

IN THE COURT OF COMMON PLEAS  
BUCKS COUNTY PENNSYLVANIA

RECEIVED

OCT 31 2022

OFFICE OF OPEN RECORDS

ANDREW CAIRNS,  
PETITIONER

v.

PENNSYLVANIA OFFICE OF OPEN  
RECORDS,  
RESPONDENTS

CASE NUMBER AP 2022-2015  
(CIVIL ACTION)

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APPEAL FROM DECISION BY THE PENNSYLVANIA  
OFFICE OF OPEN RECORDS ('PAOOR')  
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I. RELEVANT PROCEDURAL HISTORY

1. On May 18, 2022, requestor Andrew Cairns sent (2), Right-To-Know requests to the Bucks County District Attorney's Office of Open Records ('BCDAOOR'). Request (1) asked for the full and complete copy of 911 transcripts. Request (2) asked for the full and complete copy of the Post Mortem Examination. Both requests were regarding Bucks County case number CP-09-003357-2013 (See Exhibit 1-A & 1-B).

2. On May 27, 2022, the BCDAOOR Officer A.D.A Timothy Lutes responded to both requests and asked for additional time to respond (See Exhibit 1-C).

3. On June 13, 2022, in violation of RTK rule 67.901. (good faith effort to determine if the agency has custody or control of the identified record), the BCDAOOR unjustifiably forwarded the requests directly to the Bucks County Law



Department who assigned an appeals numbers (#2022-06-08-00418 & 2022-06-08-00418), and also asked for additional time to respond (See Exhibit 1-D).

4. Instead of denying the requests, or searching for the records, the Bucks County Law Department forwarded the requests to the Bucks County Commissioners Office (subcontractor for the county) which is the wrong agency for either of the requests.

5. On July 13, 2022, Ms. Ashley Dayoub, who is not an attorney, from the Bucks County Commissioners Office of Open Records denies both RTK requests. Instead of directing any appeal to the Bucks County OOR appeals officer as policy requires, she directs the appeal to the Pennsylvania Office of the Attorney General Open Records Office ('PAOOR') (See Exhibit 1-E).

6. On July 29, 2022, from prison, Cairns files a timely appeal to the PAOOR and includes testimony held in open court regarding requested documents. The reason this appeal was sent to PAOOR, and used the appeals number assigned by the Commissioners Office is due to the fact that there was no mention of the Bucks County "appeals officers" name or address in any of the correspondences received by Cairns. With only 10 business days to appeal, and the County Commissioners Office directing Cairns to file his appeal with the PAOOR, Cairns filed his appeal directly to the PAOOR, and not the Bucks County Open Records Appeals Officer. This is the first time Cairns makes mention of improper procedure regarding the misdirecting of the RTK Requests (See Exhibit 1-F).

7. On August 4, 2022, Attorney Lyle Hartranft from the PAOOR grants an appeal, assigns an appeals Number (AP 2022-2015) however addresses it to the wrong agency (See Exhibit 1-X).



8. On August 11, 2022, Cairns sends letter with exhibits of previously received, though still incomplete, 911 transcripts and Post Mortem Examination from the Bucks County District Attorney's Office ('BCDAO') to the PAOOR. (See Exhibit 1-G).

9. On August 15, 2022, (deadline for filing additional information), although no requests were sent to the coroners' office, who is a subcontractor for the county, the Bucks County Commissioners Open Records Officer sends an email to the PAOOR requesting an extension of time to respond for the Coroners Office (See Exhibit 1-H).

10. On August 15, 2022, Cairns sends letter to the PAOOR asking for full, complete, and unredacted versions of requested documents (See Exhibit 1-I).

11. On August 16, 2022, for the second time, Cairns sends a letter explaining to the PAOOR he sent his RTK Requests to the BCDAOOR and not to subcontractors for the county. Cairns also includes U.S. & PA. Supreme Court controlling case law relating to his right to review, and copy judicial documents that are in possession of a local agency and were made part of the record (See Exhibit 1-J).

