pennsylvania
OFFICE OF OPEN RECORDS

December 6, 2022

Sent Via First Class Mail:

Prothonotary
Erie County Courthouse
140 West Sixth Street
Room 120
Erie, PA 16501

RE: Submission of Record in:
Erie County Board of Elections v. Michelle Previte,
Civil Division – No. 12720-2022

Dear Prothonotary:

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"), states that "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 2022-2191:

1. The appeal filed by Michelle Previte ("Requester") to the Office of Open Records ("OOR"), received September 20, 2022.

2. Official Notice of Appeal dated September 21, 2022, sent to both parties by the OOR, advising them of the docket number and identifying the appeals officer for the matter.

3. Requester's submission dated September 30, 2022.

4. Erie County ("County") email dated October 3, 2022, seeking OOR confirmation of their request to participate in the instant appeal.

5. OOR email date October 4, 2022, noting the OOR had not received the County's request to participate nor the County's submission.

6. County submission dated September 26, 2022, received October 4, 2022.

7. Final Determination dated October 20, 2022, issued by the OOR.

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,

Kyle Applegate
Chief Counsel

Attachments

cc: Michelle Previte
Jay R. Stranahan, Esq.

IN THE MATTER OF	:	**IN THE COURT OF COMMON PLEAS**
	:	**OF ERIE COUNTY, PENNSYLVANIA**
	:	
MICHELLE PREVITE,	:	**Civil Action -**
Appellee/Requester	:	
v.	:	
	:	**No. 12720-2022**
ERIE COUNTY BOARD	:	
OF ELECTIONS,	:	
Appellant/Respondent	:	
	:	

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 *Michelle Previte v. Erie County*, OOR Dkt. AP 2022-2191, 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

_____

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: December 6, 2022

IN THE MATTER OF	:	**IN THE COURT OF COMMON PLEAS**
	:	**OF ERIE COUNTY, PENNSYLVANIA**
	:	
MICHELLE PREVITE,	:	**Civil Action -**
Appellee/Requester	:	
v.	:	
	:	**No. 12720-2022**
ERIE COUNTY BOARD	:	
OF ELECTIONS,	:	
Appellant/Respondent	:	
	:	

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 or First-Class mail as indicated below:

Jay R. Stranahan, Esq.
CARNEY & GOOD
254 West Sixth Street
Erie, PA 16507-1398
jaystranahan@yahoo.com
(via email only)

Michelle Previte
210 West 37th Street
Erie, PA 16508
michelleprevite@gmail.com
(via email only)



Faith Henry, Administrative Officer
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
Phone: (717) 346-9903
Email: fahenry@pa.gov

Dated: December 6, 2022

IN THE MATTER OF	:	**IN THE COURT OF COMMON PLEAS**
	:	**OF ERIE COUNTY, PENNSYLVANIA**
	:	
MICHELLE PREVITE,	:	**Civil Action -**
Appellee/Requester	:	
v.	:	
	:	**No. 12720-2022**
ERIE COUNTY BOARD	:	
OF ELECTIONS,	:	
Appellant/Respondent	:	
	:	

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: December 6, 2022

IN THE MATTER OF	:	**IN THE COURT OF COMMON PLEAS**
	:	**OF ERIE COUNTY, PENNSYLVANIA**
	:	
MICHELLE PREVITE,	:	**Civil Action -**
Appellee/Requester	:	
v.	:	
	:	**No. 12720-2022**
ERIE COUNTY BOARD	:	
OF ELECTIONS,	:	
Appellant/Respondent	:	
	:	

TABLE OF CONTENTS
RECORD

Michelle Previte v. Erie County,
OOR Dkt. No. AP 2022-2191

Office of Open Records Docket No. AP 2022-2191:

1. The appeal filed by Michelle Previte ("Requester") to the Office of Open Records ("OOR"), received September 20, 2022.

2. Official Notice of Appeal dated September 21, 2022, sent to both parties by the OOR, advising them of the docket number and identifying the appeals officer for the matter.

3. Requester's submission dated September 30, 2022.

4. Erie County ("County") email dated October 3, 2022, seeking OOR confirmation of their request to participate in the instant appeal.

5. OOR email date October 4, 2022, noting the OOR had not received the County's request to participate nor the County's submission.

6. County submission dated September 26, 2022, received October 4, 2022.

7. Final Determination dated October 20, 2022, issued by the OOR.

OOR Exhibit 1

Devenyi, Dylan

From: no-reply@openrecordspennsylvania.com
Sent: Tuesday, September 20, 2022 1:51 PM
To: michelleprevite@gmail.com
Subject: [External] PA Office of Open Records - Appeal Confirmation

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.*

pennsylvania
OFFICE OF OPEN RECORDS

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

Name:	Michelle Previte
Company:	
Address 1:	210 W 37th St
Address 2:	
City:	Erie
State:	Pennsylvania
Zip:	16508
Phone:	814-881-9177
Email:	michelleprevite@gmail.com
Email2:	
Agency (typed):	Erie County Board of Elections
Agency Address 1:	Erie County Courthouse
Agency Address 2:	140 West 6th Street, Rm. 114
Agency City:	Erie
Agency State:	Pennsylvania
Agency Zip:	16501
Agency Phone:	814-451-6304
Agency Email:	jslomski@eriecountypa.gov

Records at Issue in this Appeal:	1. An electronic copy of the images of all polling place ballots from the November 2020 election. 2. An electronic copy of the images of all mail-in ballots (including absentee ballots) from the November 2020 election. 3. An electronic copy of the images of all outer envelopes (containing each voter's declaration) for the mail-in ballots (including absentee ballots) from the November 2020 election.
Request Submitted to Agency Via:	e-mail
Request Date:	08/01/2022
Response Date:	09/02/2022
Deemed Denied:	No
Agency Open Records Officer:	Julie Slomski, County Clerk
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:	No
Interested in resolving this issue through OOR mediation:	No
Attachments:	• RIGHT TO KNOW REQUEST mail-in ballot envelope images.pdf • RIGHT TO KNOW REQUEST mail-in ballot images.pdf • RIGHT TO KNOW REQUEST in-person ballot images.pdf • ballot image denial.PDF • ballot image RTK correspondence.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.

