

# Supreme Court of Pennsylvania

## Court of Common Pleas

### Civil Cover Sheet

DELAWARE

County

For Prothonotary Use Only:

Docket No:

TIME STAMP

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

#### Commencement of Action:

- ☐ Complaint ☐ Writ of Summons ☒ Petition  
☐ Transfer from Another Jurisdiction ☐ Declaration of Taking

Lead Plaintiff's Name:  
County of Delaware

Lead Defendant's Name:  
Robert Mancini

Are money damages requested? ☐ Yes ☒ No

Dollar Amount Requested: ☐ within arbitration limits  
(check one) ☐ outside arbitration limits

Is this a *Class Action Suit*? ☐ Yes ☒ No

Is this an *MDJ Appeal*? ☐ Yes ☒ No

Name of Plaintiff/Appellant's Attorney: ROBERT W. SCOTT, ESQUIRE

☐ Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)

SECTION B

**Nature of the Case:** Place an "X" to the left of the **ONE** case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

#### TORT (do not include Mass Tort)

- ☐ Intentional  
☐ Malicious Prosecution  
☐ Motor Vehicle  
☐ Nuisance  
☐ Premises Liability  
☐ Product Liability (does not include mass tort)  
☐ Slander/Libel/ Defamation  
☐ Other:  
\_\_\_\_\_  
\_\_\_\_\_

#### CONTRACT (do not include Judgments)

- ☐ Buyer Plaintiff  
☐ Debt Collection: Credit Card  
☐ Debt Collection: Other  
\_\_\_\_\_  
\_\_\_\_\_  
☐ Employment Dispute:  
Discrimination  
☐ Employment Dispute: Other  
\_\_\_\_\_  
\_\_\_\_\_  
☐ Other:  
\_\_\_\_\_  
\_\_\_\_\_

#### CIVIL APPEALS

- Administrative Agencies  
☐ Board of Assessment  
☐ Board of Elections  
☐ Dept. of Transportation  
☒ Statutory Appeal: Other  
RTK Law - Office of  
Open Records  
\_\_\_\_\_  
☐ Zoning Board  
☐ Other:  
\_\_\_\_\_  
\_\_\_\_\_

#### MASS TORT

- ☐ Asbestos  
☐ Tobacco  
☐ Toxic Tort - DES  
☐ Toxic Tort - Implant  
☐ Toxic Waste  
☐ Other:  
\_\_\_\_\_  
\_\_\_\_\_

#### REAL PROPERTY

- ☐ Ejectment  
☐ Eminent Domain/Condemnation  
☐ Ground Rent  
☐ Landlord/Tenant Dispute  
☐ Mortgage Foreclosure: Residential  
☐ Mortgage Foreclosure: Commercial  
☐ Partition  
☐ Quiet Title  
☐ Other:  
\_\_\_\_\_  
\_\_\_\_\_

#### MISCELLANEOUS

- ☐ Common Law/Statutory Arbitration  
☐ Declaratory Judgment  
☐ Mandamus  
☐ Non-Domestic Relations  
Restraining Order  
☐ Quo Warranto  
☐ Replevin  
☐ Other:  
\_\_\_\_\_  
\_\_\_\_\_

#### PROFESSIONAL LIABILITY

- ☐ Dental  
☐ Legal  
☐ Medical  
☐ Other Professional:  
\_\_\_\_\_  
\_\_\_\_\_

**Processed By:**

Robert W. Scott Attorney ID # 59329  
Carl W. Ewald Attorney ID # 85639  
205 North Monroe Street  
P.O. Box 468  
Media, PA 19063  
ph (610) 891-0108  
fax (610) 627-1716  
rscott@robertwscottpc.com

Attorneys for Petitioner  
County of Delaware

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**IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY**

COUNTY OF DELAWARE	:	ADMINISTRATIVE AGENCY APPEAL
201 W. FRONT STREET	:	(RIGHT TO KNOW LAW)
MEDIA, PA 19063	:	
	:	
PETITIONER	:	
v.	:	
	:	NO. 2023-_____
ROBERT MANCINI	:	
4 GUERNSEY LANE	:	
MEDIA, PA 19063	:	
RESPONDENT	:	

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

Petitioner, the County of Delaware, files the following Petition for Judicial Review and avers as follows:

1. Petitioner, the County of Delaware (the "County"), is a governmental agency with a business address of Delaware County Courthouse, 201 W. Front Street, Media, Delaware County, Pennsylvania 19063.
2. Respondent, Robert Mancini is an adult individual with an address of 4 Guernsey Lane, Media, PA 19063.
3. The Office of Open Records (the "OOR") is a Pennsylvania Commonwealth Agency with an office address of 333 Market Street, 16th Floor Harrisburg, PA 17101-2234.

4. Respondent filed a Right to Know Law (“RTKL”) appeal with the OOR, docketed at OOR Docket No: AP 2023-0066 and AP 2023-0104, relating to a Right to Know requests filed by Respondent.

5. The RTKL provides that, where requesters challenge denials of access, the OOR assigns appeals officers to review the challenges. 65 P.S. §§ 67.503(a) and 67.1310(a)(5).

6. § 1303 of the RTKL (65 P.S. § 1303) provides that OOR shall be served with notice of an appeal from the OOR’s decision and an opportunity to respond. However, OOR is not a party to such appeal, it is merely the quasi-judicial tribunal adjudicating the matter and has the ability to respond. Padgett v. Pa. State Police, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

7. Section 1302(a) of the RTKL vests jurisdiction for a Petition for Judicial Review with the Court of Common Pleas for the County where the local agency is located.

8. Petitioner requests that this Court review the decisions set forth in the Final Determination of the OOR for Consolidated OOR Docket Nos. AP 2023-0066 and AP 2023-0104 (attached hereto as Exhibit “A”), reverse the OOR and deny the appeals of Respondent Robert Mancini in its entirety.

9. On appeal to the Court of Common Pleas, the Court of Common Pleas is the ultimate finder of fact and is to conduct full de novo review of appeals from decisions made by OOR appeals officers. Bowling v. Office of Open Records, 621 Pa. 133, 75 A.3d 453, (2013).

10. The OOR’s decision must “contain findings of fact and conclusions of law based upon the evidence as a whole. [Such] decision[s] shall clearly and concisely explain the rationale for the decision.” 65 P.S. §§ 67.1301(a); 67.1302(a); Bowling v. Office of Open Records, 621 Pa. 133, 173, 75 A.3d 453, 476-477 (2013).

11. The standard of review is de novo and that the Court of Common Pleas' scope of review is broad or plenary when it hears appeals from determinations made by OOR appeals officers under the RTKL. Bowling v. Office of Open Records, 621 Pa. 133, 75 A.3d 453, (2013).

12. Respondent submitted two requests for records relating to election matters. On December 14, 2022, Respondent submitted a request to the Delaware County Open Records Officer (the "Open Records Officer") for: "all image files sent to Vendor Fort Orange between June 01, 2022 and Nov 10, 2022 of Vote by Mail Absentee records. This should includes [sic] absentee/mail ballots and all related lists, applications, envelopes and files pertaining thereto." On December 27, 2022, Respondent submitted a request to the Open Records Officer for "the official Ballot for Marple precincts [sic] 7-1, 7-2, and [sic] 7-3 for the Nov 8, 2022 Election."

13. By letters dated January 4, 2023 and January 9, 2023, the Open Records Officer denied each requests stating in each letter: "The Pennsylvania Election Code established the procedure to access election records and what types of records are subject to inspection. Any request for access to these types of records must be made pursuant to the provisions of the Pennsylvania Elections Code and not under the RTKL. 65 P.S. § 67.3101.1; see also Pennsylvania v. Pa. Dep't of State 138 A.3d 727, 2016 Pa. Commw. LEXIS 232 (Pa Commw. Ct., May 23, 2016). To the extent that the Pennsylvania Election Code permits access to the records you requested, they would be available from the Delaware County Bureau of Elections. You may contact the Delaware County Bureau of Elections at 2501 Seaport Dr. Suite BH 120, Chester, PA 19013 (Email: [DelcoElection@co.delaware.pa.us](mailto:DelcoElection@co.delaware.pa.us))."

14. Rather than direct his two requests to the Board of Elections as stated in the Open Records Officer's denial letters, the Respondent appealed the decisions to the OOR on January 9,

2023 and January 13, 2023.<sup>1</sup> The Official Notices of Appeal from the OOR dated January 10, 2023 and January 18, 2023, are attached hereto as Exhibits “B” and “C,” respectively.

15. On January 27, 2023 the County submitted a position statement to the OOR reiterating the County’s rationale for denial and attaching two emails from the Pennsylvania Department of State advising the County’s Board of Elections to deny RTKL requests for elections records and to ask requesters to file requests through the Election Code instead. The County also submitted (a) the Affidavit of Anne M. Coogan, the County’s Agency Open Records Officer, who attested that the County Solicitor had determined that the records were elections records; and (b) the Affidavit of James P. Allen, the Director of Election Operations for the County Bureau of Elections, who attested that “the County Bureau of Elections stands ready to response to a request from Requester within the requirements of the Pennsylvania Election Code.” Such response and Affidavits are attached hereto as Exhibit “D.”

16. The OOR Hearing Officer then issued a Final Determination in which the Hearing Officer stated:

“In many previous appeals before the OOR, it has been determined that access to voting records is governed by the Election Code. 25 P.S. § 2648.

....  
Section 3101.1 of the RTKL states that “[if] the provisions of this act regarding access to records conflict with another federal or state law, **the provisions of this act shall not apply**”. 65 P.S. § 67.3101.1. (emphasis added)

....  
... because the Election Code makes records only conditionally public, they must be accessed through the Election Code.

Here, the governance of inspection and copying under the Election Code are beyond the OOR’s purview. See *Heltzel*, 90 A.3d at 831-11 (noting that the OOR

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<sup>1</sup> BETWEEN 9/23/22 AND 12/28/22, RESPONDENT MANCINI MADE 50 SEPARATE REQUESTS TO THE COUNTY’S OPEN RECORDS OFFICE. FIFTEEN RESPONSES TO THESE REQUESTS DIRECTED HIM TO CONTACT THE BOARD OF ELECTIONS AS THE RECORDS REQUESTED WERE SUBJECT TO THE PENNSYLVANIA ELECTION CODE. AS OF 3/9/2023, RESPONDENT HAS MADE AN ADDITIONAL 18 REQUESTS IN 2023.

is not in a position to enforce conditions on public access imposed by another law, and that there is a difference between statutes establishing the public nature of records and statutes that also proscribe a means of access).”

17. Notwithstanding the OOR Hearing Officer’s foregoing findings and conclusions that access to election records under the Election Code are beyond the purview of the OOR, the OOR Final Determination concluded by granting Respondent’s appeal and directing the County to provide the responsive records.

18. The OOR decision was erroneous and should be reversed after de novo review. The OOR acknowledges that the requested records are subject to Section 2648 of the Election Code and therefore access to such records is controlled by the Election Code by the express terms of Section 67.3101.1 of the Right to Know Law. The OOR Final Determination further acknowledges that “the records are not unconditionally public under the Election Code.” But the OOR Final Determination then faults the County for having “asserted no exemptions” regarding whether the requested records are required to be provided and directs the County to provide responsive records subject to the access provisions of the Election Code.

16. The OOR’s determination that the County must provide records under the control of the Board of Elections is an error of law. The Board of Elections has its own governing body and its own Solicitor who must make this assessment and determination. For example, under the Election Code, inspection and copying of records is limited to “qualified electors” of the County, 25 P.S. § 2648, and it is the Board of Elections which makes the determination as to whether the requesting party so qualifies, not the County open records officer. Further, the Election Code provides that its records are subject to inspection and copying only when not in use by the Board of Elections, and only in the presences of an employee of the Board of Elections. Id. The Open

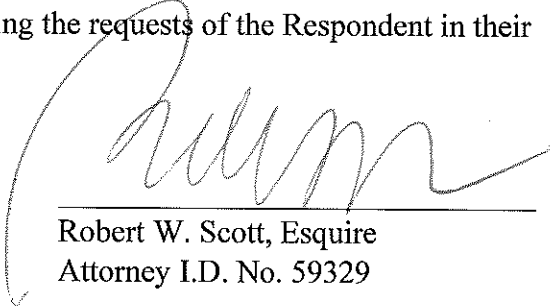
Records Officer is not employee of the Board of Elections, and cannot provide the access which the OOR erroneously directed in its Final Determination.

20. By the plain language of the RTKL, access to the requested records is not governed by the RTKL, and the OOR accordingly is without authority to grant access to such records. As a practical matter, the County Open Records Officer is without authority under the Election Code to provide access to such records.

21. Respondent will not be harmed by this Honorable Court reversing the Office of Open Records Final Determinations. As stated in the County's Denial Letter, Respondent can and should direct Respondent's requests for the records to the Delaware County Board of Elections, which has the personnel with the expertise needed to determine whether Respondent is a "qualified elector" of the County entitled to review such records, and whether the records should be provided unconditionally or not, and which can provide an employee of the Board of Elections to supervise the inspection of the records, as required by the Election Code.<sup>2</sup>

22. If the OOR's erroneous Final Determination is allowed to stand, the County could be subject to the civil penalty provisions of Section 1305 of the RTKL.