12. On August 16, 2022, the PAOOR sends email to the Bucks County Commissioners, and Coroners Office admitting Cairns did not send his requests to either party but instead, to the BCDAOOR however, the PAOOR still asks for a brief attestation from both parties (See Exhibit 1-K).

13. On August 17, 2022, Cairns sends email via his wife Deborah Silva, to the PAOOR explaining it was Deputy Attorney General RTK Officer Sharon Maitland who directed him to send his requests to the BCDAOOR. Cairns also explains to the PAOOR that this is the correct location for



the RTK requests and it is the BCDAO that possesses the requested documents (See Exhibit 1-L).

14. On August 17, 2022, the PAOOR requests more time to decide and Cairns grants the request. Cairns also mentions again that it is the BCDAO that possesses the requested records (See Exhibit 1-M).

15. On August 19, 2022, Cairns receives affidavit from Bucks County Commissioners Office stating they do not have either of the requested records (See Exhibit 1-N).

16. On August 21, 2022, Cairns, sends an email to the PAOOR and for the third time, explains to the PAOOR that he did not send any requests to the subcontracting agencies but instead, to the BCDAOOR. Cairns also asks for an affidavit from the BCDAOOR as well and points out the BCDAOOR has yet to respond to his requests. In this same email, Cairns also asks for a hearing on this matter (See Exhibit 1-"O").

17. On August 22, 2022, email from PAOOR to Bucks County subcontractors and not to the BCDAOOR asking if all parties have copies of submissions (See Exhibit 1-P).

18. On August 24, 2022, for the fourth time, Cairns sends an email explaining to the PAOOR, that he is contacting the wrong agencies and should be directing his attention to the BCDAOOR (1-Q).

19. On August 27, 2022, Cairns sends an email to the PAOOR explaining the Coroners Office is responding for the BCDAOOR, and the missing two pages from the Autopsy Report are in possession of the BCDAO and **not** the Coroners Office. This would be the fifth time Cairns tries to redirect the PAOOR to the correct office (See Exhibit 1-R).





20. On August 28, 2022, the PAOOR denies Cairns' request for a hearing but instead, asks for additional time to decide which Cairns permits (See Exhibit 1-S).

21. On August 29, 2022, email from PAOOR asking the Coroner's office (wrong office), to submit arguments as related to HIPPA, CHRIA, and the Coroners Act (See Exhibit 1-T).

22. On August 29, 2022, Cairns sends email to PAOOR acknowledging he knows the Bucks County Commissioners Office does not have the records he is requesting and for the sixth time, explains to the PAOOR who has the requested records (See Exhibit 1-U).

23. On September 13, 2022, Cairns sends a seven page letter to the PAOOR explaining the **who, what, when, where, why, and how** the RTK requests are located, should be granted, and for the seventh time, explains to the PAOOR he allowing the misdirection of his requests. Cairns supports all arguments again with controlling U.S. & PA. Supreme Court rulings as well as all applicable RTKL rules (See Exhibit 1-V).

24. On September 30, 2022, the PAOOR denies both RTK requests by allowing subcontractors for the BCDAOOR to respond, instead of the agency where the RTK requests were sent. The PAOOR also states in his denial that "neither party requested a hearing" (See Exhibit 1-W).

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## II. ARGUMENT REGARDING RTK REQUEST FOR COPY OF 911 TRANSCRIPTS

A. Although the PAOOR states the request for 911 transcripts are exempt sighting RTKL §708(b)(18) "records or part of

records, except time response logs, pertaining to audio recordings, telephone or radio transmissions received by emergency dispatch personnel including 911 recordings, Cairns clearly states in his letter dated July 29, 2022 (exhibit H) that the exception to this rule is found under §708(b)(18)(i) where it states "rule 708(b)(18)(i) shall not apply to a 911 recording, or transcripts of a 911 recording if the agency or a court determines that the public interest in disclosure outweighs the interest of nondisclosure.