COUNTY OF ERIE
BOARD OF ELECTIONS

September 1, 2022

Michelle Previte
210 West 37th St.
Erie, PA 16508

Dear Ms. Previte,

This comes in response to your Right to Know requests from August 1, 2022 for the following:

- An electronic copy of the images of all polling place ballots from the November 2020 election.
- An electronic copy of the images of all outer envelopes (containing each voter's declaration) for the mail-in ballots (including absentee ballots) from the November 2020 election.
- Please provide an electronic copy of the images of all outer envelopes (containing each voter's declaration) for the mail-in ballots (including absentee ballots) from the November 2020 election.

This request has been denied for the following reason:

The Pennsylvania Election Code governs these requests, through Section 308 of the Election Code, which provides "[t]he records of each county board of elections . . . **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: 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 . . . ." 25 P.S. § 2648 (emphasis added).

You have a right to appeal this determination in writing to Liz Wagenseller, Executive Director, Office of Open Records, 333 Market St. 16th Floor, Harrisburg, PA 17101-2234. If you choose to file an appeal, you must do so within fifteen (15) business days of the mailing date of this letter. Please be advised that this correspondence will serve to close this matter with Erie County as permitted by law.

Respectfully,

Julie Slomski, County Clerk
Deputy Open Records Officer
814-451-6304
JSlomski@eriecountypa.gov

OOR Certified Record Page 010

Gmail **Michelle Previte <michelleprevite@gmail.com>**

RTK requests

4 messages

Michelle Previte <michelleprevite@gmail.com> Mon, Aug 1, 2022 at 9:25 PM
Reply-To: MichellePrevite@gmail.com
To: "Slomski, Julie" <jslomski@eriecountypa.gov>

Dear Ms. Slomski,

Attached are three Right-to-Know requests pertaining to the November 2020 election. Thank you for your attention to this matter.

Best regards,

Michelle Previte

3 attachments

RIGHT TO KNOW REQUEST in-person ballot images.pdf
391K

RIGHT TO KNOW REQUEST mail-in ballot images.pdf
391K

RIGHT TO KNOW REQUEST mail-in ballot envelope images.pdf
392K

Slomski, Julie <JSlomski@eriecountypa.gov> Tue, Aug 2, 2022 at 3:09 PM
To: "MichellePrevite@gmail.com" <michelleprevite@gmail.com>
Cc: "Fernandez, Tonia" <tfernandez@eriecountypa.gov>, "Moore, Megan" <mmoore@eriecountypa.gov>

Good Afternoon Ms. Previte,
Please allow this email to confirm receipt of this request and acquire a 30 extension.

Best Regards,

Julie Slomski
County Clerk
Erie County Courthouse
Office of County Council
140 West 6th Street, Rm. 114
Erie, PA 16501

office: 814-451-6304
cell: 814-460-5331
CountySeal_FullColorBEST

From: Michelle Previte <michelleprevite@gmail.com>
Sent: Monday, August 1, 2022 9:27 PM
To: Slomski, Julie <jslomski@eriecountypa.gov>
Subject: RTK requests

[Quoted text hidden]

Image.jpeg
10K

Michelle Previte <michelleprevite@gmail.com> Wed, Aug 31, 2022 at 10:04 PM
Reply-To: MichellePrevite@gmail.com
To: "Slomski, Julie" <JSlomski@eriecountypa.gov>
Cc: "Fernandez, Tonia" <tfernandez@eriecountypa.gov>, "Moore, Megan" <mmoore@eriecountypa.gov>

Dear Ms. Slomski,

As we are nearing the end of the 30-day extension you requested for my Right-to-Know requests from September 1, I thought that I would tag base with you to find out if you plan to fulfill my requests. Since federal law requires that these materials be retained until at least September 3, and that date is fast approaching, I wanted to let you know that if you don't plan to fulfill my requests this week, I will be filing an appeal with the Office of Open Records. So please retain these records while the appeal process is underway.

Thank you for your attention to this matter.

Best,

Michelle Previte
[Quoted text hidden]

Slomski, Julie <JSlomski@eriecountypa.gov> Fri, Sep 2, 2022 at 9:05 AM
To: "MichellePrevite@gmail.com" <MichellePrevite@gmail.com>
Cc: "Fernandez, Tonia" <tfernandez@eriecountypa.gov>, "Moore, Megan" <mmoore@eriecountypa.gov>

Good Afternoon Ms. Previte,

Please find our response attached.

Respectfully,

Julie Slomski

County Clerk

Erie County Courthouse

Office of County Council

140 West 6th Street, Rm. 114

Erie, PA 16501

office: 814-451-6304

cell: 814-460-5331

From: Michelle Previte [mailto:michelleprevite@gmail.com]
Sent: Wednesday, August 31, 2022 10:05 PM
To: Slomski, Julie <JSlomski@eriecountypa.gov>
Cc: Fernandez, Tonia <tfernandez@eriecountypa.gov>; Moore, Megan <mmoore@eriecountypa.gov>
Subject: Re: RTK requests

Dear Ms. Slomski,

As we are nearing the end of the 30-day extension you requested for my Right-to-Know requests from September 1, I thought that I would tag base with you to find out if you plan to fulfill my requests. Since federal law requires that these materials be retained until at least September 3, and that date is fast approaching, I wanted to let you know that if you don't plan to fulfill my requests this week, I will be filing an appeal with the Office of Open Records. So please retain these records while the appeal process is underway.

Thank you for your attention to this matter.

Best,

Michelle Previte

On Tue, Aug 2, 2022 at 3:09 PM Slomski, Julie <JSlomski@eriecountypa.gov> wrote:

> Good Afternoon Ms. Previte,
> Please allow this email to confirm receipt of this request and acquire a 30 extension.
>
> Best Regards,
>
> Julie Slomski
> County Clerk
> Erie County Courthouse

Office of County Council
140 West 6th Street, Rm. 114
Erie, PA 16501

office: 814-451-6304
cell: 814-460-5331

[Quoted text hidden]

Previte-RTK.PDF
439K

pennsylvania
OFFICE OF OPEN RECORDS

Standard Right-to-Know Law Request Form

Good communication is vital in the RTKL process. Complete this form thoroughly and retain a copy; it may be required if an appeal is filed. You have 15 business days to appeal after a request is denied or deemed denied.

