



# 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 2023-0541**  
**Consolidated appeal of OOR Dkt. Nos.**  
**AP 2023-0542, 2023-0543, and**  
**2023-0544**

On February 15, 2023 and February 19, 2023, Robert Mancini (“Requester”) submitted four separate requests (collectively “Requests”) to Delaware County (“County”) pursuant to Pennsylvania’s Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, as follows:

[Request 1 2023-0541]

[P]lease provide the records of the installation of the software on [] all election machines for the May 2023 Election that either cast or tabulate or report the results. [T]his shall include software application, version number, name of installer, date of installation, hash code of application installed for each software application installed on the machines used in the processing of ballots from Marple precin[c]t 7-3 and mail ballots[.]

[Request 2 2023-0542]

For the May 16, 2023 election, please provide a copy of the logic and accuracy test use[d] to perform EAC certification.

[Request 3 2023-0543]

Please provide the ACT 2022-88 90-day report that was filed with the state in 2023 for the Nov 2022 election[.]

[Request 4 2023-0544]

Please provide the results of any the logic and accuracy test from previous election that will be used [] to perform EAC certification for the May 16, 2023 election.

On March 7, 2023, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the County informed the Requester that the records sought are governed by the provisions of the Pennsylvania Election Code (“Election Code”). 25 P.S. §§ 2600 *et seq.* The County informed the Requester that the Requests were referred to the County Bureau of Elections and enclosed a letter from the County Bureau of Elections acknowledging receipt of the Requests and prescribing the manner in which the County Bureau of Elections would grant access to the records to the extent permitted by, and pursuant to the process set forth in, the Election Code.

On March 13, 2023, the Requester filed four separate appeals with the Office of Open Records (“OOR”), claiming the Requests were denied pursuant to the RTKL, challenging the denials, and stating grounds for disclosure.<sup>1</sup> 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 March 20, 2023, the County submitted a position statement and a sworn statement made subject to 18 Pa.C.S. § 4904, from Anne Coogan, the Agency Open Records Officer (“AORO”) for the County. The Coogan Statement indicates the following:

1. I am the Open Records Officer for the [County] ...  
...
6. In response to [the R]equest[s], I inquired of the County Solicitor’s Office as to whether each request involved election records. After it had completed its legal review, I was advised by the County Solicitor’s Office that, in each case the request did relate to election records, and that the County’s response to the

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<sup>1</sup> The four separate appeals filed by the Requester were docketed as OOR Dkt. AP 2023-0541, OOR Dkt. AP 2023-0542, OOR Dkt. AP 2023-0543, and OOR Dkt. AP 2023-0544. Because the appeals involve the same parties and issues, the appeals are hereby consolidated at OOR Dkt. AP 2023-0541. *See* 65 P.S. § 67.1102(b)(3) (stating that “the appeals office shall rule on procedural matters on the basis of justice, fairness and the expeditious resolution of the dispute”).

[R]equests needed to be done in accordance with the Pennsylvania Election Code.

7. I then contacted the County Bureau of Elections, which provided me with a letter for each request directing [the Requester] as to the procedures required under the Pennsylvania Election Code to obtain election records.
8. By letters dated February 23, 2023 (AP 2023-0543), and February 28, 2023 (AP 2023-0541, 0542, and 0544), I informed [the Requester] that the County Open Records Office required an additional 30 calendar days in which to provide a final written response.
9. By letters dated March 7, 2023, I informed [Requester], with respect to each of these [R]equests, that the records requested were governed by the Pennsylvania Election Code, and that the request had been...referred to the County Bureau of Elections. I included the letter to [the Requester] from the County Bureau of Elections with more information on access to such records.
10. None of Request[e]r's [R]equests were denied, and I provided written responses within the statutory requirements to all his [R]equests, so none were deemed denied.

On March 20, 2023, and March 21, 2023, the Requester responded to the County's submission, that included portions of statutes, prior RTKL appeals, and Common Pleas documents.<sup>2</sup>

### 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,

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<sup>2</sup> The Requester also sought to have a video of a County meeting entered into the record, a portion of which depicts the County's explanation that the Election Code governs the manner in which election records are accessed and the County is bound by the law. To develop the record, the video was considered. *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”).