B. It is objectively clear that Cairns has already submitted a great deal of proof that the requested transcripts from the 911 recording not only exist but who has them (BCDAO), and that they were made part of the record. The PAOOR however refused to acknowledge where the transcripts are located, Cairns is now including another exhibit from his PCRA hearing held on July 6, 2017. On page 175 the following testimony is heard; (Exhibit D)

MR. LONDON: Your Honor, he has the transcripts also, I would like the to be admitted.

THE COURT: Transcripts of?

MR. LONDON: Of the tape. There's transcripts of this tape.

MR. REES: There are transcripts, your Honor. I'm not sure if we have one in court.

It then goes on to say;

THE COURT: We'll get a copy made. That will be marked and that will be received and made part of the proceedings (CW-PCRA-3 received into evidence).

What was received from the court was a non-time stamped, and incomplete copy of the 911 transcripts. This is the reason why Cairns is asking for a full and complete copy.

In Leucadia, v. Applied Technologies, Inc. it is stated that "numerous other courts have recognized the principal that filing a document gives right to a presumptive right of public access"



998 F.2d 157, 161-162 (3rd. Cir. 1993). The act of filing, in fact, seems to be the most significant consideration, as is evident in situations in which we have previously granted the right of access.

In United States v. Martin, 748 F.2d 964 968 (3rd Cir. 1984) it states "The status of a document has been filed with the courts, or otherwise somehow incorporated or integrated into a District Court's adjudicatory proceedings". Cairns asserts that both the recording and transcripts of the recording were made part of the criminal record.

In U.S. v. Antar, 38 F.3d 1348, 1361 (3rd. Cir. 1984) it states "The first Amendment right of access to the courtroom includes a right to access to documents resulting from those court proceedings." It also states that "the First Amendment right of access must extend equally to transcripts as to live proceedings."

In U.S. v. Chang, 47 Fed. Appx. 119,122 (3rd Cir. 2002) it states "once again, jurisprudentially, there is nothing new here". In Nixon v. Warner Cable, the Supreme Court recognized an historic common law right of access to judicial documents. 435 U.S. 589, 55 L. Ed. 2nd 570, 98 S. Ct. (1978). "The common law right of access is not limited to evidence, but rather encompasses all judicial records and documents."

C. Cairns has gone to great lengths not only proving the 911 recording was played in open court, with family members in attendance as well a media outlets, but also who is in possession of the 911 transcripts. A copy of the recording and transcripts were both entered into evidence by the prosecution so there can be no question that the courts, prosecutor or family members of the victim did not object to the contents of the recording. Clearly there is not a disclosure issue here.

## II. ARGUMENT REGARDING RTK REQUEST FOR COPY OF AUTOPSY REPORT

A. Although the PAOOR states the request for the Post Mortem Examination (Autopsy Report) is exempt from disclosure sighting RTKL 708(b)(20), it must first be addressed that Cairns did not send a request to the Coroner's Office but instead, to the BCDAOOR. In this case, any response from the Coroners Office is moot because it was the Coroner's Office who gave the autopsy report to the BCDAO to be used in a prosecution. After the prosecution presented, and discussed the report in open court, with family members and the media in attendance, then entered the report into the record. Once this happened it became a judicial record in possession of a local agency (BCDAO). This fact was explained to the PAOOR numerous times including an exhibit (Exhibit 3), revealing testimony in open court. To reiterate this fact, the following testimony took place at a preliminary hearing on May, 16 2013 in Bucks County PA;

MS. BAATZ: That is correct, your honor. There is a stipulation.

THE COURT: Okay. MS. Baatz, without objection.

MR. SPANG: And-so, the record will reflect that I've handed the report to Detective Hanks.

MR. SPANG: Q. Without going over the entire report, it is fair to say that the report essentially indicates that the cause of death for Ms. Zeinkewicz was the gunshot wound that she received that evening, the evening of February 19, 2013?

A. That is correct.

MR. SPANG: Okay, I guess I've already moved for admission. I'll hand it up to the Judge.

THE COURT: Okay. It's been done without objection.