SUBMITTED TO AGENCY NAME: Erie County Board of Elections, Attn: Julie Slomski (Attn: AORO)

Date of Request: August 1, 2022 Submitted via: ☒ Email ☐ U.S. Mail ☐ Fax ☐ In Person

PERSON MAKING REQUEST:

Name: Michelle Previte Company (if applicable): _____

Mailing Address: 210 W 37th St

City: Erie State: PA Zip: 16508 Email: michelleprevite@gmail.com

Telephone: 814-881-9177 Fax: _____

How do you prefer to be contacted if the agency has questions? ☐ Telephone ☒ Email ☐ U.S. Mail

RECORDS REQUESTED: *Be clear and concise. Provide as much specific detail as possible, ideally including subject matter, time frame, and type of record or party names. RTKL requests should seek records, not ask questions. Requesters are not required to explain why the records are sought or the intended use of the records unless otherwise required by law. Use additional pages if necessary.*

Please provide an electronic copy of the images of all polling place ballots from the November 2020 election.

DO YOU WANT COPIES? ☐ Yes, printed copies (*default if none are checked*)
☒ Yes, electronic copies preferred if available
☐ No, in-person inspection of records preferred (*may request copies later*)

Do you want certified copies? ☒ Yes (*may be subject to additional costs*) ☐ No

RTKL requests may require payment or prepayment of fees. See the Official RTKL Fee Schedule for more details.

Please notify me if fees associated with this request will be more than ☒ $100 (or) ☐ $_____.

ITEMS BELOW THIS LINE FOR AGENCY USE ONLY

Tracking: _____ Date Received: _____ Response Due (5 bus. days): _____

30-Day Ext.? ☐ Yes ☐ No (If Yes, Final Due Date: _____) Actual Response Date: _____

Request was: ☐ Granted ☐ Partially Granted & Denied ☐ Denied Cost to Requester: $_____

☐ Appropriate third parties notified and given an opportunity to object to the release of requested records.

NOTE: In most cases, a completed RTKL request form is a public record. Form updated Feb. 3, 2020
More information about the RTKL is available at https://www.openrecords.pa.gov

pennsylvania
OFFICE OF OPEN RECORDS

Standard Right-to-Know Law Request Form

Good communication is vital in the RTKL process. Complete this form thoroughly and retain a copy; it may be required if an appeal is filed. You have 15 business days to appeal after a request is denied or deemed denied.

SUBMITTED TO AGENCY NAME: Erie County Board of Elections, Attn: Julie Slomski (Attn: AORO)

Date of Request: August 1, 2022 Submitted via: ☒ Email ☐ U.S. Mail ☐ Fax ☐ In Person

PERSON MAKING REQUEST:

Name: Michelle Previte Company (if applicable): _____

Mailing Address: 210 W 37th St

City: Erie State: PA Zip: 16508 Email: michelleprevite@gmail.com

Telephone: 814-881-9177 Fax: _____

How do you prefer to be contacted if the agency has questions? ☐ Telephone ☒ Email ☐ U.S. Mail

RECORDS REQUESTED: *Be clear and concise. Provide as much specific detail as possible, ideally including subject matter, time frame, and type of record or party names. RTKL requests should seek records, not ask questions. Requesters are not required to explain why the records are sought or the intended use of the records unless otherwise required by law. Use additional pages if necessary.*

Please provide an electronic copy of the images of all outer envelopes (containing each voter's declaration) for the mail-in ballots (including absentee ballots) from the November 2020 election.

DO YOU WANT COPIES? ☐ Yes, printed copies (*default if none are checked*)
☒ Yes, electronic copies preferred if available
☐ No, in-person inspection of records preferred (*may request copies later*)

Do you want certified copies? ☒ Yes (*may be subject to additional costs*) ☐ No

RTKL requests may require payment or prepayment of fees. See the Official RTKL Fee Schedule for more details.

Please notify me if fees associated with this request will be more than ☒ $100 (or) ☐ $_____.

ITEMS BELOW THIS LINE FOR AGENCY USE ONLY

Tracking: _____ Date Received: _____ Response Due (5 bus. days): _____

30-Day Ext.? ☐ Yes ☐ No (If Yes, Final Due Date: _____) Actual Response Date: _____

Request was: ☐ Granted ☐ Partially Granted & Denied ☐ Denied Cost to Requester: $_____

☐ Appropriate third parties notified and given an opportunity to object to the release of requested records.

NOTE: In most cases, a completed RTKL request form is a public record. Form updated Feb. 3, 2020
More information about the RTKL is available at https://www.openrecords.pa.gov

pennsylvania
OFFICE OF OPEN RECORDS

Standard Right-to-Know Law Request Form

Good communication is vital in the RTKL process. Complete this form thoroughly and retain a copy; it may be required if an appeal is filed. You have 15 business days to appeal after a request is denied or deemed denied.

SUBMITTED TO AGENCY NAME: Erie County Board of Elections, Attn: Julie Slomski (Attn: AORO)

Date of Request: August 1, 2022 Submitted via: ☒ Email ☐ U.S. Mail ☐ Fax ☐ In Person

PERSON MAKING REQUEST:

Name: Michelle Previte Company (if applicable): _____

Mailing Address: 210 W 37th St

City: Erie State: PA Zip: 16508 Email: michelleprevite@gmail.com

Telephone: 814-881-9177 Fax: _____

How do you prefer to be contacted if the agency has questions? ☐ Telephone ☒ Email ☐ U.S. Mail

RECORDS REQUESTED: *Be clear and concise. Provide as much specific detail as possible, ideally including subject matter, time frame, and type of record or party names. RTKL requests should seek records, not ask questions. Requesters are not required to explain why the records are sought or the intended use of the records unless otherwise required by law. Use additional pages if necessary.*

Please provide an electronic copy of the images of all mail-in ballots (including absentee ballots) from the November 2020 election.