WHEREFORE, Petitioner respectfully requests that this Honorable Court enter an Order reversing the Office of Open Records and denying the requests of the Respondent in their entirety.



Robert W. Scott, Esquire  
Attorney I.D. No. 59329

Dated: March 10, 2023


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<sup>2</sup> Throughout the OOR appeals process, the County has continued to let Respondent know that he can contact the Board of Elections directly to obtain records under the Election Code. As of the date hereof, he has not done so.



### VERIFICATION

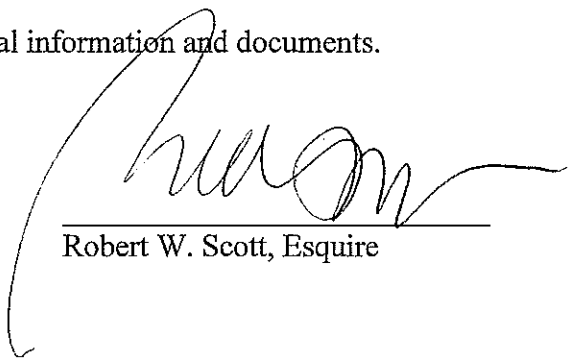
Anne M. Coogan states that she the Open Records Officer for the County of Delaware and that she is authorized to make this verification on its behalf. She states that the facts in the foregoing Petition for Judicial Review are true and correct to the best of her knowledge, information and belief subject to the penalties for unsworn perjury.

A handwritten signature in cursive script, reading "Anne M. Coogan", is written over a horizontal line.

Anne M. Coogan

**CERTIFICATE OF COMPLIANCE WITH PUBLIC ACCESS POLICY**

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



Robert W. Scott, Esquire

**IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY**

COUNTY OF DELAWARE	:	ADMINISTRATIVE AGENCY APPEAL
201 W. FRONT STREET	:	(RIGHT TO KNOW LAW)
MEDIA, PA 19063	:	
	:	
PETITIONER	:	
V.	:	
	:	NO. 2023-_____
ROBERT MANCINI	:	
4 GUERNSEY LANE	:	
MEDIA, PA 19063	:	
	:	
RESPONDENT	:	

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

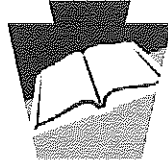
You are notified that the County of Delaware has filed a Petition for Judicial Review of the Final Determinations of the Commonwealth of Pennsylvania Office of Open Records that was issued by the Commonwealth of Pennsylvania Office of Open Records at Consolidated Docket No. AP 2022-0066 and AP 2023-01004 on February 8, 2023. You are directed to forward the record in the action to the Office of Judicial Support of the Court of Common Pleas of Delaware County, Pennsylvania for filing with this Court.

\_\_\_\_\_  
Office of Judicial Support  
Court of Common Pleas of Delaware County, Pennsylvania

Date:

(Seal of Court)

**Exhibit "A"**  
**Final Determination of Office of Open Records**  
**in Docket Nos. AP 2023-0066 and 2023-0104**  
**(attached)**



# pennsylvania

OFFICE OF OPEN RECORDS

## FINAL DETERMINATION

**IN THE MATTER OF**

**ROBERT MANCINI,  
Requester**

**v.**

**DELAWARE COUNTY,  
Respondent**

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**Docket No.: AP 2023-0066  
Consolidated appeal of OOR Dkts. AP  
2023-0066 & 2023-0104**

## **FACTUAL BACKGROUND**

On December 14, 2022 and December 27, 2022, Robert Mancini (“Requester”) submitted two requests (individually “Request”, collectively “Requests”) to Delaware County (“County”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking “all image files sent to Vendor Fort Orange between June 01, 2022 and Nov 10, 2022 of Vote by Mail Absentee records. This should includes [sic] absentee/mail ballots and all related lists, applications, envelopes and files pertaining thereto” and “the official Ballot for Marple precincts [sic] 7-1, 7-2, and [sic] 7-3 for the Nov 8, 2022 Election.” On January 4, 2023, the County denied the December 27, 2022 Request, arguing that the Pennsylvania Election Code (“Election Code”), 25 P.S. § 2648, provides the procedure to access these records. On January 9, 2023, following a thirty-day extension, 65 P.S. § 67.902(b), the County also denied the December 14, 2022 Request under the Election Code.

On January 9, 2023, and January 13, 2023, the Requester appealed to the Office of Open Records (“OOR”), challenging the denials and stating grounds for disclosure.<sup>1</sup> Specifically, the Requester argues that because the Board of Elections is under the jurisdiction of the County, the County conducts the election, election officials are employees of the County, and the voting machines are County property, related records are County records. The Requester further asserts that the County Records Manual issued by the Pennsylvania Historical and Museum Commission (“Manual”) requires the retention of responsive records. 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 January 27, 2023, the County submitted a position statement arguing that the County could not process the Request because the Election Code required that requests be directed to the County Bureau of Elections and the sworn affidavits of its Open Records Officer, Anne Coogan, and its Director of Election Operations, James Allen. Included with the County’s submission was an email from Jessica Mathis, Director, Bureau of Elections and Notaries at the Pennsylvania Department of State (“Department”), and an email from Jonathan Marks, Deputy Secretary for Elections and Commissions at the Department. Both emails provide guidance to county election officials regarding the interplay between the RTKL and the Election Code and specifically address Cast Vote Records (“CVRs”), voted mail ballots and mail ballot outer envelopes.

The same day, the Requester filed a response, quoting the County’s records retention manual and restating his belief that 25 P.S. § 2648 makes the responsive records public under the RTKL.

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<sup>1</sup> The Requests were docketed as OOR Dkts. AP 2023-0066 and 2023-0104. Because these appeals involve the same agency, requester, and similar issues on appeal, the appeals are hereby consolidated into OOR Dkt. AP 2023-0066. See 65 P.S. § 67.1102(b)(3) (stating that “the appeals officer shall rule on procedural matters on the basis of justice, fairness, and the expeditious resolution of the dispute”).

## LEGAL ANALYSIS

The County is a local agency subject to the RTKL. 65 P.S. § 67.302. Records in the possession of a local agency are presumed to be public, unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. As an agency subject to the RTKL, the County is required to demonstrate, “by a preponderance of the evidence,” that records are exempt from public access. 65 P.S. § 67.708(a)(1). Preponderance of the evidence has been defined as “such proof as leads the fact-finder ... to find that the existence of a contested fact is more probable than its nonexistence.” *Pa. State Troopers Ass’n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Pa. Dep’t of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

Here, the County argues that access to the requested records is governed by the Election Code. Section 2648 of the Election Code provides as follows:

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

25 P.S. § 2648.

Records in the possession of a local agency are presumed public unless exempt under the RTKL or other law. *See* 65 P.S. § 67.305. In many previous appeals before the OOR, it has been determined that access to voting records is governed by the Election Code. 25 P.S. § 2648. *See Shuppe v. Beaver Cnty.*, OOR Dkt. AP 2022-0037, 2022 PA O.O.R.D. LEXIS 709; *Taylor v. Westmoreland Cnty.*, OOR Dkt. AP 2022-0046, 2022 PA O.O.R.D. LEXIS 687; *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.

Regarding mail-in ballots, 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.
- (b) Record.** For each election, the county board shall maintain a record of the following information, if applicable, for each elector who makes application for a mail-in ballot:

  - (1) The elector’s name and voter registration address.
  - (2) The date on which the elector’s application is received by the county board.
  - (3) The date on which the elector’s application is approved or rejected by the county board.
  - (4) The date on which the county board mails or delivers the mail-in ballot to the elector.
  - (5) The date on which the elector’s completed mail-in ballot is received by the county board.
- (c) Compilation.** The county board shall compile the records listed under subsection (b) and make the records publicly available upon request within 48 hours of the request.

25 P.S. § 3150.17.



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

In this matter, the County has not raised any RTKL exemptions, but rather, argues that the Request is exclusively governed by the Election Code. A reading of the plain language of the statute suggests that “[a]ll 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....” 25 P.S. § 3150.17(a). Furthermore, all of “records of each county board of elections[,]” including official ballots, are subject to the Election Code. 25 P.S. § 2648. Therefore, based on the plain language of the statute, records related to mail-in ballots and certain other election documents are public under the Election Code. *See Previte v. Erie Cnty.*, OOR Dkt.

AP 2022-2191, 2022 PA O.O.R.D. LEXIS 2457, *appeal filed*, No. 12720-2022 (Erie Cnty. CCP Nov. 18, 2022); *Weaver v. Allegheny Cnty.*, OOR Dkt. AP 2022-1052, 2022 PA O.O.R.D. LEXIS 1323, *appeal filed*, SA-22-000342 (Allegheny Cnty. CCP Jun. 16, 2022) (granting the portion of a request seeking images of mail-in ballots).

The Requester, on appeal, conflates the issue of whether the records sought are *public records* and whether the records may be *accessed* under the RTKL. 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.” 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. As noted above, because the Election Code makes records only conditionally public, they must be accessed through the Election Code.

The County does not argue that the records are not public records - it argues only that it cannot provide access to those public records in response to a RTKL request, noting that it has repeatedly directed the Requester to contact the County Bureau of Elections. Here, the governance of inspection and copying under the Election Code are beyond the OOR’s purview. *See Heltzel*, 90 A.3d at 831-33 (noting that the OOR is not in a position to enforce conditions on public access imposed by another law, and that there is a difference between statutes establishing the public *nature* of records and statutes that also proscribe a means of access). Accordingly, the request for

records related to mail-in ballots 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 ballots to which the Requester is entitled as set forth in that law. *See Heltzel, supra*.

### CONCLUSION

For the foregoing reasons, the appeal is **granted**, and the County is required to make the requested records available for access in accordance with the Election Code. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to the Delaware County Court of Common Pleas. 65 P.S. § 67.1302(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond as per Section 1303 of the RTKL. 65 P.S. § 67.1303. However, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.<sup>2</sup> This Final Determination shall be placed on the OOR website at: <https://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: February 8, 2023**

/s/ Jordan Davis

Jordan C. Davis, Esq.  
Senior Appeals Officer

Sent via email only to: Robert Mancini, Jonathan Lichtenstein, Esq. and Anne M. Coogan

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<sup>2</sup> *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).



**Exhibit "B"**  
**OOR Official Notice of Appeal dated January 10, 2023**  
**(attached)**



## **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 **February 8, 2023**.

**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 **January 20, 2023**.

**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 or the E-File Appeal Portal 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.



**pennsylvania**  
OFFICE OF OPEN RECORDS

January 10, 2023

**Via Email Only:**

Robert Mancini  
4 Guernsey Lane  
Media, PA 19063  
delcocyber@gmail.com

**Via Email Only:**

Anne M. Coogan  
Agency Open Records Officer  
Delaware County  
201 West Front Street  
Media, PA 19063  
openrecords@co.delaware.pa.us

**RE: OFFICIAL NOTICE OF APPEAL - Mancini v. Delaware County OOR Dkt. AP 2023-0066**

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 January 9, 2023. A binding Final Determination ("FD") will be issued pursuant to the timeline required by the RTKL, **please see the attached information for more information about deadlines.**

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

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

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

Sincerely,

Elizabeth Wagenseller  
Executive Director

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



# The Right-to-Know Law Appeal Process

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

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

## **Submissions to the OOR**

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

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

**Include the docket number on all submissions.**

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

It is strongly advised that attorneys and other party representatives **file an Entry of Appearance** by contacting the Appeals Officer or completing the form at <https://www.openrecords.pa.gov/Appeals/EntryOfAppearance.cfm>.

*NOTE TO AGENCIES: In cases assigned to the E-File Portal, if an Entry of Appearance is not filed, the AORO is responsible to inform attorneys and other party representatives of all docket activity.*

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.*

---

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## **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](http://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...”

---

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**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.

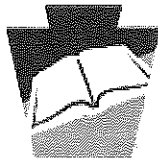
If mediation is successful, the requester will withdraw the appeal. This ensures that the case will not proceed to court — saving both sides time and money.

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.

---



# **pennsylvania**

OFFICE OF OPEN RECORDS

**APPEALS OFFICER:**

**Jordan Davis, Esq.**

**CONTACT INFORMATION:**

Commonwealth of Pennsylvania  
Office of Open Records  
333 Market Street, 16<sup>th</sup> Floor  
Harrisburg, PA 17101-2234

**FACSIMILE:**

(717) 425-5343

**EMAIL:**

[jorddavis@pa.gov](mailto:jorddavis@pa.gov)

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

EMAIL  
(Except cases assigned to the E-File  
Appeal Portal)

**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.

\_\_\_\_\_  
Agency

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:  
:  
:  
:  
:  
:  
:  
:  
:

OOR Dkt. AP \_\_\_\_\_

Please accept my appearance for the \_\_\_\_\_ in the above captioned case.