439 (Pa. Commw. Ct. 2011) (quoting *Pa. Dep't of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

The Requests exclusively seek election records as described above. The County does not dispute that any of the records sought are public or that the records do not exist, but instead asserts the legal argument that the Election Code governs the matter, the Requests have been referred to the County Bureau of Elections, and the County Bureau of Elections acknowledged receipt of the Requests and notified the Requester that it would arrange for the review of the records to the extent and in the manner permitted by the Election Code. Rather than pursue the manner prescribed by the County, the Requester is exercising the right to receive the election records pursuant to the RTKL, alleging that the County is impermissibly refusing to release election records under the RTKL, and arguing the RTKL is an appropriate legal avenue for obtaining the records sought in the Requests.

The Election Code states that:

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

25 P.S. § 2648. The County argues the Election Code applies to the records sought and has referred the Requests to the appropriate County Bureau of Elections, which informed the Requester it would directly administer the Requests with the Requester pursuant to the provisions of the Election Code. However, while raising the conflict of law argument, the County has raised no argument on appeal that the responsive records are not public pursuant to Section 2648 of the Election Code.

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 board of elections,” including “other documents and records in its custody[.]” *Id.* The OOR has interpreted this catchall provision of the Election Code broadly, applying it to emails with the Pennsylvania Department of State about elections, procedures used by county agencies to train election workers and internal communications involving elections. *See Giancola v. Allegheny Cnty.*, OOR Dkt. AP 2022-1177, 2022 PA O.O.R.D. LEXIS 1602; *Snead v. City of Phila.*, OOR Dkt. AP 2021-0160, 2021 PA O.O.R.D. LEXIS 426; *Gallagher v. Montgomery Cnty.*, OOR Dkt. AP 2021-2945, 2022 PA O.O.R.D. LEXIS 622. In the instant matter, all the requested records concern the 2022 general election and the upcoming May 2023 election, and therefore, qualify as “other documents and records” in the custody of the County’s Bureau of Elections.

When the RTKL conflicts with another state law, the other law’s provisions regarding access to records applies. *See* 65 P.S. § 67.3101.1 (“[i]f the provisions of this act regarding access to records conflict with any other federal or state law, the provisions of this act shall not apply”). When examining the conflict between the Election Code and the RTKL, the OOR has found that, while the Election Code makes many records in the custody of the County Bureau of Elections subject to public inspection by qualified electors, 25 P.S. § 2648, it does not make these records

unconditionally available to the public. *See Obernier v. Crawford Cnty.*, OOR Dkt. AP 2017-2107, 2018 PA O.O.R.D. LEXIS 110 (analyzing Section 2648 of the Election Code and noting that it “creates a separate process for obtaining these records and conditions the public inspection and copying: 1) to qualified electors of the county, 2) during ordinary business hours, and 3) when the records are not being used by the elections board”); *see also Hall v. Butler Cnty.*, OOR Dkt. AP 2022-0508, 2022 PA O.O.R.D. LEXIS 1062; *Shepherd v. Phila. Office of City Commissioners*, OOR Dkt. AP 2021- 2929, 2022 PA O.O.R.D. LEXIS 694. In addition, because the records are not unconditionally public under the Election Code, the OOR must examine any exemptions from disclosure under the RTKL that are asserted by the agency when records of a County Bureau of Elections are sought. *See Pa. Dep’t of Labor & Indus. v. Heltzel*, 90 A.3d 823, 833 (Pa. Commw. Ct. 2014).

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

## CONCLUSION

For the foregoing reasons, the appeal is **granted**, and the County is required to provide the responsive records in accordance with the procedures and requirements of the Election Code. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal or petition for review 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 according to court rules as per Section 1303 of the RTKL; however, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.<sup>3</sup> 65 P.S. § 67.1303. This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: APRIL 11, 2023**

*/s/ Lois Lara*

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LOIS LARA  
APPEALS OFFICER

Sent to: Robert Mancini (via email only)  
Jonathan Lichtenstein, Esq. (via email only)  
Anne Coogan, AORO (via email only)

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