DO YOU WANT COPIES? ☐ Yes, printed copies (*default if none are checked*)
☒ Yes, electronic copies preferred if available
☐ No, in-person inspection of records preferred (*may request copies later*)

Do you want certified copies? ☒ Yes (*may be subject to additional costs*) ☐ No

RTKL requests may require payment or prepayment of fees. See the Official RTKL Fee Schedule for more details.

Please notify me if fees associated with this request will be more than ☒ $100 (or) ☐ $_____.

ITEMS BELOW THIS LINE FOR AGENCY USE ONLY

Tracking: _____ Date Received: _____ Response Due (5 bus. days): _____

30-Day Ext.? ☐ Yes ☐ No (If Yes, Final Due Date: _____) Actual Response Date: _____

Request was: ☐ Granted ☐ Partially Granted & Denied ☐ Denied Cost to Requester: $_____

☐ Appropriate third parties notified and given an opportunity to object to the release of requested records.

NOTE: In most cases, a completed RTKL request form is a public record. Form updated Feb. 3, 2020
More information about the RTKL is available at https://www.openrecords.pa.gov

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 **October 20, 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 **September 30, 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.

333 Market Street, 16th Floor | Harrisburg, PA 17101-2234 | 717.346.9903 | F 717.425.5343 | https://openrecords.pa.gov

pennsylvania
OFFICE OF OPEN RECORDS

September 21, 2022

Via Email Only:

Ms. Michelle Previte
210 W 37th St
Erie, PA 16508
michelleprevite@gmail.com

Via Email Only:

William S. Speros, Esquire
Agency Open Records Officer
Erie County
Erie County Courthouse, Room 504
140 West 6th Street
Erie, PA 16501
WSperos@eriecountypa.gov
jslomski@eriecountypa.gov

RE: OFFICIAL NOTICE OF APPEAL - Previte v. Erie County OOR Dkt. AP 2022-2191

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 September 20, 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

Elizabeth Wagenseller
Executive Director

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

333 Market Street, 16th Floor | Harrisburg, PA 17101-2234 | 717.346.9903 | F 717.425.5343 | https://openrecords.pa.gov

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)).

Attorneys, counsel and legal representatives may file an Entry of Appearance by contacting the Appeals Officer or completing the form at https://www.openrecords.pa.gov/Appeals/EntryOfAppearance.cfm.

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 or completing the form at https://www.openrecords.pa.gov/Appeals/DIPRequest.cfm. (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.

pennsylvania
OFFICE OF OPEN RECORDS

IN THE MATTER OF :
:
_____, :
Requester :
:
v. : **OOR Dkt. AP _____**
:
_____, :
Agency :

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.

Rev. 6-20-2017

OOR Exhibit 3

From:	Michelle Previte
To:	Slomski, Julie; Speros, William; Hartranft, Lyle; ttalarico nwpalawyers.com
Subject:	[External] Previte v. Erie County OOR Dkt. AP 2022-2191
Date:	Friday, September 30, 2022 10:34:18 PM
Attachments:	Previte submission in Previte v Erie County OOR Dkt. AP 2022-2191.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.*

Dear Appeals Officer Hartranft,

Attached you will find my submission regarding the above captioned appeal. Even though Mr. Talarico was not listed in the original OOR packet created by Mr. Spiess for this case, I am including him in this correspondence because I believe he may be the County solicitor responsible for this case.

Thank you for your attention in this matter.

Best regards,

Michelle Previte

TO: OFFICE OF OPEN RECORDS
333 MARKET STREET, 16TH FLOOR
HARRISBURG, PA 17126-0333

Michelle Previte v. Erie County Board of Elections
Reference # RTK 2022-2191

APPEAL OF DENIAL OF RIGHT TO KNOW REQUEST
SERVED ON ERIE COUNTY BOARD OF ELECTIONS

This appeal is filed pursuant to provisions of The Right to Know Law.

PROCEDURAL HISTORY:

1. On August 1, 2022, this Requestor served a Right to Know Request on the Erie County Board of Elections. (See page 12 of this RTK Appeal Packet.)

2. The Request sought the following information:

   a. An electronic copy of the images of all polling place ballots from the November 2020 election.
   b. An electronic copy of the images of all mail-in ballots (including absentee ballots) from the November 2020 election.
   c. An electronic copy of the images of all outer envelopes (containing each voter's declaration) for the mail-in ballots (including absentee ballots) from the November 2020 election.

3. On August 2, 2022, the Erie County Board of Elections (hereinafter the "Agency") sought additional time in which to respond to the Request. (See page 12 of the RTK Appeal Packet for this case.)

4. On September 1, 2022, the Request was DENIED. (The County response can be found on page 11 of the RTK Appeal Packet for this case.)

5. This appeal is filed pursuant to 65 P.S.§ 67.1101.

THE LAW:

65 P.S.§ 67.1101(a)(1) provides:

> If a written request for access to a record is denied or deemed denied, the requester may file an appeal with the Office of Open Records…within 15 business days of a deemed denial. The appeal shall state the grounds upon which the requester asserts that the record is a public

> record…and shall address any grounds stated by the agency for delaying or denying the request.

The Pennsylvania Supreme Court has repeatedly held that the Right to Know Law (hereinafter "RTKL") should be **liberally** construed to effectuate the purpose of promoting access to government information in order to scrutinize the actions of public officials. See Commonwealth Department of Public Welfare v. Eiseman, 125 A.3d 19 (Pa. 2015) The citizen's purpose in obtaining the documents is irrelevant, and a citizen may not be denied access because of a lack of interest or for a lack of a "legitimate" purpose. Current Status, Inc. v. Hykel, 778 A.2d 781 (Pa.Commw. 2001) (decided under the former RTK Act).

65 P.S. §67.708(a)(1) provides:

> 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. (Emphasis added).

Because there is a presumption that a record in the possession of an agency is a public record subject to disclosure, the agency has the burden of proving by a preponderance of the evidence that it is exempt or protected by privilege. West Chester University v. Schackner, 124 A.2d 382 (Pa.Commw. 2015).