(Requester/Agency)

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

Attorney: \_\_\_\_\_

Firm: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Email: \_\_\_\_\_

Phone #: \_\_\_\_\_

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

## REQUEST TO PARTICIPATE BEFORE THE OOR

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

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

OOR Docket No: \_\_\_\_\_

Today's date: \_\_\_\_\_

Name: \_\_\_\_\_

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

Address/City/State/Zip \_\_\_\_\_

E-mail \_\_\_\_\_

Fax Number: \_\_\_\_\_

Name of Requester: \_\_\_\_\_

Address/City/State/Zip \_\_\_\_\_

Telephone/Fax Number: \_\_\_\_\_ / \_\_\_\_\_

E-mail \_\_\_\_\_

Name of Agency: \_\_\_\_\_

Address/City/State/Zip \_\_\_\_\_

Telephone/Fax Number: \_\_\_\_\_ / \_\_\_\_\_

E-mail \_\_\_\_\_

Record at issue: \_\_\_\_\_

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

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

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

Respectfully submitted, \_\_\_\_\_ (must be signed)

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

Subject: Right to know appeal Delaware County no 2022-528

Date : 05 January 2023

Submitter: Robert Mancini

RECEIVED

JAN 09 2023

OFFICE OF OPEN RECORDS

Below is a my appeal

- A) Name : Robert Mancini  
Address: \$ Guernsey Lane Media PA 19063  
Telephone : 610-506-9827  
Fax: None
- B) A concise statement of the fact  
The Delaware County Clerk< Anne M. Coogan denied my request
  - 1) The address of Denier  
Open Record Office  
County of Delaware  
201 W Front Street Room 206  
Media PA 19063  
(610) 891-4260- Office  
(610) 891-8759 – Fax
  - 2) The record requested  
" Please provide the official ballots for Marple Precincts 7-1, 7-2, 7-3 for the Nov 8, 2022 election"
  - 3) Date of records request 27 December 2022
  - 4) Date of any response or the date of the responses was deemed denied: 04 Jan 2023
  - 5) Statement of public record:  
The record is a public record. The 2017 County Records Manual record series EI-24 listed below verbiage.

PAGE 1 of 6 RM

#### **EL-24 Official Ballots**

Consists of paper ballots and ballot labels used with voting machines and electronic voting equipment. Includes the following types of ballots:

- (1) Electronic and punch card write-in ballots.
- (2) Official ballot cards-punch card system.
- (3) Mechanical voting machine write-in paper rolls.
- (4) Spoiled and unused ballot cards-punch card system.
- (5) Spoiled and unused paper ballots.

**Retain** 4 months for all official ballots and the contents of ballot boxes, unless notified by the county's district attorney or a judge of a court of record that an extension of retention is required due to pending prosecution or litigation. (25 P.S. §§ 2649, 3031.13(a), 3031.16(a), 3063(a) and 3065(a)).

**6) Statement addressing the ground of denial.**

**The County states that the records are not under the Right-to-know law.**

**The machine are the property of Delaware County because the Election office is under the jurisdiction of Delaware County. A county records as quoted from the records manual is**

**The County Records Act defines county records as "any papers, dockets, books, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received in any office of county government in pursuance of law or in connection with transactions of public business in the exercise of its legitimate functions and the discharge of its responsibilities." Retention periods listed in the County Records Manual apply to information in all forms and formats. The fact that information is created and stored electronically or on microfilm rather than on paper has no bearing on its retention status. All information included under the definition of a county record must be disposed of in accordance with the County Records Act and disposition procedures approved by the County Records Committee.**

**The County Conducts the election, the election officials are either employees of the County or volunteers for the county, The machines were bought and paid for with Delaware County money, i.e. Delaware County Taxpayer Money, therefore the records should fall under the Right-to-know law.**

**7) Attached is the**

- A) Request**
- B) Denial**

*PAGE 2 of 6 RM*



8) I verify that this all of the documents for the request and denial.



Robert Mancini

05 Jan 2023

Date

PAGE 3 of 6 RM



OPEN RECORDS  
GOVERNMENT CENTER BUILDING  
201 W. FRONT STREET  
MEDIA, PENNSYLVANIA 19063  
PHONE: (610) 891-4260

COUNCIL  
DR. MONICA TAYLOR  
CHAIR

ANNE M. COOGAN  
OPEN RECORDS OFFICER

ELAINE PAUL SCHAEFER  
VICE CHAIR

January 4, 2023

KEVIN M. MADDEN  
CHRISTINE A. REUTHER  
RICHARD R. WOMACK

Mr. Robert C. Mancini  
4 Guernsey Lane  
Media, PA 19063

**Re: Right-to-Know Law Request No. 2022-528**

Dear Mr. Mancini:

This letter acknowledges receipt by the County of Delaware of your written request for records under the Pennsylvania *Right-to-Know Law* (*Act 3 of 2008, 65 P.S. § 67.101, et seq.*) ("*RTKL*"). This office received your request on December 27, 2022. Therefore, under the RTKL, a written response to your request was due on or before January 4, 2023. This letter is provided pursuant to that requirement. A copy of your request is attached.

Your request is denied. The Pennsylvania Election Code establishes the procedure to access election records and what types of records are subject to inspection. Any request for access to these types of records must be made pursuant to the provisions of the Pennsylvania Election Code and not under the RTKL. 65 P.S. § 67.3101.1; see also *Pennsylvanians v. Pa. Dep't of State* 138 A.3d 727, 2016 Pa. Commw. LEXIS 232 (Pa. Commw Ct., May 23, 2016).

To the extent that the Pennsylvania Election Code permits access to the records you requested, they would be available from the Delaware County Bureau of Elections. You may contact the Delaware County Bureau of Elections at 2501 Seaport Dr. Suite BH 120, Chester, PA 19013 (Email: [DelcoElection@co.delaware.pa.us](mailto:DelcoElection@co.delaware.pa.us)).

To the extent that you believe your request has been denied incorrectly, your right to appeal is set forth below:

PAGE 4 of 6 RM

Mr. Robert C. Mancini  
January 4, 2023  
Page 2

**Right to Appeal**

YOU HAVE A RIGHT TO CHALLENGE THIS DENIAL OF YOUR REQUEST. IN ORDER TO DO SO, YOU MUST FILE A WRITTEN APPEAL WITH:

EXECUTIVE DIRECTOR  
Office of Open Records  
Commonwealth Keystone Building  
333 Market Street, 16<sup>th</sup> Floor  
Harrisburg, PA 17126-0333

WITHIN FIFTEEN (15) BUSINESS DAYS OF THE MAILING DATE OF THIS LETTER. 65 P.S. § 67.1101(a)(1). THE APPEAL SHALL STATE THE GROUNDS UPON WHICH THE REQUESTER ASSERTS THAT THE RECORD IS A PUBLIC RECORD, LEGISLATIVE RECORD OR FINANCIAL RECORD AND SHALL ADDRESS ANY GROUNDS STATED BY THE AGENCY FOR DELAYING OR DENYING THE REQUEST. 65 P.S. § 67.1101(a)(1)

Please be advised that this correspondence will serve to close this record with our office as permitted by law.

Sincerely,



Anne M. Coogan  
Open Records Officer  
County of Delaware  
201 W. Front Street  
Media, PA 19063

PAGE 506 RM

OPEN RECORDS OFFICE  
County of Delaware  
201 W. Front Street, Room 206  
Media, PA 19063  
(610) 891-4260 – Office  
(610) 891-8759 - Fax

OPEN RECORDS REQUEST FORM

Name of Requester

Mancini Robert C.  
(Please print) Last First MI

Signature: Robert Mancini Date: 27 Dec 2022

Mailing Address: 4 Guernsey Lane  
Media PA 19063  
City State Zip Code

Telephone Number: 610-506-9827 FAX Number:

Email Address: Delcocyber@gmail.com

Please identify each of the documents that are subject to this request. You must identify these documents with sufficient specificity so we may ascertain whether we have these documents and how to locate them.

Please provide the official Ballot for Marple precincts 7-1, 7-2 and 7-3 for the Nov 8, 2022 Election

Please check one of the following boxes:

- ☐ I am only requesting access to the documents identified above.  
☐ I am only requesting a copy of the documents identified above.  
☐ I am requesting access to the documents identified above and a copy of those documents.

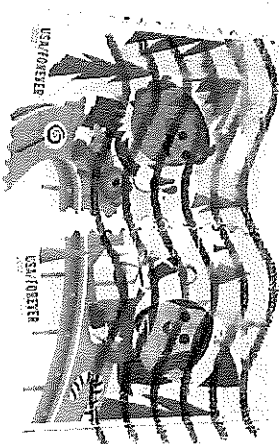
If you are requesting a copy of the documents identified above, please check one of the following boxes:

- ☐ I want a paper copy of the documents  
☒ Other format (please specify): electronic copy of document

PAGE 6 of 6 RM

Mr. & Mrs. Robert Mancini  
1 Guernsey Lane  
Medip 2A, 19053

PHILADELPHIA PA 190  
5 JAN 2023 PM 6 L



EXECUTIVE DIRECTOR  
Office of Open Records  
COMMONWEALTH KEYSTONE BUILDING  
333 MARKET STREET 16TH FLOOR  
HARRISBURG PA 17126-0333

17126-0333





**Exhibit "C"**  
**OOR Official Notice of Appeal dated January 18, 2023**  
**(attached)**





## **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 **February 13, 2023**.

**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 **January 27, 2023**.

**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 or the E-File Appeal Portal 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.



**pennsylvania**  
OFFICE OF OPEN RECORDS

January 18, 2023

**Via Email and First Class Mail:**

Robert Mancini  
4 Guernsey Lane  
Media, PA 19063  
delcocyber@gmail.com

**Via Email Only:**

Anne M. Coogan  
Agency Open Records Officer  
Delaware County  
201 West Front Street  
Media, PA 19063  
openrecords@co.delaware.pa.us

**RE: OFFICIAL NOTICE OF APPEAL - Mancini v. Delaware County OOR Dkt. AP 2023-0104**

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 January 13, 2023. 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):**

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

Sincerely,

Elizabeth Wagenseller  
Executive Director

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

# The Right-to-Know Law Appeal Process

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

The Office of Open Records (“00R”) 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 00R 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 00R**

**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.

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**may be construed as a waiver of objections regarding release of requested records.**

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

Sample affidavits are on the OOR website, [openrecords.pa.gov](http://openrecords.pa.gov).

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

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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.

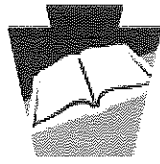
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Parties are encouraged to consider the OOR's mediation program as an alternative way to resolve disputes under the RTKL.

---



# **pennsylvania**

OFFICE OF OPEN RECORDS

**APPEALS OFFICER:**

**Jordan Davis, Esq.**

**CONTACT INFORMATION:**

Commonwealth of Pennsylvania  
Office of Open Records  
333 Market Street, 16<sup>th</sup> Floor  
Harrisburg, PA 17101-2234

**FACSIMILE:**

(717) 425-5343

**EMAIL:**

jorddavis@pa.gov

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

**EMAIL**

(Except cases assigned to the E-File  
Appeal Portal)

**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.

\_\_\_\_\_  
Agency

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OOR Dkt. AP \_\_\_\_\_

Please accept my appearance for the \_\_\_\_\_ in the above captioned case.

(Requester/Agency)

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

Attorney: \_\_\_\_\_

Firm: \_\_\_\_\_

Address: \_\_\_\_\_

Email: \_\_\_\_\_

Phone #: \_\_\_\_\_

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

## REQUEST TO PARTICIPATE BEFORE THE OOR

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

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

OOR Docket No: \_\_\_\_\_

Today's date: \_\_\_\_\_

Name: \_\_\_\_\_

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

Address/City/State/Zip \_\_\_\_\_

E-mail \_\_\_\_\_

Fax Number: \_\_\_\_\_

Name of Requester: \_\_\_\_\_

Address/City/State/Zip \_\_\_\_\_

Telephone/Fax Number: \_\_\_\_\_ / \_\_\_\_\_

E-mail \_\_\_\_\_

Name of Agency: \_\_\_\_\_

Address/City/State/Zip \_\_\_\_\_

Telephone/Fax Number: \_\_\_\_\_ / \_\_\_\_\_

E-mail \_\_\_\_\_

Record at issue: \_\_\_\_\_

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

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

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

Respectfully submitted, \_\_\_\_\_ (must be signed)

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



Subject: Right to know appeal Delaware County no 2022-488

Date :18 December 2022

Submitter: Robert Mancini

Below is a my appeal

A) Name : Robert Mancini

Address: \$ Guernsey Lane Media PA 19063

Telephone : 610-506-9827

Fax: None

B) A concise statement of the fact

The Delaware County Clerk< Anne M. Coogan denied my request

1) The address of Denier

Open Record Office

County of Delaware

201 W Front Street Room 206

Media PA 19063

(610) 891-4260- Office

(610) 891-8759 – Fax

2) The record requested

" Please provide all image files sent to vendor Fort Orange between June 01, 2022 and Nov 10, 2022 of Vote by Mail Absentee Records" This should include absentee ballots and all related lists, Applications, envelopes and files pertaining thereto"

3) Date of records request 07 December 2022

4) Date of any response or the date of the responses was deemed denied: 09 January 2022

5) Statement of public record:

The record is a public record. The 2017 County Records Manual record series EI-1 listed below verbiage.