What Cairns received from the court was a incomplete copy (pages 1,2,3 of 5) of the autopsy report. This is the reason why Cairns is asking for a full and complete copy.



B. It is objectively clear that Cairns has already submitted a great deal of proof that the requested autopsy report not only exists but is in possession of the BCDAO. It was the PAOOR who who refused to recognize this fact which is why Cairns has appealed the PAOOR'S decision to this court.

In Penn Jersey Advance, Inc. v. Grim, 962 A.2d 632,636 (PA. 2009), Chief Justice McCaffrey states that "We must determine here whether an autopsy report constitutes a coroner's official record or paper. If so, it must be disclosed pursuant to Section 1251." The Coroner's Act does not define 'autopsy report,' nor does it define 'official records and papers.' Therefore, pursuant to our rules of statutory interpretation as outlined above, we look to the provisions of the Coroner's Act for guidance. If it appears from the provisions that the conducting of an autopsy is a duty of a coroner in his or her official capacity, it reasonably follows that the resulting autopsy report is an official record or paper subject to disclosure under section 1251. Cairns asserts that the Coroner's Act does not control because it was turned over to the prosecution and became a public record i.e. "official record and papers,"subject to disclosure. This is especially true in that it was discussed in open court and made part of an "official record".

In Leucadia, v. Applied Technologies, Inc. it is stated that "numerous other courts have recognized the principal that filing a document gives right to a presumptive right of public access" 998 F.2d 157, 161-162 (3rd. Cir. 1993). The act of filing, in fact, seems to be the most significant consideration, as is evident in situations in which we have previously granted the right of access.

In United States v. Martin, 748 F.2d 964, 968 (3rd Cir. 1984) it states "The status of a document as a 'judicial records' depends on whether a document has been filed with the courts, or

otherwise somehow incorporated or integrated into a District Court's adjudicatory proceedings". The fact is clear that the Post Mortem Examination (autopsy report), was officially made part of the criminal record.

C. Cairns has gone to great lengths in proving the autopsy report was discussed in open court, with family members in attendance as well a media outlets, and made part of the record, but also it is the Bucks County District Attorney's Office that is in possession of the report.

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### III. FAILURES OF PROCEDURES BY THE BUCKS COUNTY DISTRICT ATTORNEY'S OFFICE OF OPEN RECORDS (BCDAOOR)

#### A. Pursuant to RTKL §67.901. General rule

"Upon receipt of a written request for access to a record, an agency shall make a "good faith effort" to determine if the record requested is a public record, legislative record or financial record and whether the agency has possession, custody or control of the identified record, and to respond as promptly as possible under the circumstances existing at the time of the request. All applicable fees shall be paid in order to receive access to the record requested. The time for response shall not exceed five business days from the date the written request is received by the open-records officer for an agency. If the agency fails to send the response within five business days of receipt of the written request for access, the written request for access shall be deemed denied."

B. In Uniontown Newspapers v. Pennsylvania Department of Corrections, U.S. 243 A.3d 19; 2020 (May 21, 2020), The court states that "If the agency does not possess the records in question, but a contractor does, the agency must take reasonable





steps to secure the records from the contractor and then make a determination if those are exempt from disclosure. After gathering all of the relevant records, the agency must then review the records and assess their public nature under §§901 and 903 of the Right-To-Know Law." As the Commonwealth Court observed, it is axiomatic that the agency cannot discern whether a record is public or exempt without first obtaining and reviewing the record.

The following actions transpired;

- \* May 18, 2022, Cairns sends (2) RTK requests to the BCDAOOR.
- \* May 27, 2022, BCDAOOR Officer ADA Timothy Lutes responds to both requests and requests additional time to respond.
- \* June 13, 2022, BCDAOOR forwards RTK request to the Bucks County Law Department who also asks for additional time to respond.
- \* Both RTK requests are then forwarded to the Bucks County Commissioners Office.
- \* July 29, 2022, The Bucks County Commissioners Office denies both appeals and instead of directing Cairns to appeal to the Bucks County RTK Appeals Officer, they directed all appeals to the PAOOR.