If the agency DENIES a request, the denial MUST include "**[t]he specific reasons for the denial, including a citation of supporting legal authority.**" 65 P.S. §903(2).

In the case at bar, the Requester has sought 3 distinct categories of items in her Right to Know Request. A blanket denial was provided as to all.

The Agency's basis for denial is as follows:

> The Pennsylvania Election Code governs these requests, through Section 308 of the Election Code, which provides "[t]he records of each county board of elections … **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: 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 …" 25 P.S. §2648 (emphasis added).

The polling place ballot image request will be addressed after the other two requests are addressed below.

A. Mail-in Ballot Images and Outer Envelope Images From the 2020 Election

The RTK Request included "images of all mail-in ballots (including absentee ballots) from the November 2020 election" and "images of all outer envelopes (containing each voter's declaration) for the mail-in ballots (including absentee ballots) from the November 2020 election." The statutory authority for this request lies in 25 P.S. § 3150.17 which provides as follows:

> (a) General rule. –**All official mail-in ballots,** files, applications for ballots and **envelopes on which the executed declarations appear** and all information and lists **are designated and declared to be public records**…(Emphasis added).

This statutory language clearly and unequivocally allows for the production of these records. Moreover, this statutory provision was added to the Pennsylvania statutes in 2019 through Act 77. It was clearly the intent of our legislature to expand what constitutes a public record. When given a clear opportunity to modify the election code language – to LIMIT what is accessible to the public, our legislators – elected by the people, EXPANDED the language of what is a public record – subject to provisions of the Right to Know Law. Accordingly, Ms. Previte is clearly entitled to the mail-in ballot images and the images of the outer envelopes containing each voter's declaration pursuant to the clear and unequivocal language of 25 P.S. § 3150.17.

When legislative language is clear, the words of the statute are to be enforced without grafting any interpretation based upon presumed intent. "When the words of a statute are clear

and free from all ambiguity, the letter is not to be disregarded under the pretext of pursuing its spirit." 1 Pa.C.S.A. § 1921(b); Cherry v. Pennsylvania Higher Education Assistance Agency, 642 A.2d 463 (Pa. 1994). In determining the meaning of a statute, "words and phrases shall be construed according to rules of grammar and according to their common and approved usage…" 1 Pa.C.S.A. § 2903(a). The plain language of the statute demonstrates that mail-in ballots and the outer envelopes containing each voter's declaration are public records. Accordingly, images of these ballots and outer envelopes are accessible to voters under Pennsylvania's RTKL.

Furthermore, the OOR Final Determination in Stroehmann v. Lycoming County Office of Voter Services (OOR Docket No: AP 2022 - 00048) granted access to the requestor of the mail-in ballot images in accordance with 25 P.S. § 3150.17. So if mail-in ballots are public records and therefore their images are deemed public records, then by the same reasoning, the images of outer envelopes containing each voter's declaration are also public records and access should also be granted by the OOR.

B. Polling Place Ballot Images From the 2020 Election

The other category of items sought includes "images of all polling place ballots from the November 2020 election." A "Public Record" is defined as any record that is not exempt under Section 708, and not exempt from any other law, regulation, or order, or is not protected by a privilege. 65 P.S. § 67.102

Pennsylvania's Election Code of 1937 provides:

> The records of each county board of elections, general and duplicate returns, tally papers…and other documents and records in its custody, except the contents of the ballot boxes and voting machines and records of assisted voters, shall be open to public inspection…" 25 P.S.§ 2648.

The Agency maintains that the Election Code prohibits the disclosure of "polling place ballot images" because they constitute the "contents of ballot boxes." Although the Agency failed to

make this point, its case is supported by the fact that in the Stroehmann v. Lycoming County Office of Voter Services case cited above, the OOR Appeals Officer denied access to requestor of the polling place ballot images based upon this argument. (This decision is currently on appeal in the Lycoming County Court of Common Pleas (see CV22-00574) with an evidentiary hearing scheduled for November 30, 2022.) However, this reading of the law is inconsistent with previous determinations by the Office of Open Records. In Kesich v. Tioga County (OOR Docket No: AP 2012-0205), the requestor sought copies of ballot images and voting machine documents pursuant to the RTKL. The County granted access to the ballot images in text format but denied access to a specific format of the ballot images requested and denied access to the voting machine documents. Although the issue centered around the mode of delivery of the ballot images, in evaluating the production of the information, the OOR stated, "The County **properly granted** access to the ballot images…" (Kesich, OOR Order, p. 6). Similarly, Ms. Previte should be granted access to ALL of the ballot images from the November 2020 election, not just the ballot images for the mail-in ballots cast.

Additionally, digital images are **not** contained **within** ballot boxes. They are merely records of votes cast. Under the RTKL, the term "Record" is **broadly** defined as follows:

> **Information**, regardless of physical form or characteristics that documents a transaction or activity of an agency and that is **created, received** or retained pursuant to law or **in connection with** a transaction, **business or activity of the agency**. The term includes a document, paper, letter, map, book, tape, photograph, film or sound recording, **information stored or maintained electronically and a data-processed or image-processed document.** 65 P.S. Section 67.102 (Emphasis added).

The plain language of 25 P.S. § 3150.17, recently passed by Pennsylvania legislators, declares "All official mail-in ballots, files, applications for ballots and envelopes" to be "designated and declared" public records. Moreover, if mail-in ballots are clearly and unequivocally designated to be public records, then it makes no sense that anything other than the contents of ballot boxes –

the ballots themselves that are contained within a ballot box **during an election**– would be excluded. Treating ballot images for in-person voting differently than ballot-images for mail-in ballots would create an absurd result.

In Bowling v. Office of Open Records, 75 A.3d 453 (Pa. 2013), the Pennsylvania Supreme Court held:

> We presume that the General Assembly does not intend a result that is absurd, impossible of execution, or unreasonable, and that the General Assembly intends the entire statute to be effective and certain. Id. at 466.

Rules of statutory construction similarly do not allow for an inconsistent reading of Pennsylvania statutes.