**RECORDS**

**EI-1 Absentee Ballot Records**

Includes absentee ballots and all related lists, applications, envelopes and files pertaining thereto. Application usually shows personal identification information, reason for request, and elector's signature.

Retain 2 years. (25 P.S. § 3146.9)

The County use absentee and mail-in-ballots interchangeably. Take from their Request for proposal [Exhibit 2 page 4 of Exhibit]

RECEIVED

JAN 13 2023

OFFICE OF OPEN RECORDS

#### **Vote By Mail Ballots & Vote By Mail Fulfillment**

The printing vendor must provide outbound mailing fulfillment of Vote By Mail/Absentee ballots. The fulfillment process will require the vendor to prepare envelopes and inserts, plus Vote By Mail / Absentee ballot, folded twice in designated locations, that must be prepared in a ballot packet that will include:

**This is the frequency in which the County send these files [Exhibit 2 page 4 of Exhibit]**

- Delaware County will generate Vote By Mail print files with voter-name information and ballot pdfs two to three times weekly from the 39<sup>th</sup> day before Election Day until the 12<sup>th</sup> day before Election Day.

**The RFP also states [Exhibit 2 page 20 of Exhibit] that the PA Right to know Law applies to this agreement**

18. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, ("RTKL") applies to this Agreement. Upon written notification from the County that it requires the Contractor's assistance in responding to a request under the RTKL for information related to this Agreement that may be in the Contractor's possession, constituting, or alleged to constitute a record in accordance with the RTKL

#### **6) Statement addressing the ground of denial.**

**The County states that the records are not under the Right-to-know law.**

**The machine are the property of Delaware County because the Election office is under the jurisdiction of Delaware County. A county records as quoted from the records manual is**

**The County Records Act defines county records as "any papers, dockets, books, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received in any office of county government in pursuance of law or in connection with transactions of public business in the exercise of its legitimate functions and the discharge of its responsibilities." Retention periods listed in the County Records Manual apply to information in all forms and formats. The fact that information is created and stored electronically or on microfilm rather than on paper has no bearing on its retention status. All information included under the definition of a county record must be disposed of in accordance with the County Records Act and disposition procedures approved by the County Records Committee.**

**The County Conducts the election, the election officials are either employees of the County or volunteers for the county, The machines were bought and paid for with Delaware County money, i.e. Delaware County Taxpayer Money, therefore the records should fall under the Right-to-know law.**

#### **7) Exhibits Included**

- A) Request & Denial (3 pages)  
B) Invitation to Bid for Printing/Mailing of Vote by Mail Ballots for the 2022 Primary and General Election (24 pages)

8) I verify that this all of the documents for the request and denial.

*Robert Mancini*

11 Jan 2023

Robert Mancini

Date



**OPEN RECORDS**  
**GOVERNMENT CENTER BUILDING**  
201 W. FRONT STREET  
MEDIA, PENNSYLVANIA 19063  
PHONE: (610) 891-4260

EXHIBIT 1

COUNCIL  
DR. MONICA TAYLOR  
CHAIR

ANNE M. COOGAN  
OPEN RECORDS OFFICER

ELAINE PAUL SCHAEFER  
VICE CHAIR

January 9, 2023

KEVIN M. MADDEN  
CHRISTINE A. REUTHER  
RICHARD R. WOMACK

Mr. Robert C. Mancini  
4 Guernsey Lane  
Media, PA 19063

**Re: Right-to-Know Law Request No. 2022-492**

Dear Mr. Mancini:

You were notified by letter from this office dated December 14, 2022, that this Office required an additional 30 calendar days, i.e., until January 14, 2023, in which to provide a final written response to your request. This letter is provided pursuant to that requirement. A copy of your request is attached.

Your request is denied. The Pennsylvania Election Code establishes the procedure to access election records and what types of records are subject to inspection. Any request for access to these types of records must be made pursuant to the provisions of the Pennsylvania Election Code and not under the RTKL. 65 P.S. § 67.3101.1; see also *Pennsylvanians v. Pa. Dep't of State* 138 A.3d 727, 2016 Pa. Commw. LEXIS 232 (Pa. Commw Ct., May 23, 2016).

To the extent that the Pennsylvania Election Code permits access to the records you requested, they would be available from the Delaware County Bureau of Elections. You may contact the Delaware County Bureau of Elections at 2501 Seaport Dr. Suite BH 120, Chester, PA 19013 (Email: [DelcoElection@co.delaware.pa.us](mailto:DelcoElection@co.delaware.pa.us)).

To the extent that you believe your request has been denied incorrectly, your right to appeal is set forth below:

**Right to Appeal**

**YOU HAVE A RIGHT TO CHALLENGE THIS DENIAL OF YOUR REQUEST. IN ORDER TO DO SO, YOU MUST FILE A WRITTEN APPEAL WITH:**

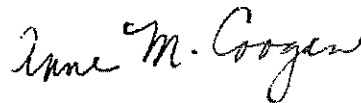
Mr, Robert Mancini  
January 9, 2023  
Page 2

EXECUTIVE DIRECTOR  
Office of Open Records  
Commonwealth Keystone Building  
333 Market Street, 16<sup>th</sup> Floor  
Harrisburg, PA 17126-0333

WITHIN FIFTEEN (15) BUSINESS DAYS OF THE MAILING DATE OF THIS LETTER. 65 P.S. § 67.1101(a)(1). THE APPEAL SHALL STATE THE GROUNDS UPON WHICH THE REQUESTER ASSERTS THAT THE RECORD IS A PUBLIC RECORD, LEGISLATIVE RECORD OR FINANCIAL RECORD AND SHALL ADDRESS ANY GROUNDS STATED BY THE AGENCY FOR DELAYING OR DENYING THE REQUEST. 65 P.S. § 67.1101(a)(1)

Please be advised that this correspondence will serve to close this record with our office as permitted by law.

Sincerely,

A handwritten signature in cursive script that reads "Anne M. Coogan".

Anne M. Coogan  
Open Records Officer  
County of Delaware  
201 W. Front Street  
Media, PA 19063



# EXHIBIT 2

eCP-020222

## **Invitation to Bid for Printing/Mailing of Vote By Mail Ballots For the 2022 Primary and General Election**



**DELAWARE COUNTY, PENNSYLVANIA**

**BOARD OF ELECTIONS**

## Instructions for Respondents

Delaware County Central Purchasing will receive Proposals via electronic submission using PennBid until 9:30AM on February 23, 2022, at which time the proposals shall be opened with results displayed publicly on PennBid.

Documents are available at no cost on PennBid ([www.pennbid.net](http://www.pennbid.net)). Each bid must be submitted on the attached.

Any questions pertaining to this Invitation to Bid must be submitted via the "Clarifications" feature within PennBid by February 11, 2022. Telephone inquiries will not be entertained.

The Delaware County Council reserves the right to reject any and all proposals or parts thereof and to determine whether the quality and type of equipment and/or service to be furnished meet the requirements for which it is intended. They further reserve the right to insist or waive any technicalities required for the best interest of the County and to consider competency and responsibility of the bidder before the award of the contract and award bids accordingly.

Dr. Monica Taylor, Chair  
Elaine Paul Schaefer, Vice Chair  
Kevin M. Madden  
Christine A. Reuther  
Richard R. Womack, Jr.  
DELAWARE COUNTY COUNCIL

### 1. DOCUMENTS REQUIRED IN PROPOSAL

- **Bid Bond**
  - In lieu of a hard copy Bid Bond, each electronic bid must be accompanied by a scanned copy of a **CORPORATE BID BOND, CERTIFIED GOOD FAITH CHECK, CASHIER'S CHECK, OR TREASURER'S CHECK**, in the amount of **Ten Percent (10%) of the total amount of the bid drawn to the order of the County of Delaware (County)**. This should be uploaded in Pennbid. Upon opening of the bids, the original hard copy check should be provided within five (5) days of bid opening upon request from the County. the original must be the same check number, bank, etc. as what was uploaded as part of the bid submission.
  - Failure to accompany this bid with appropriate bid security described above will automatically disqualify bidder.
- **A signed cover letter on company letterhead that includes the vendor's name, address and contact information.**
- **Appendix B: Vendor Experience Printing Ballots**
- **Appendix C: Canceled Government Printing Contracts & Litigation**
- **Appendix E: Proposal Sheet**

**Vendor also may provide details or background information in support of this proposal.**

### 2. DEADLINE FOR SUBMISSIONS

**BY: 9:30 AM EST**

**ON: Tuesday, Feb. 23, 2022**



**3. ELECTRONIC SUBMISSIONS ONLY**

Proposals may only be submitted electronically via Pennbid. Written submissions will not be accepted.

**4. QUESTIONS**

Any questions pertaining to this Invitation to Bid must be submitted via the "Clarifications" feature within PennBid by February 11, 2022. Telephone inquiries will not be entertained.

**5. NOTICE ON POSSIBLE CHANGE OF DATE OF PRIMARY ELECTION**

At this time, there is a possibility that the Pennsylvania Courts may postpone the May 17, 2022 Primary Election. Vendor will need to adjust accordingly if the Primary is moved to a later date. If the Primary date is postponed, timelines in this document must be interpreted in terms of number of days before new date of the Primary Election.

### **Introduction**

Delaware County, Pennsylvania will conduct a Primary on May 17, 2022 (or at a later date as ordered by the Courts) and a General Election on Nov. 8, 2022. The County has approximately 420,000 registered voters. The Primary Election will require the services of a printing vendor to:

- Print mailing envelopes;
- Print return envelopes;
- Print secrecy envelopes;
- Print Vote By Mail/Absentee ballots;
- Print Inserts that list Delaware County drop boxes; and,
- Properly and timely assemble, prepare and mail Vote By Mail/Absentee packets.

Delaware County uses the Hart Intercivic Verity balloting system. The County chose the Hart Intercivic Verity balloting system partly because it provides ballot scanners and programs that not only scan, count and tabulate the voter's selections, but also read an individual bar code on each ballot to guard against photocopying or double scanning of any ballot. This means that the printing vendor must use digital printing, as the county will be sending a unique pdf image for each front and back side of each ballot to be printed.

### **Vote By Mail Ballots & Vote By Mail Fulfillment**

The printing vendor must provide outbound mailing fulfillment of Vote By Mail/Absentee ballots. The fulfillment process will require the vendor to prepare envelopes and inserts, plus Vote By Mail / Absentee ballot, folded twice in designated locations, that must be prepared in a ballot packet that will include:

- An outbound mailing envelope with two-color printing (black and blue), front and back, with one-color simplex imaging of the voter's name and mailing address and a unique outbound IMB that corresponds to the individual voter on the face of the outbound envelope. The "name" data will be imaged in black ink. No individualized "name" data will be imaged on the back side of the outbound envelope. A report of the IMBs and the corresponding voters must be provided to Delaware County after each batch is prepared.
- A ballot return envelope with two-color printing (black and blue), front and back, with one-color simplex imaging of the voter's name, address, registration number and precinct code, and the individualized bar code and the QR code that corresponds ballots inside. A unique IMB that corresponds to the voter must be imaged on the front side of the ballot return envelope. A report of the IMBs and the corresponding voters must be provided to Delaware County after each batch is prepared.
- A Secrecy Envelope (with the words "Official Election Ballot" printed in in one color (black) on the front side) that is 8.75" x 5.25". No name data is imaged on this Official Election Ballot envelope.
- Two uniform inserts: an 8.5"x11" Drop Box List insert on 20-pound white stock with two-color printing (black and blue) front and back, and an 8.5"x3.625" Voting Instructions on 20-pound yellow stock (canary-colored slip sheet) with one-color (black) printing on both sides.

Delaware County will be responsible for all postage. The indicia – on both the outbound envelope to the voter and on the Business Reply Mail ballot-return envelope – will list a Delaware County permit with the US Postal Service. Other items of importance:

- Delaware County will generate Vote By Mail print files with voter-name information and ballot pdfs two to three times weekly from the 39<sup>th</sup> day before Election Day until the 12<sup>th</sup> day before Election Day.

- The first file of between 35,000 and 42,000 Vote By Mail/Absentee records: Within six to ten (6 to 10) calendar days (excepting only Sundays) of receipt of the first file, the vendor shall use high-integrity/file-based integrity processing systems to complete the following:
- Presort name file with no NCOA address corrections but datafile can be CASS certified to standardize street name, street suffix, unit/apartment, city or ZIP/ZIP+4.
  - Image mailing envelopes based on name data,
  - Print, fold, and insert correct ballot based on name data,
  - Image and insert correct return envelope based on name data,
  - Insert generic Official Election Ballot envelope, generic Drop Box List and generic Voting Instructions slip sheet, and
  - Ship and drop the complete Vote By Mail/Absentee ballot packets to the US Postal Service in Philadelphia PA.
- Second file and all subsequent Vote By Mail files: Within three (3) calendar days (excepting only Sundays) of receipt of later files, the vendor shall use high-integrity/file-based integrity processing systems described above (for the first file of 35,000-42,000 Vote By Mail/Absentee records) to complete mailings – and ship and drop complete Vote By Mail/Absentee Voting ballot packets to the US Postal Service in Philadelphia, PA. These second and subsequent files are expected to count in the hundreds or low thousands of names per file and will not exceed 3,000 records per day.
- The vendor must ship/deliver all Delaware County Vote By Mail/Absentee ballot packets to the US Postal Service in Philadelphia, PA. The Philadelphia facility must be the point at which Delaware County Vote By Mail/Absentee ballot packets first enter the USPS mail stream.

