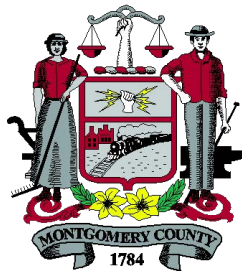
Montgomery County Voter Services
P.O. BOX 311
Norristown, PA 19404

Requests submitted by email should be sent to:

voters@montcopa.org

**MONTGOMERY COUNTY
BOARD OF ELECTIONS**

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



VOTER SERVICES

PO BOX 311
NORRISTOWN, PA 19404-0311
610-278-3280
FAX: 610-292-4527
WWW.MONTCOPA.ORG

REQUEST FOR VOTER RECORDS

Name

Address

Phone

Email

Request is made on behalf of

Public Information List: This is a listing of all voters in the county and contains name, residential address, mailing address, date of birth and date last voted.

Street List: This is a listing of all voters in the county and contain name and residential address.

Individual Voter Information: Please provide as much information as possible to ensure we locate the correct record.

Name

Address

D.O.B

Other: If the type of record you're looking for isn't listed above, please use the following box and describe the record you're looking for with as much detail as you can. A staff member may contact you if we require additional information.

Affirmation

I affirm that any information obtained from the records requested from the Montgomery County Board of Elections will not be used for commercial or other purposes, except for those related to elections, political activities and law enforcement as required by 25 Pa.C.S. §§ 1207(b) & 1404(c)(2). I further affirm that I will not publish any of the above lists on the Internet as such publication is prohibited by 4 Pa. Code §§ 183.13 (g) & 183.14 (k).

I verify that this statement is true and correct. I understand that false statements made are subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

Requestor's Signature

Date

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

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	jalderfer@gmail.com
Records Requested	<p>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.</p> <p>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.</p>
Do You Want Copies?	Yes

Do You Want To Inspect Yes
The Records?

Do You Want Certified No
Copies of Records?

(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

OOR Exhibit 6

From: [Raikowski, Lauren](#)
To: [Hartranft, Lyle](#); jalderfer@gmail.com
Cc: [Stein, Josh](#); [Open Records](#)
Subject: RE: Alderfer v. Montgomery Co: AP 2022-1779 - County's Supplemental submission
Date: Monday, September 19, 2022 4:31:28 PM
Attachments: [RE Alderfer v. Montgomery Co AP 2022-1777 - County Submission .msg](#)
[RE Alderfer v. Montgomery Co AP 2022-1779 - County submission.msg](#)
[Alderfer Supplemental Affidavit of Joshua Stein AP-2022-1779.pdf](#)

Dear Appeals Officer Hartranft:

Good afternoon! I apologize for the tardy response. Like many other Counties across the state, we have been extremely busy with the increased volume of Right-to-Know Requests at present.

Mr. Stein is out of the office at the moment. Having pulled our office file, I think there's been a little bit of a mix up between appeals docketed at AP-2022-1777 and AP-2022-1779. Both submissions are attached. There were two (2) similar requests from the same Requester, which were ultimately appealed and docketed around the same time.

It is the County's position, and admittedly, the position of the Requester himself in his opening paragraph in his OOR appeal, that the SQL database backup information, the Batch Manifest Report, or Tabulator Batch Report all fall under the purview of the Pennsylvania Election Code and that the records requested are not subject to access under the Right-to-Know Law. Attached please find a revised, Supplemental Affidavit, reflecting the same.

As always, should you have any questions, or if I can be of further assistance, please do not hesitate to contact us.

Respectfully,

Lauren Raikowski
RTK Administrator
County of Montgomery
One Montgomery Plaza
P.O. Box 311
Norristown, PA 19404-0311
(t) 610-292-6881
(f) 610-278-1158
lraikowski@montcopa.org

Please note that Montgomery County, Pennsylvania is in the process of transitioning from our old .ORG email address to our new .GOV email address.