This is a brief history of events and the complete history has already been stated, however, it is perfectly clear according to the facts presented that the BCDAOOR did not follow policy; in fact, it appears the BCDAOOR never even looked for the records at all. By "shuffling off" the RTK requests to subcontracting agencies, instead of personally obtaining the records, evinces an act of "bad faith" on the part of every responding agency. Ironically enough, the Bucks County District Attorneys's Office, the Bucks County District Attorney's Office of Open Records and Appeals Office, the Bucks County Clerk of Courts Office and the very court deciding this case are all located in the same building.

C. In Commonwealth of PA., Penn. Gaming Control Board v. Office Of Open Records, 628 Pa. 175; 103 A3d 1284; 2014 Pa. LEXIS 2928 (Pa. 2014), it states "In view of these amici, the RTKL has placed the duty of delivering the requests to the appropriate open-records officer upon the agency employees and not upon the requestor, as the General Assembly did not intend technicalities to thwart requests, but establish that agencies bear responsibility for misdirected requests. Thus, these amici posit that the Commonwealth Court majority's reading of the RTKL is the only interpretation that gives full effect to the RTKL."

In Dep't of Env'tl. Prot. v. Legere, 50 A.3d 260, 2012 Pa. Commw. LEXIS 229, 13 (PA. Commw. Ct. 2012) it states, Contrary to the department's argument, 65 P.S. §67.901 did not merely require it to conduct a good faith search for the documents requested because the issue was not whether the records at issue were public records, or whether the department had possession, custody or control of the records, because the documents requested were the department's own determination and orders; instead, the issue was where within the department it's determination letters and orders may have been found. Notably, the department's steps to find the records did not include an actual physical search of it's files.

D. Clearly the BCDAOOR did not perform a "good faith" effort in locating the requested documents and either intentionally, or unintentionally, misdirected the RTK requests to agencies who are subcontractors for the District Attorney's Office. It appears that nobody in Bucks County who was associated with these requests followed the procedures set forth in RTKL §67.901.

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#### IV. VIOLATIONS OF PROCEDURES BY THE PENNSYLVANIA OFFICE OF OPEN RECORDS (PAOOR)

##### A. History of events with the PAOOR

1. July 29, 2022, Cairns files a timely appeal to the PAOOR as per instructions from the Bucks County Commissioners Office, however, this is the Wrong Agency to deny the requests, here now known as ('WA#1'). As the wrong appeals office it had no standing to respond in any lawful manner.

2. August 4, 2022, PAOOR Appeals Officer, Lyle Hartranft Esq., grants appeal, however addresses the appeal to WA#1, and not the Bucks County Office of Open Records Appeals Officer.

3. August 11, 2022, Cairns sends letter and copies of preexisting yet still incomplete requested records to the PAOOR. Cairns also explains the PAOOR is involving the wrong agency for appeals purposes.

4. August 15, 2022, WA#1 inappropriately requests an extension of time for the Coroners Office which is also a non standing agency in this matter, here now knows as ('WA#2').

5. August 16, 2022, The PAOOR sends an email to WA#1 & WA#2 admitting Cairns did not send any RTK requests to either of these agencies, however, still asks both parties without lawful standing to respond.

6. August 17, 2022, Cairns has wife, who is disabled, forward an email to the PAOOR explaining he sent his RTK requests to the BCDAOOR and it is the Bucks County District Attorneys Office who possesses the requested documents.

7. August 17, 2022, email from PAOOR requesting more time



to decide. Cairns responds same day explaining again to the PAOOR that it is the BCDAO that has the records and it is the BCDAOOR who is the only lawful respondent.

8. August 19, 2022, Cairns receives affidavit from WA#1 stating they don't have the records sought by Cairns.

9. August 21, 2022, Cairns wife forwards an email to the PAOOR explaining again he did not send any requests to WA#1 or WA#2 and asks not only for an affidavit from the BCDAOOR but also a hearing on this matter.