#### **Testing of ballots at printing facility (or Delaware County offices)**

Delaware County deploys an employee and Hart ballot scanners on-site at the vendor's printing facility to test ballots for readability and accuracy. The printing vendor must provide climate-controlled workspace in an office setting with appropriate heat and air conditioning, lighting, electrical service, for the Delaware County staff member to be able to use a Hart Intercivic ballot scanner to mark and test ballots. The ballot orders will include 10 extra ballots for each batch. The vendor will be responsible for separating and providing the 10 extra ballots from each precinct to the Delaware County testing staffer so that the testing staffer may mark and test the ballots at the printing vendor's facility during production and prior to the shipping of the ballots. **Delaware County reserves the right to perform this testing at Delaware County offices by having the vendor send the test ballots to Delaware County via overnight mail.**

#### **Qualifications and Experience**

Bidder must:

- Detail the equipment and systems that the bidder would use to produce ballots, envelopes and perform fulfillment of Vote By Mail ballots.
- Detail the supply chain to be used to acquire paper to ensure production on a timely basis per the schedule outlined in this Request for Proposals.
- Have conducted printing and mailing services for at least five (5) years at the production facility to be used for this project.
- Be able to print various ballot styles and perform related inventory controls and packaging of ballots.

- Be able to perform mail fulfillment processes, including imaging individual Vote By Mail packets and providing correct ballot styles.
- Be able to properly perform presort and related USPS paperwork, and not change, per the Pennsylvania Election Code, any mailing addresses in the file, **excepting only for:**
  - o Formatting/spelling of street name to conform with USPS
  - o Formatting/spelling of street suffix (DR, BLVD, PK, etc) to conform with USPS
  - o Formatting unit/apartment number to conform with USPS
  - o Correcting spelling of city, town or borough to conform with USPS
  - o Correcting ZIP Code or expanding ZIP Code to ZIP+4.
- Be able to accept voter-data files from the County as often as every two to three (2-3) days to mail out ballot packets to the voters.
- Be able to incorporate IMB data tracking systems for both outbound and return envelopes.
- Provide a brief description of the bidder's business, including a general scope of work performed, capabilities and experience.
- Detail, using Appendix B, any governmental entity (or entities) that the proposer has printed election ballots and/or provided Vote By Mail/Absentee Voting programs in the last four (4) calendar years. If no such experience exists, the vendor must submit the signed and dated Appendix B with the word "None."
- Detail, using Appendix C, any governmental entity (or entities) and the corresponding contract(s) during the last four (4) calendar years where the governmental entity (federal, state or local) terminated a contract with the bidder or filed litigation. Describe what occurred. Disclosures on Appendix C must include parent/predecessor/re-named portions of the bidding organization from the last four (4) years. If no such experience exists, the vendor must submit the signed and dated Appendix C with the word "None."
- May provide a listing of references with contact people and telephone numbers, of counties that you have provided ballot printing within the last four (4) years.
- Provide a listing of any subcontractors that may be used on the project.

#### Contract Period

- The contract shall be for the period through the 2022 General Election (November 8, 2022).
- Delaware County reserves the right to extend the contract period with the Vendor, based on vendor's performance and factoring for changes in paper and production prices, for up to three (2) additional one-year terms, through the Nov. 2024 General Election, if the vendor agrees to hold to the prevailing processes and systems outlined in this RFP. Said renewal(s) shall be agreed to by the parties and shall be in writing.

#### Termination of Contract

Delaware County reserves the right to cancel this contract for vendor's failure to provide proper materials and services, or for performance or material deviations that disrupt the election. Failure by the vendor to provide proper materials, services and compliance with specifications may require Delaware County to seek replacement services at the vendor's expense.

#### Free On Board (FOB) Destination pricing

All bids shall incorporate "Free On Board (FOB) Destination" deliveries and include freight and fuel, and be guaranteed for a minimum period of four months. No freight or fuel surcharges will be considered or paid.

#### Additional Services

If the Delaware County Bureau of Elections requires changes, whether small or extraordinary, of the vendor (for example, changes resulting that increase quantities or revise the printing), the amount of payment beyond the amount of the vendor's bid will be negotiated between Delaware County and the vendor and will be calculated based on the vendor's bid, excepting for smaller quantities or shorter production and delivery schedules. The provisions of this paragraph shall be subject to applicable Pennsylvania Law and section 6-29 (D)(1) of Delaware County Administrative Code.

#### Schedules and Deliveries

Feb. 23, 2022: Bid opening

March 2, 2022: Assuming receipt of acceptable bid, contract award by Delaware County Council

March 16, 2022 or earlier: Bureau of Elections to supply artwork for outbound and return Vote By Mail/Return envelopes, and the Official Election Ballot envelope.

March 18, 2022 or earlier: Delaware County Bureau of Elections provides artwork for two-color/two-sided "Drop Box" insert for use with Vote By Mail and the "Voting Instructions" insert for use with Vote By Mail.

April 8, 2022: Vendor must complete production of outbound and return Vote By Mail envelopes and the Official Election Ballot envelopes.

April 8, 2022: Vendor must complete printing of "Drop Box" and "Voting Instructions" inserts for uses with Vote By Mail.

April 8, 2022: Bureau of Elections to supply first file of 35,000-42,000 Vote By Mail records. Based on receipt of this file, Vendor must deliver complete Vote By Mail ballot packets to US Postal Service in Philadelphia April 19.

April 18-May 7, 2022 Vendor to complete preparation of second and all subsequent name-record files of Vote By Mail/Absentee ballot packs within three (3) calendar days (excepting for Sundays) of receipt of each Vote By Mail/Absentee name file.

Sept. 2, 2022 or earlier: Bureau of Elections to supply artwork for outbound and return Vote By Mail/Return envelopes, and the Official Election Ballot envelope.



Sept. 15, 2022 or earlier: Delaware County Bureau of Elections provides artwork for two-color/two-sided "Drop Box" insert for use with Vote By Mail and the "Voting Instructions" insert for use with Vote By Mail.

Sept. 22, 2022: Vendor must complete production of outbound and return Vote By Mail envelopes and the Official Election Ballot envelopes.

Sept. 22, 2022: Vendor must complete printing of "Drop Box" and "Voting Instructions" inserts for uses with Vote By Mail.

Sept. 22, 2022: Bureau of Elections to supply first file of 35,000-42,000 Vote By Mail records. Based on receipt of this file, Vendor must deliver complete Vote By Mail ballot packets to US Postal Service in Philadelphia by Oct. 5, 2022.

Oct. 4-Oct. 28, 2022 Vendor to complete preparation of second and all subsequent name-record files of Vote By Mail/Absentee ballot packs within three (3) calendar days (excepting for Sundays) of receipt of each Vote By Mail/Absentee name file.

#### Pricing

All prices quoted shall include separate pricing for each product listed as part of this Bid/RFP as well as cost to securing necessary set of three unique envelopes for each ballot packet; envelope printed and prepared for mailing to voter, as well as printing the voters information on the return envelope for voter to enclose their voted ballot and secrecy envelope. Bidder also will need to be able to image or affix a barcode/QR code on the return envelope. The barcode/QR code will encompass the voter correspondence ID as provided in the voter-data file. As part of the ballot packet, the Bidder must be able to ensure that the corresponding unique ballot is properly matched with the voter precinct (and in a 2022, 2023 or 2024 Primary election, if applicable, the ballots for the correct political party of that voter), and each unique ballot may be delivered once, and only once, as each contains a unique bar code generated by the Hart Verity system.

- Pricing of May Primary ballots should be based on 8 ½" x 14" ballots
- Pricing of November General Election ballots should be based on 8 ½" x 11" ballots
- Pricing for both elections' ballots should be based on the ballot stock paper recommended by Hart Intercivic Best Practices (Appendix D).
- Pricing of mailings should be based on printing all envelopes, ballots and inserts, plus sorting and preparation of complete ballot envelope packets for mail and delivery of the completed packets to the agreed-upon U.S. Postal Distribution Center in Philadelphia, PA. No additional trucking, freight or fuel surcharges will be either considered or paid.

#### Envelope Specifications:

- o Outbound Envelope (to Voter) 10 ¼" X 6", gummed 2" flap. Stock: 28-pound white wove. Printing: 2-over-2: black and blue on front side, flap and back side. Interior of envelope must have black security printing to obscure contents.
- o Return Envelope (from Voter) 9 ½" X 5 ¾", gummed 2" flap. Stock: 28-pound white wove. Printing: 2-over-2: black and blue on front side, flap and back side. Interior of envelope must have black security printing to obscure contents.

- Official Election Ballot Envelope 8 ¾" X 5 ½", gummed 2" flap. Stock: 28-pound white wove. Printing: 1-over-0: black only on front side. Interior of envelope must have black security printing to obscure contents.

Delivery

Expectation is that Bidder will mail the first file of voter ballot packets within six to 10 calendar days (excepting for Sundays) of receipt of the first voter-data file from Delaware County; and within three calendar days (excepting for Sundays) of receipt of the second and later voter-data files from Delaware County.



### Quantities

May 2022 Primary Vote By Mail ballots – Quantity: 65,000, related envelopes and inserts, and fulfillment services

Nov. 2022 General Election Vote By Mail ballots – Quantity: 75,000, related envelopes and inserts, and fulfillment services

### Ballot Printing Specifications for Vote By Mail Ballots

- All ballots shall be printed on all white paper.
- All ballots shall be four-color process on both sides, digital printing of 600 dpi or higher.
- Paper size for all May 2022 ballots shall be 8.5 inches wide by 14 inches long
- Paper size for all Nov. 2022 ballots shall be 8.5 inches wide by 11 inches long.
- Ballot paper weight shall be 28 pounds and a sample of paper shall be submitted to Bureau of Elections for approval.
- Ballot file will be provided in PDF format and must be printed so that the ballot can be read by Delaware County scanning software (Hart Intercivic, Verity).
- Packets shall be shrink wrapped by election precinct in packets of 50 and then boxed for each precinct with appropriate labeling.
- Bond of #1 grade, laser guaranteed, 28# basis weight meeting the following specifications:
- Basis Weight, 28# Bond
- Finish, Smooth Xerography
- Sheffield, 100-120
- Brightness, 91-96
- Content, Virgin wood fiber, 100% non-recycled content
- Florescent Level, 4%
- Moisture Content, 4.5%
- Packaging, Moisture resistant ream wrap
- Trim, +/- .025"
- Squareness, +/- .00075"
- Toner Adhesion: Mill treatment that allows optimum binding of toner and paper fibers
- Size, 8.5" x 11" (in future elections, as small as 8.5"x11" and as large as 8.5" x 20")
- Grain short to reduce flaking of toner or paper particles on or near folds.

These specifications are detailed in Appendix D of this RFP, the Hart Verity Ballot Printing Guide (pages 38-39), Hart Official Ballot Paper Terminology. Selected vendor also must adhere to the following items in the Hart Verity Ballot Printing Guide: Section 1 (pages 10-12), ballot paper; Section 4 (pages 26-27), ballot printing and quality assurance; and Appendix B (page 41) on requirement for **digital printing of 600 dpi or higher** and restrictions on "ballot image modification."

**PROPOSAL**

Director, Central Purchasing  
Delaware County Government Center  
Courthouse Complex  
201 W. Front Street  
Media, PA 19063

Director:

We, the undersigned, do hereby offer to – Furnish and deliver printed official ballots as required in the four hundred twenty-nine (429) election precincts/districts for the 2022 County of Delaware May 17, 2022 Primary and Nov. 8, 2022 General Election – in accordance with the attached Bid, Specifications, and General Conditions of this bid.

**COST: 2022 PRIMARY ELECTION FOR PRINTING/MAILING OF ENVELOPES, BALLOTS AND INSERTS AND RELATED MAILING SERVICES FOR VOTE BY MAIL/ABSENTEE BALLOTS**

\$ \_\_\_\_\_

**COST: 2022 GENERAL ELECTION FOR PRINTING/MAILING OF ENVELOPES, BALLOTS AND INSERTS AND RELATED MAILING SERVICES FOR VOTE BY MAIL/ABSENTEE BALLOTS**

\$ \_\_\_\_\_

If this bid is accepted, we agree to execute the attached Form of Contract within **FIFTEEN (15) DAYS** after receiving notice of the award of contract. It is also understood that this bid may not be withdrawn for a period of sixty (60) days after the opening thereof.

We, who have signed this Bid Page have read and agree to comply with all parts of the Invitation, Bid, Bid Forms, Specifications, and General Conditions of this Bid.

Respectfully submitted,

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

ATTEST: \_\_\_\_\_  
Secretary or Assistant Secretary

\_\_\_\_\_  
Address of Bidder

This Bid page must have two (2) signatures and, if the Bidder is a Corporation, the CORPORATE SEAL MUST BE AFFIXED WHEN SUBMITTING BIDS. If the Bidder is a Partnership, the names of all partners of the firm, as well as the trading name, shall be set forth. If the bidder is a Corporation, this bid must be executed by the President or Vice-President and attested to by the Secretary or Assistant Secretary with the Corporate Seal annexed. If any person other than the above-mentioned officers sign the Bid, then authorization permitting said person to sign Bids and documents must accompany said Contracts. Only one signature is required if the company is a Sole Proprietorship, however, this must be stated under the signature.