Confidentiality Notice: This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure, forwarding, or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

From: Hartranft, Lyle <lhtranft@pa.gov>
Sent: Wednesday, September 14, 2022 2:12 PM
To: Raikowski, Lauren <LRaikowski@montcopa.org>; jalderfer@gmail.com
Cc: Stein, Josh <JStein1@montcopa.org>; Open Records <openrcrd@montcopa.org>
Subject: RE: Alderfer v. Montgomery Co: AP 2022-1779 - County submission
Importance: High

Dear Parties:

I just want to clarify what exactly is being requested. I attached a copy of the appeal notice and will refer to that. Page 19 appears to be the Request and it seeks the County's "Batch Manifest Report" also called the "Tabulator Batch Report" for all of the elections that were on the ballot for the November 3, 2022 General Election. However, when the County responded, page 14, it listed the Request, in quotes, as the "SQL database backup from the Election Management System (EMS), in digital format, for all of the elections that were on the ballot for the November 3, 2020 General Election." (SQL database backup). The County's attestations also seem to address this SQL database backup as opposed to the "Batch Manifest Report." While I recognize that the Requester is arguing that he is seeking "Batch Manifest Report" information and this was not addressed by the County, I want to give the County an opportunity to explain. For example, is the SQL database backup information the same information as a "Batch Manifest Report" or "Tabulator Batch Report." I am confused as to why the County quoted the Request but it does not appear to be the same Request as listed. Please see pages 19 (request) and 14 (County's response).

I would ask that the County provide a response at its earliest convenience or no later by the end of the day on Friday, September 16, 2022.

Thank-you for your attention in this matter,

	:	PA Office of Open Records
JONATHAN ALDERFER	:	Docket No. AP 2022-1779
vs.	:	
COUNTY OF MONTGOMERY	:	

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.

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:  _____

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

Dated: September 19, 2022

OOR Exhibit 7

From: [Hartranft, Lyle](#)
To: [Raikowski, Lauren](#); jalderfer@gmail.com
Cc: [Stein, Josh](#); [Open Records](#)
Subject: RE: Alderfer v. Montgomery Co: AP 2022-1779 and 2022-1777- County's Supplemental submission
Date: Tuesday, September 20, 2022 10:06:00 AM

Mr. Alderfer,

Based on the County's supplemental submission, I want to give you the opportunity to respond at OOR Dkt. AP 2022-1779. However, to do so, I would ask for a two-week extension on both dockets (in order to keep them together). As such, I would suggest the following: The OOR 's final determination is due on or before October 14, 2022. Accordingly, I would ask that you submit any additional response on or before September 28, 2022.

Kindly let me know at your earliest convenience or no later by the end of the day today whether this is acceptable to you and I will update the dockets accordingly.

Thank-you for your attention in this matter.

Lyle Hartranft, Esq.
Appeals Officer
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
lhtranft@pa.gov
<http://openrecords.pa.gov> | @OpenRecordsPA

From: Raikowski, Lauren <LRaikowski@montcopa.org>
Sent: Monday, September 19, 2022 4:30 PM
To: Hartranft, Lyle <lhtranft@pa.gov>; jalderfer@gmail.com
Cc: Stein, Josh <JStein1@montcopa.org>; Open Records <openrcrd@montcopa.org>
Subject: RE: Alderfer v. Montgomery Co: AP 2022-1779 - County's Supplemental submission

Dear Appeals Officer Hartranft:

Good afternoon! I apologize for the tardy response. Like many other Counties across the state, we have been extremely busy with the increased volume of Right-to-Know Requests at present.

Mr. Stein is out of the office at the moment. Having pulled our office file, I think there's been a little bit of a mix up between appeals docketed at AP-2022-1777 and AP-2022-1779. Both submissions are attached. There were two (2) similar requests from the same Requester, which were ultimately appealed and docketed around the same time.

It is the County's position, and admittedly, the position of the Requester himself in his opening paragraph in his OOR appeal, that the SQL database backup information, the Batch Manifest Report, or Tabulator Batch Report all fall under the purview of the Pennsylvania Election Code and that the records requested are not subject to access under the Right-to-Know Law. Attached please find a revised, Supplemental Affidavit, reflecting the same.

As always, should you have any questions, or if I can be of further assistance, please do not hesitate to contact us.

Respectfully,

Lauren Raikowski
RTK Administrator
County of Montgomery
One Montgomery Plaza
P.O. Box 311
Norristown, PA 19404-0311
(t) 610-292-6881
(f) 610-278-1158
lraikowski@montcopa.org

Please note that Montgomery County, Pennsylvania is in the process of transitioning from our old .ORG email address to our new .GOV email address.