10. August 22, 2022, The PAOOR asks WA#1 & WA#2 if they all have copies of submissions.

11. August 27, 2022, Cairns' wife forwards an email to the PAOOR that WA#2 is unlawfully responding for the BCDAOOR. This is the fifth time Cairns has explained to the PAOOR he is contacting the wrong agencies.

12. August 28, 2022, The PAOOR denies Cairns' request for a hearing but instead, asks for additional time to decide.

13. August 29, 2022, Email from PAOOR to WA#2 asking them to submit arguments.

14. August 29, 2022, Cairns' wife forwards an email to the PAOOR explaining he already knows WA#1 & WA#2 do not have the records he requested which is why he never sent any RTK requests to them.

15. September 13, 2022, Cairns sends a seven page letter explaining who has the records and also includes RTK Laws and supporting case law. This is the seventh time Cairns has explained to the PAOOR he is allowing wrong agency's to respond.





16. September 30, 2022, the PA00R denies both of Cairns's requests by allowing WA#1 & WA#2 to respond to Cairns' requests and also states in his denial that neither party requested a hearing and Cairns is appealing to the wrong agency.

## B. Legal Analysis

"The objective of the Right-to-Know Law...is to empower citizens by affording them access to information concerning 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 action 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).

Because the PA00R allowed the wrong agency to deny the requests, and not the the Bucks County Open Records Appeals Officer, there was never a chance for requestor to scrutinize any documents, thereby denying him due process of law under the fourteenth amendment to the constitution.

C. 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. Due process rights "may arise from expectation or interest created by state laws or policies." Wilkerson v. Austin, 545 U.S. 209, 221 (2005).



Cairns presented testimony regarding his preliminary and PCRA hearings held in open court, evidence proving the requested documents were in possession of the Bucks County District Attorney's Office and were made part of the record. These documents then became "public access". However, the PAOOR disregarded all evidence presented and denied the appeal. Also, pursuant to §67.1102(a)(2), Cairns did in fact request a hearing in this matter despite the PAOOR saying he didn't (See Exhibit 1-"0").

D. The District Attorney's Office is a local agency subject to 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 RTKL or other law or protected by privilege, judicial order or decree. See 65 P.S. §67.305. Upon receipt of a request (BCDAOOR), an agency is required to assess whether a record requested is in possession, custody or control and to respond within five business days. 54 P.S. §67.901.

Cairns asserts that at no point did the receiving agency make a good faith effort to locate the requested documents pursuant to RTKL §67.901. even though they are actually located in the same building as the Bucks County District Attorney's Office and would not have to go far to retrieve them. Cairns has pointed this out to the PAOOR numerous times, however, the PAOOR failed to acknowledge Cairns' claims. Furthermore, the PAOOR also ignored Cairns' repeated position that he did not send any requests to the secondary subcontracting agencies that are responding to his request for documents.

By now, after multiple attempts to inform the PAOOR that he is allowing a non attorney (paralegal) subcontracting agency to respond citing no legal claims demonstrating the subcontractor entities lawful standing. WA#2 wrongfully denied the requests as well as directed the appeal to the wrong appeals agency. Cairns asserts that at this point the PAOOR should have realized that



this agency has only stated that they do not have the records and without an actual denial from an attorney for the Bucks County's Office of Open Records Appeals Department, the PAOOR should have immediately redirected the appeal to the proper agency. The PAOOR is either not aware of his duties or is somehow helping the BCDAOOR in skirting it's responsibilities of disclosing public records.

Pursuant to RTKL §67.1310(a)(2) the PAOOR can "issue advisory opinions to agencies and requestors." At no time did the PAOOR attempt to rectify the problems with wrong agencies responding to Cairns' requests nor did he provide the address or suggest appealing to the Bucks County Open Records Appeals Officer. Due to Cairns' incarceration he has little to know access to the internet and there were no correspondences with the county or PAOOR that included the name or address of the Bucks County OOR appeals officer.