## GENERAL CONDITIONS

1. It is understood that parties making quotes accept all terms and conditions contained and expressed in the Specifications, General Conditions and any Special General Conditions.
2. No verbal instructions or information will be binding. The Specifications will be considered as clear and complete unless attention is called to any apparent discrepancies or incompleteness thereof, before opening of the quotes. Should any change in Specifications be required, they will be issued to all bidders in the form of an Addendum to the Original Solicitation.
3. Any exception(s) taken to the requirements of this bid must be in writing, listed on a separate page and attached firmly to the Bid.
4. The County of Delaware reserves the right to reject any or all bids or parts thereof. They also reserve the right to award the Contract in such a manner deemed to be in the best interest of the County.
5. The Successful Bidder shall be required to fulfill the requirements of its Bid upon execution and delivery of an agreement substantially in the form attached hereto.
6. Each Bidder, when submitting its bid, must deduct the Manufacturer's Excise Tax, if any, which the County as a political sub-division is exempt from paying. The County Council agrees that they will execute the necessary Forms of Tax Exemption Affidavits, when presented to them by the Successful Bidder. Also, each Bidder must exclude the Pennsylvania Sales Tax Allowance, if any. The County Council agrees that they will execute the necessary Sales Tax Exemption Affidavits.
7. Do not ship without a Purchase Order; shipments must have the Purchase Order number on all packages and invoices.
8. The acceptance of all bids for Contracts is made expressly conditional upon a satisfactory rating from a pre-award investigation conducted by the Central Purchasing Department.
9. Contracts shall be awarded to the lowest responsible bidder as determined under the County Code. In determining lowest responsible bidder, in addition to price, the Central Purchasing Department in its pre-award evaluation shall, in consultation with the Department of Elections, ascertain and consider:
  - (a) The expertise of the Bidder to perform the Contract or provide the service required.
  - (b) Whether the Bidder can perform the Contract or provide the service promptly, or within the time specified and with adequate supervisory personnel.
  - (c) The character, integrity, reputation and judgement of the Bidder.

- (d) The quality of performance on previous Contracts and services.
  - (e ) The previous and existing compliance by the Bidder with laws and ordinances relating to the Contract or Service.
  - (f) The sufficiency of the financial resources of the Bidder to perform the Contract or provide the Service.
  - (g) The ready availability of supplies necessary to discharge performance in a prompt and workmanlike manner.
  - (h) The ability of the Bidder to provide future maintenance and service for the use of the subject of the Contract.
  - (i) The number and scope of conditions attached to the bid.
  - (j) Applicability of local vendor provisions of the County Code.
10. 11. Successful bidder must provide; County of Delaware with an original W-9 for our Controllers Department.

**The successful bidder shall submit an ORIGINAL, CURRENT Certificate of Insurance for a Comprehensive General Liability, Auto and Workers Compensation Policy.**

**The following factors will automatically disqualify a low bidder:**

- (a) Default on the payment of taxes, licenses or other monies due the County.
- (b) Default, breach of repudiation on a past Contract or Contracts which reflect a course of performance deemed deleterious to the County's best interest.

**VENDOR/CONTRACTOR'S INSURANCE REQUIREMENTS:**

**COMPREHENSIVE GENERAL LIABILITY:** Before the contract is awarded the Contractor shall take out and maintain during the life of this contract such Public Liability and Property Damages Insurance as shall protect him from all claims or loss arising from Property damages, personal injury and bodily injury including accidental death. Such Insurance Policy shall include Products and Completed Operations coverage and include coverage for damage which may arise from the Operations of the Contractor or by any sub-contractor or by anyone directly or indirectly employed by either of them. The Combined Single Limit of Liability required is \$1,000,000.00 per occurrence with a deductible of no more than \$1,000.00.

**\*VEHICLES:** Comprehensive Business Automobile Coverage shall be maintained with a Combined Single Limit of Liability in an amount no less than \$1,000,000.00 per occurrence with no deductible. **PROPERTY DAMAGE:** \$2,000,000.00 coverage.

**WORKER'S COMPENSATION:** Worker's Compensation Insurance required by Pennsylvania law covering all Owners, employees and all employees of the General Contractors and Sub-Contractors. In the alternative, a current certificate of Exempt status from the Pennsylvania Department of Labor and Industry is acceptable if the Owner is an Exempt Self-Insurer in the State of Pennsylvania.

**EMPLOYER'S LIABILITY INSURANCE:** Employer's Liability Insurance with limits not less than \$500,000.00 per accident or employee disease.

The County of Delaware shall be named as an additional insured on all policies insofar as the specific contract is concerned. In addition, the Contractor shall furnish the County with a certificate of insurance showing the type, amount, class of operations covered, effective dates and dates of expiration. All policies should also contain a sixty (60) day notice of cancellation clause.

**NOTE:** IF THE OWNER MAINTAINS A SELF-INSURED PROGRAM OR A LIMITED SELF-INSURANCE PROGRAM FOR ANY OR ALL OF THE EXPOSURES LISTED ABOVE, A COMPLETE DESCRIPTION OF THE PROGRAM WITH INFORMATION ON EXCESS CARRIERS AND FUNDING ARRANGEMENTS SHOULD BE PROVIDED. IN THE EVENT THE WORKER'S COMPENSATION IS SELF-INSURED, A COPY OF THE CURRENT EXEMPTION CERTIFICATE SHALL BE PROVIDED.

- **PLEASE NOTE:** IF VENDOR USES A COMMON CARRIER PLEASE ENCLOSE A LETTER STATING THAT A COMMON CARRIER IS USED AND THEREFORE AUTO LIABILITY DOES NOT APPLY

## FORM OF AGREEMENT FOR SERVICE

This Agreement for Services (this "Agreement") is made the \_\_\_\_ day of \_\_\_\_\_, 2022 between \_\_\_\_\_ ("Contractor"), \_\_\_\_\_ and the COUNTY OF DELAWARE ("County"), 201 West Front Street, Media PA 19063.

### I. Background

County wishes to obtain certain services as described in Exhibit B to this Agreement (the "Services"). Contractor desires to provide to County, and County has agreed to retain Contractor to provide, the Services to County, as set forth in (i) [Name/ Date of Proposal] (the "Proposal"), and (ii) County's [RFP Name and Date] (the "RFP") both of which are attached hereto as part of Exhibit B.

The execution of this Agreement was approved by County Council on \_\_\_\_\_, 2022.

### II. Duties

- A. The "Standard Terms of Contract" attached hereto as Exhibit A and the provisions set forth in Exhibit B are incorporated herein as if set forth in full; provided, that if there is any conflict between the provisions in Exhibit A and the provisions of the RFP, the provisions of the RFP shall control.
- B. Contractor shall perform the Services in accordance with the terms and conditions set forth in this Agreement and in Exhibit A and Exhibit B.
- C. It is expressly acknowledged by the parties that County and Contractor are independent contracting parties. Nothing in this Agreement shall be construed to create a principal/agent, employer/employee, master/servant or partnership or joint venture relationship. Contractor shall be responsible for paying any taxes applicable to payments made under this Agreement.
- D. Title to all deliverables generated by Contractor in performance of this Agreement shall be vested in the County to use in any manner and for any purpose it may desire. Contractor shall not publish any deliverables generated in its performance of this Agreement without the written consent of the County, to be given or withheld in its sole discretion.

### III. Term and Termination

- A. The term (the "Term") of this Agreement will begin on \_\_\_\_\_/2022 and end on \_\_\_\_\_/2022.
- B. Unless otherwise set forth in Exhibit B, this Agreement may be terminated before the end of the Term as follows:
  - (1) County may terminate this Agreement at any time without cause by giving thirty (30) days written notice to Contractor.

- (2) County may terminate this Agreement immediately at any time by giving written notice of termination to Contractor and without prejudice to any other rights or remedies County may have, if Contractor breaches any of its material obligations under this Agreement and does not cure the breach within five (5) business days after Contractor's receipt of County's notice of the breach which notice shall specify in reasonable detail the nature of the breach. Contractor may terminate this Agreement immediately by giving written notice of termination to County and without prejudice to any other rights or remedies Contractor may have, if County breaches any of its material obligations under this Agreement and does not cure the breach within five (5) business days after County's receipt of Contractor's notice of the breach which notice shall specify in reasonable detail the nature of the breach.
- (3) This Agreement and all rights of Contractor hereunder shall terminate upon the completion of the duties as defined in Exhibit B.

#### IV. Payment

- A. Contractor shall receive the compensation set forth in Exhibit B as payment for all the Services Provided by Contractor pursuant to this Agreement.
- B. The total payments due under this Agreement for all Services provided by Contractor pursuant to this Agreement shall not exceed the amount set forth in Exhibit B.
- C. After execution of this Agreement by Contractor and County, each month after receipt of Contractor's invoice with respect to Services performed in the prior month, County will pay Contractor amounts due Contractor under this Agreement as set forth in Exhibit B. Contractor shall submit monthly invoices within thirty (30) days from the last day of the month within which the work is performed. The final invoice shall be submitted within forty-five (45) days of this Agreement's termination date. County will neither honor nor be liable for invoices not submitted in compliance with the time requirements in this paragraph unless County agrees otherwise in writing. Contractor shall be paid only for services acceptable to County.
- D. County will pay Contractor undisputed amounts due under this Agreement within forty-five (45) days of receipt of each invoice.
- E. Contractor agrees to reimburse County for overpayments resulting from any reason, including but not limited to errors, contract limitations, actual or audited cost adjustments or non-compliance with applicable policies and procedures.



IN WITNESS WHEREOF, intending to be legally bound, the parties hereto have executed this Agreement by their properly authorized officers or officials to be effective at the beginning of the Term as provided herein.

[CONTRACTOR]

COUNTY OF DELAWARE

By: \_\_\_\_\_

Title:

\_\_\_\_\_  
CHAIRMAN, COUNTY COUNCIL

Attested \_\_\_\_\_  
County Clerk

**Exhibit A**  
**Standard Terms of Contract**

1. Contractor, in consideration for the acceptance of its proposal and/or bid and the award of the contract thereunder and the payment hereinafter to be made, covenants, proposes, and agrees with County to furnish and deliver the labor, supplies, materials and equipment and to do and perform services, labor, and work as more particularly set forth and specified in all items of the general specifications and/or instructions to bidders and bid of the contractor and all in strict accordance therewith.
2. Contractor covenants and agrees to assume, and does hereby assume, all liability for and shall and does agree to indemnify, save harmless and defend County and its officials, officers, agents and employees against any and all loss, costs, suits, claims, charges, or damages of any kind and nature by any party arising from (i) injuries sustained by mechanics, laborers, workmen or by any person or persons whatsoever, to their person or property, whether employed in and about the said work or otherwise, by reason of any accidents, damages, or injuries, torts or trespasses happening in and about, or in any way incident to or by reason of the furnishing and delivery of the said materials, supplies, services and equipment or the performance of the said work and labor or (ii) negligent acts or omissions of Contractor or its employees, agents or subcontractors, including, in each case, costs, counsel fees and all expenses of a defense, and shall defend any and all actions brought against the County based upon any such claims or demands.
3. Contractor agrees that neither Contractor nor any permitted subcontractor nor any person on its behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance or work under this Contract.
4. Contractor agrees to comply with the insurance requirements set forth in the RFP.
5. The Agreement shall be binding upon the successors and permitted assigns of the parties hereto. Contractor covenants and agrees not to assign, transfer or subcontract this Contract without first obtaining the prior written consent of the County, and any attempted assignment, transfer or subcontract to which the County does not consent shall be null and void.
6. Contractor certifies, for itself and all its permitted subcontractors, that as of the date of its execution of this the Agreement, that neither Contractor, nor any subcontractor, nor any suppliers are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if Contractor cannot so certify, then it agrees to submit a written explanation of why such certification cannot be made. Contractor also certifies, that as of the date of its execution of the Agreement, it has no tax liabilities or other Commonwealth obligations. A current list of suspended and debarred entities can be obtained by contacting: Department of General Services, Office of Chief Counsel, 603 North Office Building, Harrisburg, PA 17125, Telephone No. (717) 783-6472 / FAX No. (717) 787-9138.
7. Contractor covenants that only persons legally present and able to work in the United States shall be employed in any capacity in the performance of this contract.
8. At the County's request, Contractor hereby agrees to provide statements to the County reflecting the work performed and materials supplied to date and the cost thereof.
9. The Agreement shall be governed in all respects by the laws of the Commonwealth of Pennsylvania without giving effect to its rules relating to conflicts of laws. The exclusive venue for any action and/or proceeding concerning, arising from, and/or relating to the Agreement shall be the state and federal courts located, respectively, within the Commonwealth of Pennsylvania, Delaware County and/or the United States District Court for the Eastern District of Pennsylvania. Each party hereto

waives any and all objections to the foregoing designated jurisdiction(s), including without limitation those that may be based on the theory of an inconvenient forum.