> In ascertaining the intention of the General Assembly in the enactment of a statute the following presumptions, among others, may be used:
>
> (1) That the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable.
> (2) That the General Assembly intends the entire statute to be effective and certain.
> * * * * * * * * * * *
> (5) That the General Assembly intends to favor the public interest as against a private interest.
>
> 1 Pa.C.S.A. Section 1922 (1)(2) & (5).

In a recent Commonwealth Court decision issued on preliminary objections, Chief Justice Leavitt stated, "Any statutory construction exercise begins with careful examination of the words **actually** chosen by the legislature." County of Fulton v. Secretary of the Commonwealth, 277 M.D. 2021, p. 20. (Emphasis added).

The plain language of 25 P.S. § 3150.17 provides "All official mail-in ballots, files, applications for ballots and envelopes" are to be "designated and declared" public records. Moreover, the rules of statutory construction require consistency in the application and results

that favor the public interest. Accordingly, Ms. Previte is entitled to "polling place ballot images from the November 2020 election" under Pennsylvania's RTKL.

WHEREFORE, the Requestor respectfully requests a determination requiring full disclosure of the information sought.

Date: September 30, 2022 */s/ Michelle Previte*

Michelle Previte
210 W 37th Street
Erie, PA 16508
michelleprevite@gmail.com

OOR Exhibit 4

From: Slomski, Julie
To: DC, OpenRecords; michelleprevite@gmail.com; Speros, William
Cc: Hartranft, Lyle; ttalarico nwpalawyers.com
Subject: RE: Previte v. Erie County, Dkt. AP 2022-2191
Date: Monday, October 3, 2022 6:20:02 PM

Good Afternoon Administrative Officer Spiess,
We just wanted to confirm that you received our request to participate in this case.

Please advise if you did not.

Thank you,

Julie Slomski
County Clerk
Erie County Courthouse
Office of County Council
140 West 6th Street, Rm. 114
Erie, PA 16501

office: 814-451-6304
cell: 814-460-5331

From: DC, OpenRecords [mailto:RA-OpenRecords@pa.gov]
Sent: Wednesday, September 21, 2022 3:59 PM
To: michelleprevite@gmail.com; Speros, William <WSperos@eriecountypa.gov>; Slomski, Julie <JSlomski@eriecountypa.gov>
Cc: Hartranft, Lyle <lhartranft@pa.gov>
Subject: Previte v. Erie County, Dkt. AP 2022-2191

Dear Parties,

Attached, find an appeal that has been filed with the Office of Open Records. The above mentioned matter is 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.

Ian Spiess
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
Open Records in Pennsylvania Blog

OOR Exhibit 5

From: Hartranft, Lyle
To: Slomski, Julie; michelleprevite@gmail.com; Speros, William
Cc: ttalarico nwpalawyers.com
Bcc: Spiess, Ian
Subject: RE: Previte v. Erie County, Dkt. AP 2022-2191
Date: Tuesday, October 4, 2022 8:16:00 AM

Dear Parties:

I did not receive a request to participate from Erie County. Also, I will note that the submission period closed on September 30, 2022 and the only submission I received was from Ms. Previte on September 30, 2022. Out of due process and noting that there may be some communication issues, I will permit the County to submit any additional evidence/argument by the end of the day today, October 4, 2022.

Sincerely,

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

From: Slomski, Julie <JSlomski@eriecountypa.gov>
Sent: Monday, October 3, 2022 6:20 PM
To: DC, OpenRecords <RA-OpenRecords@pa.gov>; michelleprevite@gmail.com; Speros, William <WSperos@eriecountypa.gov>
Cc: Hartranft, Lyle <lhartranft@pa.gov>; ttalarico nwpalawyers.com <ttalarico@nwpalawyers.com>
Subject: RE: Previte v. Erie County, Dkt. AP 2022-2191

Good Afternoon Administrative Officer Spiess,
We just wanted to confirm that you received our request to participate in this case.

Please advise if you did not.

Thank you,

Julie Slomski
County Clerk
Erie County Courthouse
Office of County Council
140 West 6th Street, Rm. 114
Erie, PA 16501

office: 814-451-6304
cell: 814-460-5331

From: DC, OpenRecords [mailto:RA-OpenRecords@pa.gov]
Sent: Wednesday, September 21, 2022 3:59 PM
To: michelleprevite@gmail.com; Speros, William <WSperos@eriecountypa.gov>; Slomski, Julie <JSlomski@eriecountypa.gov>
Cc: Hartranft, Lyle <lhartranft@pa.gov>
Subject: Previte v. Erie County, Dkt. AP 2022-2191

Dear Parties,

Attached, find an appeal that has been filed with the Office of Open Records. The above mentioned matter is 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.

Ian Spiess
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
Open Records in Pennsylvania Blog

OOR Exhibit 6

From: Slomski, Julie
To: Hartranft, Lyle; michelleprevite@gmail.com; Speros, William
Cc: ttalarico nwpalawyers.com
Subject: RE: Previte v. Erie County, Dkt. AP 2022-2191
Date: Tuesday, October 4, 2022 9:13:50 PM
Attachments: OOR-9-26-22.pdf

Dear Appeals Officer Hartranft,

Thank you for your response, please find our submission attached.

Respectfully,

Julie Slomski
County Clerk
Erie County Courthouse
Office of County Council
140 West 6th Street, Rm. 114
Erie, PA 16501

office: 814-451-6304
cell: 814-460-5331

From: Hartranft, Lyle [mailto:lhartranft@pa.gov]
Sent: Tuesday, October 4, 2022 8:17 AM
To: Slomski, Julie <JSlomski@eriecountypa.gov>; michelleprevite@gmail.com; Speros, William <WSperos@eriecountypa.gov>
Cc: ttalarico nwpalawyers.com <ttalarico@nwpalawyers.com>
Subject: RE: Previte v. Erie County, Dkt. AP 2022-2191

Dear Parties:

I did not receive a request to participate from Erie County. Also, I will note that the submission period closed on September 30, 2022 and the only submission I received was from Ms. Previte on September 30, 2022. Out of due process and noting that there may be some communication issues, I will permit the County to submit any additional evidence/argument by the end of the day today, October 4, 2022.