In Philadelphia District Attorneys Office v. Gregory Stover, 176 A.3d 1027 (2017), Judge McCullough states in his opinion that "The RTKL explicitly grants the OOR with jurisdiction to review decisions of local agencies. See section 503(a)(5) and 1310(a)(5) of the RTKL, 65 P.S. §§67.503(a)(2), 67.1310(a)(5), and the District Attorney is a local agency. Therefore, we conclude that the OOR possesses jurisdiction to entertain Requestor's first appeal from the District Attorney's denial of his request."

Cairns asserts that the PAOOR knew the RTK request for documents were directed at the District Attorneys' Office yet failed to see that it was actually subcontracting agencies who were responding. With the PAOOR having jurisdiction to review RTK requests to the District Attorney's Office, there can be no question that the PAOOR failed in it's determination to deny Cairns' requests.



## V. CONSTITUTIONAL RIGHT TO ACCESS JUDICIAL RECORDS

A. In *N.J. Media Grp. Inc. v. U.S.* 836 F.3d 421, 434 (3rd. Cir. 2016), It states, "We have previously recognized a right of access to judicial proceedings and judicial records, and this right of access is beyond dispute." *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 780-81 (3rd. Cir. 1994) (internal quotation marks omitted); see also *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 98 S. Ct. 1306, 55 L. Ed. 2nd 570 (1978) (recognizing 2016 U.S. App. LEXIS 32 that, in the context of criminal proceedings, the press has historically-based, common law right of access to judicial records and documents). That law is rooted in common law and predated the Constitution. *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hotel Rittenhouse Assoc.*, 800 F.2d 339, 343 (3rd. Cir. 1986). It is however narrower than the First Amendment Right we have just discussed, being focused on the specific question of 'whether [the documents at issue] is considered to be a 'judicial record.'" In *re Cendant Corp.*, 260 F.3d 183, 192 (3rd. Cir. 2001). And the answer to that question "depends on whether [the] document has been filed with the court, or otherwise incorporated or integrated into a district court's adjudicatory proceedings".

In *Commonwealth v. Bradley* 232 A.3d 747, 775 (Pa. Super 2020) it states "U.S. Constitution Amendment 1, protects the public's right of access to information about their official's public activities. It goes beyond protection of the press and the self-expression of individuals to prohibit government from limiting the stock of information from which members of the public may draw. Access to information regarding public police activities is particularly important because it leads to citizens discourse on public issues, the highest rung of the hierarchy of the First Amendment values, and is entitled to special protection."





The court goes on to say, "Accordingly, recording police activity in public falls squarely within the First Amendment Right of access to information. As no doubt the press has this right, so does the public."

B. Because Ms. Silvs's 911 recording was played in "open court", transcribed to a document, and made part of the record in a criminal proceeding, Cairns has a Constitutional Right of Access to these transcripts.

In U.S. v. Antar, 38 F.3d 1348, 1361 (3rd. Cir. 1994) it states "The First Amendment Right of access to the courtroom includes a right to access of documents resulting from those court proceedings." It also states that "The First Amendment Right of access must extend equally to transcripts as to live proceedings."

C. While discussing the existence of the 911 transcripts at a PCRA Hearing held on July 6, 2017 in Bucks County PA., prosecutor Nathaniel Spang from the Bucks County District Attorney's Office states in open court that "there are transcripts your Honor". Although the transcripts were still incomplete, the Court goes on to make the transcripts part of the record. The same prosecutor introduced a copy of the Post Mortem Examination (also incomplete) at a preliminary hearing held one May 16, 2013 in Bucks County PA. There can be no doubt that both the 911 transcripts and Post Mortem Examination Report from the incident at Jefferson on the Creek in Warminster Township Bucks County on February 19, 2013 were discussed in open court and made part of the record. Therefore, Cairns has a First Amendment Right to access the judicial documents requested through the Right-To-Know requests that were sent to the Bucks County District Attorney's Office of Open Records (See Exhibits 1, 3, & D).