10. The Contract for Service executed by the County and Contractor, and all attachments, forms the entire agreement between the parties and there are no other agreements, either written or oral, between them.
11. Any provision of the Agreement which is in violation of any State or Federal law or regulation shall be deemed amended to conform with such law or regulation, except that if such change would materially and substantially alter the obligations of the parties under the Agreement. Contractor acknowledges that the Agreement may be funded by grants from Federal or State sources, and Contractor agrees that it shall comply with all applicable requirements of any grant agreement.
12. Contractor shall maintain books, records, documents, correspondence, and other data pertaining to the costs and expenses of the Agreement (hereinafter referred to collectively as "the records"), to the extent and in such detail as will properly reflect all costs, direct and operating of materials, equipment, supplies, and services, and other costs and expenses of whatever nature for which funding has been provided under the provisions of the Agreement. The books and records shall be maintained in accordance with generally accepted accounting principles. Contractor agrees to require any permitted subcontractors to comply with the record keeping and retention requirements of this paragraph.
13. The Agreement may be amended only by a written instrument signed by both County and the Contractor.
14. The parties do not intend, nor shall any clause be interpreted to create in any third party, any obligations to, or right or benefit by, such third party under this Agreement from either the County or the Contractor.
15. The Agreement shall be binding upon the successors, administrators and permitted assigns of Contractor.
16. All government and business information disclosed by County to Contractor in connection with the Agreement shall be treated as confidential information unless it is or later becomes publicly available through no fault of Contractor, or it was or later is rightfully developed or obtained by Contractor from independent sources free from any duty of confidentiality. County's confidential information shall be held in strict confidence by Contractor and shall not be used or disclosed by Contractor for any purpose except as reasonably necessary to implement or perform the Agreement, or except as required by law or governmental agency, provided that County is given a reasonable opportunity to obtain a protective order at its cost and expense.
17. THE COUNTY SHALL NOT BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOST PROFITS OR INJURY OF ANY KIND IN CONNECTION WITH THE AGREEMENT.
18. The Pennsylvania Right-to-Know Law, 65 P.S. § § 67.101-3104, ("RTKL") applies to this Agreement. Upon written notification from the County that it requires the Contractor's assistance in responding to a request under the RTKL for information related to this Agreement that may be in the Contractor's possession, constituting, or alleged to constitute, a record in accordance with the RTKL ("Requested Information"), the Contractor shall: 1. Provide the county, within five (5) calendar days after receipt of written notification, access to, and copies of, any document or information in the Contractor's possession arising out of this Agreement that the County reasonably believes is Requested Information and may be a public record under the RTKL; and 2. Provide such other assistance as the County may reasonably request, in order to comply with the RTKL with respect to this Agreement. If the Contractor considers the Requested Information to include information that the Contractor considers

exempt from production under the RTKL, the Contractor must notify the County within five (5) business days of receiving the written notification; however, the County is not bound by such notification and will provide copies of materials provided hereunder in response to a right-to-know request as required by Pennsylvania law.

**Exhibit B**

**Bid and Proposal**  
**[Attached]**

**PERFORMANCE BOND**

Known by All Persons Present, that \_\_\_\_\_

\_\_\_\_\_ (PRINCIPAL) and \_\_\_\_\_

(SURETY) and held and firmly bound unto the County of Delaware in the Commonwealth of

Pennsylvania (hereinafter called County) in the sum of: \_\_\_\_\_ lawful money

of the United States of America, to which payment will and truly to be made, we do hereby

jointly and severally bind and oblige ourselves and our respective successors and assigns firmly

by these present:

Sealed with our Seals this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

Whereas, the above bounden Principal has entered into a written Contract with the

County to: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

for the prices set forth in said Bid, which said Contract is by reference made a part thereof.

Now the condition of this obligation is such that, if the above-bounden Principal shall well and truly perform said Contract and fully and faithfully carry out to complete the same in all respects, then this obligation shall be void and of no effect, otherwise, to continue in full force and virtue.

## Appendix B – Vendor Experience Printing Ballots

Instructions: This form is required to be submitted with the proposal to Delaware County. The vendor may complete, sign and date multiple pages of this form, if needed. If vendor has no experience printing election ballots for a government agency, vendor must write "NO EXPERIENCE" and complete Affirmation at bottom of page and submit with proposal.

Jurisdiction (City/County, State) \_\_\_\_\_

Description of year and work \_\_\_\_\_

Contact Information (name/phone/email) \_\_\_\_\_

Jurisdiction (City/County, State) \_\_\_\_\_

Description of year and work \_\_\_\_\_

Contact Information (name/phone/email) \_\_\_\_\_

Jurisdiction (City/County, State) \_\_\_\_\_

Description of year and work \_\_\_\_\_

Contact Information (name/phone/email) \_\_\_\_\_

Jurisdiction (City/County, State) \_\_\_\_\_

Description of year and work \_\_\_\_\_

Contact Information (name/phone/email) \_\_\_\_\_

### Affirmation

I swear and certify that the bidder/proposer performed the ballot-printing services listed above on this page (or these pages).

Name of printing company making proposal \_\_\_\_\_

Representative completing this form (print name) \_\_\_\_\_

Signature of person completing this form \_\_\_\_\_

Date of signature of this form \_\_\_\_\_

## Appendix C – Canceled Government Printing Contracts & Litigation

Instructions: This form is required to be submitted with the proposal to Delaware County. The vendor may complete, sign and date multiple pages of this form, if needed. If vendor (or its parent company, subsidiary companies or predecessor company operating under different name) has had no canceled printing contracts and no contracts that resulted in litigation, vendor must write "NO CANCELED CONTRACTS/NO LITIGATION" and complete Affirmation at bottom of page and submit with proposal.

Jurisdiction (City/County, State) \_\_\_\_\_

Description of year and work \_\_\_\_\_

Canceled contract/litigation issue \_\_\_\_\_

Jurisdiction (City/County, State) \_\_\_\_\_

Description of year and work \_\_\_\_\_

Canceled contract/litigation issue \_\_\_\_\_

Jurisdiction (City/County, State) \_\_\_\_\_

Description of year and work \_\_\_\_\_

Canceled contract/litigation issue \_\_\_\_\_

Jurisdiction (City/County, State) \_\_\_\_\_

Description of year and work \_\_\_\_\_

Canceled contract/litigation issue \_\_\_\_\_

### **Affirmation**

I swear and certify that this page (or these pages) represent all of the vendor's government contracts from the last four (4) years for printing services that were canceled or the subject of litigation.

Name of printing company making proposal \_\_\_\_\_

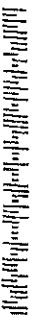
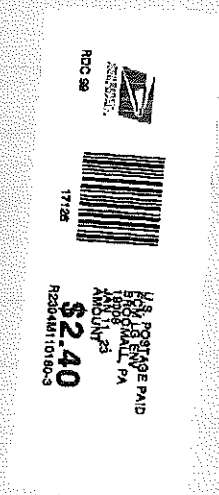
Representative completing this form (print name) \_\_\_\_\_

Signature of person completing this form \_\_\_\_\_

Date of signature of this form \_\_\_\_\_

Robert Maurani  
4 Greensey Lane  
Medi4 PA 19063

EXECUTIVE DIRECTOR  
Office of Open Records  
Commonwealth Keystone Building  
333 Market Street 16<sup>th</sup> Floor  
Harrisburg PA 17126-0333





**Exhibit "D"**  
**Response of County and**  
**Affidavit of County Open Records Officer and**  
**Affidavit of Director of Elections Operations**  
**(attached)**



COUNCIL  
DR. MONICA TAYLOR  
Chair  
ELAINE PAUL SCHAEFER  
Vice Chair  
KEVIN M. MADDEN  
CHRISTINE A. REUTHER  
RICHARD R. WOMACK



COUNTY OF DELAWARE  
GOVERNMENT CENTER BUILDING

201 West Front Street  
Media, Pennsylvania 19063  
610.891.4270  
www.delcopa.gov

January 27, 2023

By e-mail: [jorddavis@pa.gov](mailto:jorddavis@pa.gov)  
Jordan Davis, Esq.  
Commonwealth of Pennsylvania  
Office of Open Records  
333 Market Street, 16th Floor  
Harrisburg, PA 17101-2234

Re: Mancini v. Delaware County  
OOR Dkt. AP 2023-0066 and AP 2023-0104

Dear Appeal Officer Davis:

This letter provides additional information in regard to both of the above referenced appeals. These two appeals present the same issue – the interaction of the Pennsylvania Right to Know Law and the Pennsylvania Election Code – and reflect Appellant’s refusal to follow the provisions of the Pennsylvania Election Code to request records from the Board of Elections, of which he has been informed, and instead engage in the OOR appeals process.

These appeals involve: (1) request submitted by Robert C. Mancini (“Appellant”) to the County of Delaware (the “County”) on December 27, 2022, under the Pennsylvania Right to Know Law, 65 P.S. §§ 67.101, et seq. (the “RTKL”), for the following records - “the official Ballot for Marple precincts [sic] 7-1, 7-2 and [sic] 7-3 for the NoV 8, 2022 Election;” and (2) a request submitted by Appellant to the County on December 7, 2023, under the RTKL for the following record -: “all image files sent to Vendor Fort Orange between June 01, 2022 and Nov 10, 2022 of Vote by Mail Absentee records. This should includes [sic] absentee/mail ballots and all related lists, applications, envelopes and files pertaining thereto.”

As set forth in the attached Affidavit of Anne Coogan, Open Records Officer, she inquired of the County Solicitor’s Office as to whether each request was permitted under the

RTKL as they both involved records regarding the Board of Elections. She was informed that each was not, and that the request should be denied as pre-empted by the Pennsylvania Election Code. She therefore denied Appellant's requests and stated in her denial letters to Appellant that the "request for access to these types of records must be made pursuant to the provisions of the Pennsylvania Election Code and not under the RTKL." She then provided him with the contact information for the Bureau of Elections and stated that Appellant could contact that office for the requested records.

It should be noted that in 2022, Appellant received denials for fourteen (14) requests on the basis that the records were subject to Election Code, and in each case the Open Records Officer directed Appellant to contact the Bureau of Elections and provided him with the contact information for same. As set forth in the attached Affidavit of James P. Allen, Director of Election Operations, the Bureau of Elections responds to requests for records of the County Board of Elections as per the Pennsylvania Election Code, the Bureau of Elections stands ready to respond to a request for records from Requestor within the requirements of the Pennsylvania Election Code, and the Bureau has not received a request from Appellant for the records at issue in these appeals.

Rather than contact the Bureau of Elections for the records he desires to review, Appellant instead continued and continues to request records governed by the Pennsylvania Election Code from the Open Records Officer, which the Open Records Officer is legally prohibited from providing under the Pennsylvania Election Code because she is not an employee of the Bureau of Elections, as further discussed below. Furthermore, Appellant filed at least one (1) appeal to the Office of Open Records, which appeal was docketed at AP 2022-2667 (the "Mancini 2022-2667 OOR Appeal"), rather than contact the Bureau of Elections.

The request which is the subject of this reply is a request for records governed by the Election Code, as was the case for the request that is the subject of the Mancini 2022-2667 OOR Appeal. In the Final Determination issued with respect to the Mancini 2022-2667 OOR Appeal, the Hearing Officer stated:

"The OOR ... concludes that the records sought are subject to Section 2648 of the Election Code. The Election Code controls all "records of each county Bureau of elections", including "other documents and records in its custody[.]" Id.

....

When the RTKL conflicts with another state law, the other law's provisions regarding access to records applies. See 65 P.S. § 67.3101.1 ("[i]f the provisions of this act regarding access to records conflict with any other federal or state law, the provisions of this act shall not apply")."

Notwithstanding the OOR Hearing Officer's findings and conclusions that the records sought under the Mancini 2022-2667 OOR Appeal are governed by the Pennsylvania Election Code – as is the case with the records that are the subject of this reply – the OOR Final Determination concluded by granting Appellant's appeal and directing the Open Records Officer to provide the requested records.

The County has appealed the Final Determination in the Mancini 2022-2667 OOR Appeal to the Delaware County Court of Common Pleas. The County believes such Final Determination was subject to an error of law for the reasons described below.

The RTKL provides that, “[i]f the provisions of this act regarding access to records conflict with any other federal or state law, the provisions of this act shall not apply,” 65 P.S. § 67.3101.1. Access to the records requested by Appellant is governed by the Pennsylvania Election Code (25 P.S. § 2648). As in *Pennsylvanians For Union Reform v. Pa. Dept. of State*, 138 A.3d 727 (Pa. Cmwlth. 2016) (holding that access to voter registration records is governed exclusively by the Pennsylvania Voter Registration Act), 25 P.S. § 2648 expressly sets forth a comprehensive framework for maintaining and disseminating the records of the Board of Elections and establishes the manner and medium in which such records may be made available for public inspection and copying.

As further detailed in attached e-mail (Exhibit I) from Jessica Mathis, Director, Bureau of Elections and Notaries at the Pennsylvania Department of State, 25 P.S. § 2648 specifically governs public access to the records of each county board of elections. This guidance was recently referenced in an e-mail from Jonathan Marks, Deputy Secretary for Elections and Commissions (Exhibit II).