Sincerely,

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

From: Slomski, Julie <JSlomski@eriecountypa.gov>
Sent: Monday, October 3, 2022 6:20 PM
To: DC, OpenRecords <RA-OpenRecords@pa.gov>; michelleprevite@gmail.com; Speros, William <WSperos@eriecountypa.gov>
Cc: Hartranft, Lyle <lhartranft@pa.gov>; ttalarico nwpalawyers.com <ttalarico@nwpalawyers.com>
Subject: RE: Previte v. Erie County, Dkt. AP 2022-2191

Good Afternoon Administrative Officer Spiess,
We just wanted to confirm that you received our request to participate in this case.

Please advise if you did not.

Thank you,

Julie Slomski
County Clerk
Erie County Courthouse
Office of County Council
140 West 6th Street, Rm. 114
Erie, PA 16501

office: 814-451-6304
cell: 814-460-5331

From: DC, OpenRecords [mailto:RA-OpenRecords@pa.gov]
Sent: Wednesday, September 21, 2022 3:59 PM
To: michelleprevite@gmail.com; Speros, William <WSperos@eriecountypa.gov>; Slomski, Julie

<JSlomski@eriecountypa.gov>
Cc: Hartranft, Lyle <lhartranft@pa.gov>
Subject: Previte v. Erie County, Dkt. AP 2022-2191

Dear Parties,

Attached, find an appeal that has been filed with the Office of Open Records. The above mentioned matter is 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.

Ian Spiess
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
Open Records in Pennsylvania Blog

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: 2022-2191 **Today's date:** 09/26/2022

Name: Julie Slomski

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 140 West 6th St. Room 114 Erie, PA 16501

E-mail jslomski@eriecountypa.gov

Fax Number:

Name of Requester: Michelle Previte

Address/City/State/Zip 210 West 37th Erie, PA 16508

Telephone/Fax Number: 814-881-9177 /

E-mail michelleprevite@gmail.com

Name of Agency: Erie County Board of Elections

Address/City/State/Zip 140 West 6th St. Room 114 Erie, PA 16501

Telephone/Fax Number: 814-451-6304 /

E-mail jslomski@eriecountypa.gov

Record at issue: Electronic copy of ballot images and outer envelopes from 2020 election

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

- [x] 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, Julie Slomski (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.

Rev. 6-20-2017

COUNTY OF ERIE
BOARD OF ELECTIONS

September 26th 2022

Appeals Officer, Lyle Hartranft
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234

Re: Previte v. Erie County Board of Elections- OOR Dkt. AP 2022-2191

Dear Officer Lyle Hartranft,

Please allow this to serve as response to Previte v. Erie County Board of Elections- OOR Dkt. AP 2022-2191. Ms. Previte has requested *"electronic copies of all polling place and mail in ballots from the November 2020 election, electronic copies of images of all outer envelopes from the mail in ballots from the November 2020 election"*. These requests have been denied for the following reasons:

The Pennsylvania Election Code governs these requests, through Section 308 of the Election Code, which provides "[t]he records of each county board of elections . . . 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: 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 . . . ." 25 P.S. § 2648 (emphasis added).

Respectfully,

Julie Slomski, County Clerk
Deputy Open Records Officer
814-451-6304
JSlomski@eriecountypa.gov

Cc:
Erie County Board of Elections-Solicitor, Thomas Talarico, Esquire

OOR Certified Record Page 047

OOR Exhibit 7

From: Hartranft, Lyle
To: michelleprevite@gmail.com; Speros, William; Slomski, Julie
Subject: Final Determination: Previte-Erie County (OOR Dkt. AP 2022-2191)
Date: Thursday, October 20, 2022 10:12:00 AM
Attachments: 2022-2191_Previte-ErieCounty_FD.pdf

Dear Parties:

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

Sincerely,

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

pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
MICHELLE PREVITE, **Requester**	:	
v.	:	**Docket No.: AP 2022-2191**
ERIE COUNTY, **Respondent**	:	

INTRODUCTION

Michelle Previte ("Requester") submitted a request ("Request") to Erie County ("County") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq*., seeking images of all mail-in ballots, outer envelopes for the mail-in ballots, and polling place ballots. The County denied the Request, arguing that the Pennsylvania Election Code governs the records sought. The Requester appealed to the Office of Open Records ("OOR"). For the reasons set forth in this Final Determination, the appeal is **granted in part** and **denied in part**, and the County is required to take further action as directed.

FACTUAL BACKGROUND

On August 1, 2022, the Request was filed, seeking:

1. [A]n electronic copy of the images of all mail-in ballots (including absentee ballots) from the November 2020 election.

2. [A]n electronic copy of the images of all outer envelopes (containing each voter's declaration) for the mail-in ballots (including absentee ballots) from the November 2020 election.

3. [A]n electronic copy of the images of all polling place ballots from the November 2020 election.

On August 2, 2022, the County invoked its right to a thirty-day extension during which to respond to the Request. 65 P.S. § 67.902(b). On September 2, 2022, the County denied the Request, arguing that "[t]he Pennsylvania Election Code governs these requests[.]"

On September 9, 2022, the Requester appealed to the Office of Open Records ("OOR"), challenging the denial and stating grounds for disclosure. 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 September 30, 2022, the Requester submitted a position statement arguing that she is entitled to the responsive records. The Requester asserts that *Stroehmann v. Lycoming Cnty.*, OOR Dkt. AP 2022-0885, 2022 PA O.O.R.D. LEXIS 1292, applies to this matter, asserting that in the Final Determination, the OOR "granted access to the requestor mail-in ballot images in accordance with 25 P.S. § 3150.17."

On October 4, 2022, the County submitted a position statement reiterating its argument that the Pennsylvania Election Code ("Election Code") governs the Request.

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, the Requester sought a hearing, but that request is denied.