Confidentiality Notice: This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure, forwarding, or distribution is prohibited. If you are not the intended

OOR Exhibit 8

From: [Hartranft, Lyle](#)
To: [Raikowski, Lauren](#); jalderfer@gmail.com
Cc: [Stein, Josh](#); [Open Records](#)
Subject: RE: Alderfer v. Montgomery Co: AP 2022-1779 - County's Supplemental submission
Date: Thursday, September 22, 2022 9:37:00 AM
Attachments: [2022-08-01 AppealNotice 2022-1779.pdf](#)
Importance: High

Dear Parties:

On September 20, 2022, I sent an email to the Requester seeking additional time to issue the final determination and to provide him the opportunity to respond. To date, I have not received a response. I do have another concern regarding the above-captioned appeal. The appeal packet contains a Request for "Batch Manifest Report" and "Tabulator Batch Report" but the County's 30-day extension and subsequent denial address the SQL database backup information as opposed to the specific Request. I believe the Requester points this out (see page 12 attached).

The Request is dated June 20, 2022 but the extension, dated June 28, 2022 (page 14) addresses the SQL database as opposed to the Batch Manifest Report. Can one of the parties send me the 30-day extension letter and/or the County's response to the "Batch Manifest Report" or, in the alternative, an explanation that the County did not seek a 30-day extension and/or issue a final determination addressing the "Batch Manifest Report."

Kindly provide an update by the end of the day today, September 22, 2022. Again, if more time is needed, I would ask that the Requester agree to an extension as outlined my September 20, 2022 correspondence.

Sincerely,

Lyle Hartranft, Esq.
Appeals Officer
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
lhhartranft@pa.gov
<http://openrecords.pa.gov> | @OpenRecordsPA

From: Raikowski, Lauren <LRaikowski@montcopa.org>
Sent: Monday, September 19, 2022 4:30 PM
To: Hartranft, Lyle <lhhartranft@pa.gov>; jalderfer@gmail.com
Cc: Stein, Josh <JStein1@montcopa.org>; Open Records <openrcrd@montcopa.org>
Subject: RE: Alderfer v. Montgomery Co: AP 2022-1779 - County's Supplemental submission

Dear Appeals Officer Hartranft:

Good afternoon! I apologize for the tardy response. Like many other Counties across the state, we have been extremely busy with the increased volume of Right-to-Know Requests at present.

Mr. Stein is out of the office at the moment. Having pulled our office file, I think there's been a little bit of a mix up between appeals docketed at AP-2022-1777 and AP-2022-1779. Both submissions are attached. There were two (2) similar requests from the same Requester, which were ultimately appealed and docketed around the same time.

It is the County's position, and admittedly, the position of the Requester himself in his opening paragraph in his OOR appeal, that the SQL database backup information, the Batch Manifest Report, or Tabulator Batch Report all fall under the purview of the Pennsylvania Election Code and that the records requested are not subject to access under the Right-to-Know Law. Attached please find a revised, Supplemental Affidavit, reflecting the same.

As always, should you have any questions, or if I can be of further assistance, please do not hesitate to contact us.

Respectfully,

Lauren Raikowski
RTK Administrator
County of Montgomery
One Montgomery Plaza
P.O. Box 311
Norristown, PA 19404-0311
(t) 610-292-6881
(f) 610-278-1158
lraikowski@montcopa.org

OOR Exhibit 9

From: [Raikowski, Lauren](#)
To: [Hartranft, Lyle](#); jalderfer@gmail.com
Cc: [Stein, Josh](#); [Open Records](#)
Subject: [External] RE: Alderfer v. Montgomery Co: AP 2022-1779 - County's Supplemental submission
Date: Thursday, September 22, 2022 4:27:11 PM
Attachments: [montgomerycounty_01_logo.png](#)
[montgomerycounty_01_Facebook.png](#)
[montgomerycounty_01_Instagram.png](#)
[montgomerycounty_01_Twitter.png](#)
[montgomerycounty_01_Youtube.png](#)
[montgomerycounty_01_Nextdoor.png](#)
[montgomerycounty_01_Linkedin.png](#)
[RE OR22-379 \(Alderfer\).msg](#)
[RE OR22-381 \(Alderfer\).msg](#)

ATTENTION: This email message is from an external sender. Do not open links or attachments from unknown senders. To report suspicious email, use the [Report Phishing button in Outlook](#).