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## VI. CONCLUSION

When defense counsel makes an appropriate discovery request, the Government must respond by turning over the materials directly to the defendant or to the trial judge. *United States v. Argus* 427 U.S. 97, 106, 96 S. Ct. 2392, 2398, 49 L. Ed. 2d 342 (1976). The submission of discovery materials to the court for an in camera inspection and decision as to which materials are discoverable is commonly used when the Government's need for preserving confidentiality over the materials must be balanced with the defendant's Constitutional Right to evidence material to his defence. See *United States v. Nixon*, 418 U.S. 683, 94 S. Ct. 3090, 41 L. Ed. 2d 1039 (1974).

What Cairns received from the courts were "incomplete copies" of both the 911 transcripts and Post Mortem Examination. To be clear this is not a request for discovery but rather a RTK request for judicial documents in possession of the District Attorney's Office which is a local agency pursuant to RTKL 65 P.S. §67.503(a).

There can be no question as to who has the records sought and where they are located. Because this case is still open, and appeals have been filed, in the event of a new trial it is the Bucks County District Attorney's Office that will be prosecuting the new trial and most certainly will have all evidence on hand to present his case.

The Right-To-Know requests for documents were sent directly to the Bucks County District Attorney's Office of Open Records which is in the same exact building where prosecutor resides. For the Assistant District Attorney in charge of the Bucks County Open Records Office, who actually received the requests, to misdirect the requests to various subcontractors, and not locate the records himself, is an obvious attempt to circumvent the requests and the Right-To-Know Law under §67.901..



It is like asking a person who is driving a car if he knows where the keys are. Of course he does; Just like the Bucks County District Attorney's Office of Open Records knows exactly where the requested documents are.

Additionally, although the PAOOR stated in the denial of Cairns' appeal that the Bucks County District Attorney's Office denied the requests, this to is simply not true and you will find no such document stating so.

The very fact that Cairns has in his possession a partial copy of the 911 transcripts and 3 of 5 pages of the autopsy report, which he received from the Bucks County District Attorney's Office, objectively demonstrates that they are not documents exempt from disclosure pursuant to either the RTK Laws, the Coroner's Act, HIPPA and CHIRA Laws, or the First Amendment of the Constitution. If they were, Cairns would not now possess portions of the very records requested. If the spirit of "transparency and openness" truly exists within the courts which is the very purpose of the RTKL, than Cairns should have no problem obtaining the records in question.

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#### VII. RELIEF REQUESTED

Wherefore, for the foregoing reasons, Cairns prays this court grants him both requests to include (1) Full and complete time-stamped copy of the 911 transcripts, and (2) Full and complete copy of the Post Mortem Examination in this instant appeal and relief requested.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Jacob Cairns", is written over a horizontal line.

October 28, 2022



CERTIFICATE OF SERVICE

I, Andrew Cairns, pro-se petitioner, do hereby swear and affirm that on the day of October 28, 2022, I have served a true and correct document titled APPEAL FROM DECISION BY THE PENNSYLVANIA OFFICE OF OPEN RECORDS (PAOOR), on the below listed address via United States First Class Certified and bulk mail, postage prepaid. This is the filing date pursuant to the prison mailbox rule. See Houston v. Lack, 487 U.S. 266, 108 S. Ct. 2379, 101 L.Ed. 2d 245 (1988).

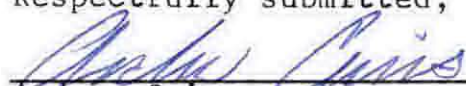
VIA FIRST CLASS MAIL TO:

Office of the District Attorney  
Matthew D. Weintraub Esq.  
Bucks County Service Center  
100 North Main Street  
Doylestown, PA. 18901

Clerk of Courts Bucks County  
Attention: Brian Monroe  
Bucks County Service Center  
100 North Main Street  
Doylestown, PA. 18901

Pennsylvania Office of Open Records  
Executive Director Liz Wagenseller  
333 Market Street 16TH Floor  
Harrisburg, PA. 17101-2234

Respectfully submitted,

  
\_\_\_\_\_,  
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ID.# LJ-7100  
1 Kelly Drive  
Coal Township, PA. 17866-1021