Further, the records of each county board of elections are not unconditionally public under the Pennsylvania Election Code. It is the board of elections which must determine and assert whether the requested records are public or not under the Pennsylvania Election Code. The board of elections has its own governing body and its own Solicitor who must make this assessment and determination. For example, under the Pennsylvania Election Code, inspection and copying of records is limited to qualified electors of the County, 25 P.S. § 2648, and it's the board of elections which makes this determination, not the County open records officer.

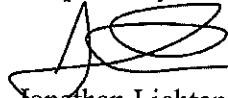
Finally, the provisions for public access are substantially different between the RTKL and the Pennsylvania Election Code. Under the Pennsylvania Election Code, records are subject to inspection and copying only when not in use by the Board of Elections, and only in the presence of an employee of the Board of Elections. The Open Records Officer is not an employee of the Board of Elections and cannot comply with these provisions.

Jordan Davis, Esq.  
January 27, 2023  
Page 4

The Open Records Officer is without legal authority to provide the requested records or even to determine whether these records may be provided to Appellant, and is not able to follow the procedures set forth under the Pennsylvania Election Code for access. As instructed in the letters sent by the Open Records Officer to the Appellant, the requests for these records should be made to the Delaware County Bureau of Elections to be provided to the extent permitted by and in the manner set forth in the Pennsylvania Election Code. This places the requests with the proper entity, the Bureau of Elections, to determine an appropriate response, and which is able to follow the provision for access in the Pennsylvania Election Code.

For the foregoing reasons the appeals should be denied.

Respectfully submitted,

  
Jonathan Lichtenstein, Esq.  
Deputy County Solicitor

Enclosures: Affidavits

Exhibits I and II

cc: Robert C. Mancini (Delcocyber@gmail.com)

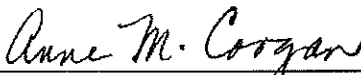
Anne Coogan, Open Records Officer (OpenRecords@co.delaware.pa.us)

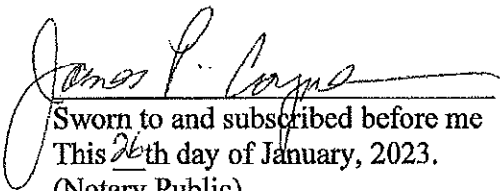
## AFFIDAVIT

Anne Coogan, pursuant to 18 P.S. § 4904, deposes and states as follows:

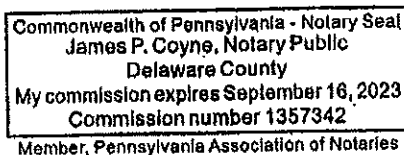
1. I am the Open Records Officer for the County of Delaware (the "County").
2. The Requestor in Docket # AP 2023-0066 submitted a right to know request for the following records: "the official Ballot for Marple precincts [sic 7-1. 7-2 and [sic] 7-3 for the Nov 8, 2022 Election."
3. The Requestor in Docket # AP 2023-0104 submitted a right to know request for the following records: "all image files sent to Vendor Fort Orange between June 01, 2022 and Nov 10, 2022 of Vote by Mail Absentee records. This should include [sic] absentee/mail ballots and all related lists, applications, envelopes and files pertaining thereto."
4. In response to each request, I inquired of the County Solicitor's Office as to whether it was governed by the Pennsylvania Right to Know Law (the "RTKL"). After it had completed its legal review, I was advised by the County Solicitor's Office that, in each case, access to the requested records was pre-empted by Pennsylvania Election Code.
5. By letters dated January 4, 2023, and January 9, 2023, respectively I informed Appellant of the denial of each request for records as pre-empted by the Pennsylvania Election Code and provided the contact information for the County Bureau of Elections.
6. I am not an employee of the County Board of Elections.

Executed this 16th day of January, 2023.

  
Anne Coogan, Open Records Officer  
County of Delaware

  
Sworn to and subscribed before me  
This 16th day of January, 2023.  
(Notary Public)

My commission expires: 9/16/2023

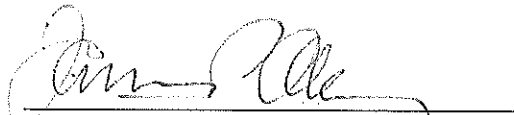


# AFFIDAVIT

James P. Allen, pursuant to 18 P.S. § 4904, deposes and states as follows:

1. I am the Director of Election Operations for the County of Delaware (the "County").
2. The County Bureau of Elections regularly responds to requests for records of the County Board of Elections as set forth in the Pennsylvania Election Code.
3. I've been informed that Robert Mancini, the Requestor in Docket # AP 2023-0066, AP 2023-0104 and AP 2023-0133 and submitted right to know requests for the following records: (1) "the official Ballot for Marple precincts [sic] 7-1, 7-2 and [sic] 7-3 for the NoV 8, 2022 Election;" (2) "all image files sent to Vendor Fort Orange between June 01, 2022 and Nov 10, 2022 of Vote by Mail Absentee records. This should includes [sic] absentee/mail ballots and all related lists, applications, envelopes and files pertaining thereto;" and (3) "Numerical list of voters used to determine the number who cast ballots in election. for Marple Township [sic] ward 7 precinct [sic] 3 for November 2022 election."
4. To my knowledge, the Requestor has never contacted the Bureau of Elections to obtain such records.
5. The County Bureau of Elections stands ready to respond to a request for records from Requestor within the requirements of the Pennsylvania Election Code.
6. Anne Coogan, County Clerk and Open Records Officer, is not an employee of the County Board of Elections.

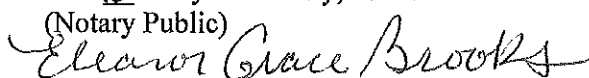
Executed this 26th day of January, 2023.



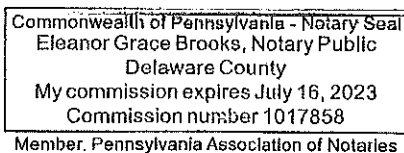
James P. Allen  
Director of Election Operations  
County of Delaware

Sworn to and subscribed before me  
This 26th day of January, 2023.

(Notary Public)



My commission expires: 7-16-2023





## Exhibit I

Lichtenstein, Jonathan

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**From:** Mathis, Jessica <jesmathis@pa.gov>  
**Sent:** Monday, November 8, 2021 1:03 PM  
**To:** Mathis, Jessica  
**Subject:** DOS Email: Potential Right To Know Requests

**Importance:** High

Dear County Election Officials:

The Department of State has learned of a record requests made under the Right to Know Law (RTKL) and recently received by a county board of election. The Department urges county boards of election to consider the provisions outlined below in formulating responses to any similar requests. **As always, please consult with your county solicitor and your Agency Open Records Officer (AORO) before responding to the requests.**

The request at issue is for a "digital copy of the ... Cast Vote Record (CVR) file for every precinct tabulator and central tabulator used in the 2020 General Election."

First, Section 3101.1 of the Right-to-Know Law provides that, "[i]f the provisions of this act regarding access to records conflict with any other federal or state law, the provisions of this act shall not apply." 65 P.S. § 67.3101.1. As the Pennsylvania Election Code establishes the procedure to access election records and what types of records are subject to inspection, any request for access to these types of records must be made pursuant to the provisions of the Election Code and not under the RTKL. *See, Pennsylvanians For Union Reform v. Pa. Dept. of State*, 138 A.3d 727 (Pa. Cmwlth. 2016) (holding that access to voter registration records is governed exclusively by the PA Voter Registration Act). 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).

Stated another way, the statute provides that: 1) voted ballots are NOT subject to public inspection; 2) voting machines are NOT subject to public inspection; 3) all other records are subject to inspection and copying by a qualified elector of the county, *i.e.*, a registered voter of the county, but need not be produced for the requester as is the case under the Right-to-Know Law; and 4) the records are subject to inspection and copying only when not in use by the board, and only in the presence of an employee of the board.

As such, **the statutory provision cited above can be used to deny any request to inspect voted ballots, or to receive copies of voted ballots, or to examine voting machines, as the Election Code specifically exempts these records and equipment from public disclosure.** Regarding the CVR, the CVR is the raw record that is created by a single tabulator, and is created as part of the Election Management System (EMS) of the particular electronic voting system used in that county. The CVR of any one tabulator has not been added to the CVR found on other tabulators in an election district, or added to the central tabulator CVR developed from processing absentee and mail-in ballots for that election district. Thus, the CVR for any tabulator is a subset of the record for a particular election district. In addition, the tabulation and computation of votes has not occurred when a tabulator's CVR has been produced. Overvotes may be displayed, being resolved through other aspects of the EMS software. In other words, the data will be unprocessed and considering it on its face will be problematic. Further, different electronic voting systems create CVRs in different ways, using unique proprietary software. And some of the systems even capture scans of the ballots, similar to photocopies or photographs.

**It is the Department's perspective that CVR data is a modern version of those items excluded from public review under Section 308 of the Election Code, where "the contents of ballots boxes and voting machines" are unavailable for public review.** This position recognizes that a CVR is a raw evaluation of ballots, even capturing overvotes contained on the ballots. In

some cases the ballots themselves are scanned, producing a facsimile of the ballot. It is logical that the exclusion of a ballot from the records available for public review under Section 308 would lead to the exclusion of an exact copy of the ballot, as well.

Section 308 also excludes voting machines from access. "Voting machines" is a term referring to mechanical voting devices, but is also commonly used to refer to modern electronic voting systems. The Department believes that this exclusion also applies to the modern components of electronic voting systems and their contents, one of which is the CVR of any tabulator. The exclusion would also apply when considering what was excluded from public examination with an older, all mechanical voting machine. Those devices included counters for each race, similar to odometers, that were available for checking only by removal of locked covers. The CVR is the modern analog of the counters of the voting machines, in that the CVR and the counters both represented raw, unreviewed data.

Further, to the extent CVR data is not randomized, that information, considered together with an election district's numbered list of voters, could create insight into how a person voted. This would be a direct violation of the Pennsylvania Constitution's secrecy in voting guarantee. Pa. Const. Art. VII, sec. 4.

For these various reasons the Department does not believe CVR data should be provided to any requester.

**Lastly, counties should review requests for election information to ensure the requester is a registered elector of their county. A registered elector in Pennsylvania would only be entitled to inspect the records in the county where he or she is registered.**

Again, please share this email with your solicitor and agency open records officer.

Thanks,  
Jess

Jessica Mathis, Director  
Bureau of Elections and Notaries  
PA Department of State  
210 North Office Building | Harrisburg, PA 17120  
Phone: 717. 787.5280 Fax: 717.705.0721  
[www.dos.pa.gov](http://www.dos.pa.gov)

## Exhibit II

(Emphasis added to reference to prior e-mail.)

**From:** "Marks, Jonathan" <jmarks@pa.gov>  
**Date:** October 11, 2022 at 2:51:40 PM MDT  
**To:** "Marks, Jonathan" <jmarks@pa.gov>  
**Subject:** DOS Email - RTKL Requests

Dear county election official,

In addition to recent requests for cast vote records (CVRs), the Department has been made aware of Right-to-Know requests in several counties seeking copies of voted mail ballots and mail ballot outer envelopes from various recent elections. It is the Department's position that voted ballots are **not** subject to disclosure under the Election Code. Unfortunately, there have been a few OOR decisions that have concluded that the Election Code potentially permits disclosure of said ballots. Requestors have cited Section 1307-D of the Election Code, 25 P.S. § 3150.17(a), a records provision which provides that "official mail-in ballots. . . and envelopes on which the executed declarations appear" are public records "except that no proof of identification shall be made public, nor shall information concerning a military elector be made public. . ." The Department submits that "official mail-in ballots" refers to the official, un-voted ballots (*i.e.* sample ballots) and not *voted* ballots. Indeed, Section 308 of the Election Code, 25 P.S. § 2648, specifically provides that the contents of ballot boxes and voting machines are **not subject** to public inspection. A voted mail ballot and a CVR are the equivalent of the contents of ballot boxes and thus not subject to public inspection.

And as to outer envelopes, while section 1307-D provides that they are subject to public inspection, a county is required to redact "proof of identification" and "information concerning [] military elector[s]." What is more, it is the Department's position that a voter's signature and potentially other personal information should be redacted after conducting a privacy analysis pursuant to the Pennsylvania Constitution and *Pennsylvania State Educ. Ass'n v. Commonwealth Department of Economic Development*, 148 A.3d 142 (Pa. 2016).

**The attached email, which was sent to counties regarding similar Right to Know requests, also contains helpful information, including information related to who can inspect these records and how these records are to be inspected.** As always, please consult first with your solicitor, but do not hesitate to contact the Department if you should have further questions.

Warmest regards,

**Jonathan Marks** | Deputy Secretary for Elections and Commissions (*he, him, his*)  
Office of the Secretary  
302 North Office Building, Harrisburg, PA 17120  
Office: 717.787.6458 Direct: 717.783.2035  
[dos.pa.gov](http://dos.pa.gov) | [vote.pa.gov](http://vote.pa.gov) | [Facebook](#) | [Twitter](#)