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 to be public, unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. Upon receipt of a request, an agency is required to assess whether a record requested is within its possession, custody or control and to respond within five business days. 65 P.S. § 67.901. An agency bears the burden of proving the applicability of any cited exemption(s). *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). Preponderance of the evidence has been defined as "such proof as leads the fact-finder … to find that the existence of a contested fact is more probable than its nonexistence." *Pa. State Troopers Ass'n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011)

(quoting *Pa. Dep't of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

1. Copies of the records of mail-in ballots (including absentee ballots) and images of outer envelopes must be provided as set forth in the Election Code

As noted above, the Requester relies on *Stroehmann* to support her argument that the mail-in ballots (including absentee ballots) and the images of outer envelopes must be provided. However, while *Stroehmann* found that mail-in ballots are public records under the Election Code, the OOR noted that access to those records is governed by the Election Code, and directed that county "to provide any access to the records for which the Requester is entitled as set forth in that law." The OOR did not hold that the records must be provided to every individual upon request.

There is a distinction in the Election Code between whether a record is public in nature and publicly accessible. The Election Code determines who can access the records. With respect to the records sought in Items 1 and 2 of the Request, Section 3150.17 of the Election Code states:

> **(a) General rule.**—All official mail-in ballots, files, applications for ballots and envelopes on which the executed declarations appear, and all information and lists are designated and declared to be public records and shall be safely kept for a period of two years, except that no proof of identification shall be made public, nor shall information concerning a military elector be made public which is expressly forbidden by the Department of Defense because of military security.

25 P.S. § 3150.17. Meanwhile, Section 2648 of the Election Code governs the inspection of records made public under the Code:

> The records … 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*: 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

> 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.

25 P.S. § 2648 (emphasis added).

Under the RTKL, Section 67.302(a) provides that "[a] local agency or local agency shall provide public records in accordance with this act." 65 P.S. § 67.302(a). Records in the possession of a local agency are presumed to be public records. However, this "presumption shall not apply if: (1) the record is exempt under section 67.708; (2) the record is protected by a privilege; or (3) the record is exempt from disclosure under any other Federal or State law, regulation or judicial order or decree." 65 P.S. § 67.305. Further, Section 306 of the RTKL, entitled "Nature of document," states: "Nothing in this act shall supersede or modify the public or nonpublic nature of a record or document established in Federal or State law, regulation or judicial order or decree." 65 P.S. §67.306. However, Section 3101.1 makes clear 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." (Emphasis added).

Here, we need not examine the public nature of the mail-in ballots and their declaration envelopes, as the plain language in the Election Code establishes that "[a]ll official … ballots, … and envelopes on which the executed declarations appear … are hereby designated and declared to be public records." Rather, the issue becomes whether the requested records may be *accessed* under 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. While the *Stroehmann* decision does apply to the instant matter, *Stroehmann* explains that "the governance of inspection and copying under the Election Code are beyond the OOR's purview." *Stroehmann*, 2022 PA O.O.R.D. LEXIS 1292, *8-10 (citing *Heltzel*, 90 A.3d at 831-33); *see also Gallagher and the Republican National Committee v. Montgomery Cnty.*, OOR Dkt. AP 2021-2945, 2022 PA O.O.R.D. LEXIS 622; *Hall v. Butler Cnty.*, OOR Dkt. AP 2022-0508, 2022 PA O.O.R.D. LEXIS 1062; *Shepherd v. Phila. Office of City Commissioners*, OOR Dkt. AP 2021-2929, 2022 PA O.O.R.D. LEXIS 694.

Accordingly, access to the requested records is governed by the access provisions set forth in the Election Code, and the County is directed to provide any access to the mail-in and absentee ballots and outer envelopes for which the Requester is entitled as set forth in that law. *See Heltzel*, *supra*; *see also Weaver v. Allegheny Cnty.*, OOR Dkt. AP 2022-1052, 2022 PA O.O.R.D. LEXIS 1323 (finding that the County is to provide access to mail-in ballots).[1]

2. The "polling place ballots" are not subject to access under the RTKL

Item 3 of the Request seeks "images of all polling place ballots from the November 2020 election." Although the Requester argues that "digital images are not contained within ballot boxes[,]" here, as in numerous other appeals decided by the OOR, Item 3 of the Request clearly seeks the contents of the ballot box and/or voting machines because it seeks "ballot images," which are contents of a ballot box or voting machines, and are therefore, not public records. *See* 25 P.S. § 2648 (excluding "the contents of ballot boxes" from public inspection). Accordingly, the

[1] *Weaver* is currently on appeal before the Allegheny County Court of Common Pleas.

Election Code excludes these records from public access, even by qualified electors. Therefore, the County does not need to provide any access to these records. *See Taylor v. Westmoreland Cnty.*, OOR Dkt. AP 2022-0046, 2022 PA O.O.R.D. LEXIS 687 (request for [b]allot images of any and all ballots cast in the 2020 election was denied as contents of the ballot box and, thus, not subject to access under the RTKL); *see also Shuppe v. Beaver Cnty.*, OOR Dkt. AP 2022-0037, 2022 PA O.O.R.D. LEXIS 709; *Edwards v. Butler Cnty.*, OOR Dkt. AP 2021-2976, 2022 PA O.O.R.D. LEXIS 296; *Cornetti v. Butler Cnty.*, OOR Dkt. AP 2021-2891, 2022 PA O.O.R.D. LEXIS 146; *Jaquette v. Delaware Cnty.*, OOR Dkt. AP 2021-2808, 2022 PA O.O.R.D. LEXIS 25.

CONCLUSION

For the foregoing reasons, the Requester's appeal is **granted in part** and **denied in part**, and the County is required to make records responsive to Items 1 and 2 of the Request available for access in accordance with the Election Code within thirty days. 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 Erie 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 according to court rules as per Section 1303 of the RTKL. 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.[2] This Final Determination shall be placed on the OOR website at: http://openrecords.pa.gov.

FINAL DETERMINATION ISSUED AND MAILED: October 20, 2022

/s/ Lyle Hartranft

_____

Lyle Hartranft, Esq.
Appeals Officer

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

Sent to: Michelle Previte (via email);
William Speros, Esq. (via email);
Julie Slomski, AORO (via email)