Dear Appeals Officer Hartranft:

Good afternoon! As requested, attached please find 30-day extension letters which responded to both of Mr. Alderfer's Requests, one docketed under AP-2022-1777 (originally logged at OR22-379) and another under AP-2022-1779 (originally logged at OR22-381).

Respectfully,

Lauren Raikowski
RTK Administrator
County of Montgomery
One Montgomery Plaza
P.O. Box 311
Norristown, PA 19404-0311
(t) 610-292-6881
(f) 610-278-1158
lraikowski@montcopa.org

Please note that Montgomery County, Pennsylvania is in the process of transitioning from our old .ORG email address to our new .GOV email address.

Confidentiality Notice: This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure, forwarding, or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.



Lauren Raikowski
Contract/RTK Admin
Purchasing

P: (610) 292-6881
www.montcopa.org



This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure, forwarding, or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

From: Hartranft, Lyle <lhtranft@pa.gov>
Sent: Thursday, September 22, 2022 9:37 AM
To: Raikowski, Lauren <Lauren.Raikowski@montgomerycountypa.gov>; jalderfer@gmail.com
Cc: Stein, Josh <JStein1@montcopa.org>; Open Records <openrcrd@montcopa.org>
Subject: RE: Alderfer v. Montgomery Co: AP 2022-1779 - County's Supplemental submission
Importance: High

Dear Parties:

On September 20, 2022, I sent an email to the Requester seeking additional time to issue the final determination and to provide him the opportunity to respond. To date, I have not received a response. I do have another concern regarding the above-captioned appeal. The

From: Raikowski, Lauren
To: jalderfer@gmail.com
Subject: RE: OR22-381 (Alderfer)
Attachments: [OR22-381 \(Alderfer\) 30 Day Letter.pdf](#)

Mr. Alderfer:

Good morning! Attached please find our response to your Right-to-Know Request. We need a little more time to respond to your Request.

Sincerely,

Lauren Raikowski
RTK Administrator
County of Montgomery
One Montgomery Plaza
P.O. Box 311
Norristown, PA 19404-0311
(t) 610-292-6881
(f) 610-278-1158
lraikowski@montcopa.org

Please note that Montgomery County, Pennsylvania is in the process of transitioning from our old .ORG email address to our new .GOV email address.

Confidentiality Notice: This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure, forwarding, or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

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

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	jalderfer@gmail.com
Records Requested	<p>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.</p> <p>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.</p>
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

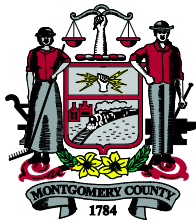
Proprietary or Trade Secret: YES / NO

Personal Privacy Interest: YES / NO

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

**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

June 27, 2022

VIA E-MAIL

Jonathan Alderfer
624 School House Road
Telford, PA 18969
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,

A handwritten signature in red ink, reading 'Josh Stein', is positioned above the typed name of the County Solicitor.

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

OOR Exhibit 10

From: [Hartranft, Lyle](#)
To: jalderfer@gmail.com; [Raikowski, Lauren](#); [Stein, Josh](#)
Subject: Final Determination: Alderfer-MontgomeryCo. (OOR Dkt. AP 2022-1779)
Date: Friday, September 30, 2022 2:33:00 PM
Attachments: [2022-1779 Alderfer-MontgomeryCo. FD.pdf](#)

Dear Parties:

Attached, please find the final determination for the above-captioned matter.

Sincerely,

Lyle Hartranft, Esq.
Appeals Officer
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
lhhartranft@pa.gov
<http://openrecords.pa.gov> | @OpenRecordsPA



FINAL DETERMINATION

IN THE MATTER OF

**JONATHAN ALDERFER,
Requester**

v.

**MONTGOMERY COUNTY,
Respondent**

:
:
:
:
:
:
:
:
:
:
:

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, 2022,¹ the Request was filed, stating:

¹ 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, 2022,² 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.³ 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

² 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.

³ 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.⁴

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.

⁴ 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,⁵ 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.

⁵ *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 Solutions⁶ 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

⁶ 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.”⁷ 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,⁸ 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.

⁷ 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.

⁸ *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.⁹ 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

APPEALS OFFICER
LYLE HARTRANFT, ESQ.

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

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