

May 23, 2023

**FILED VIA PACFILE**

Michael Krimmel, Esq.  
Prothonotary  
Commonwealth Court of Pennsylvania  
Pennsylvania Judicial Center  
601 Commonwealth Avenue, Suite 2100  
Harrisburg, PA 17106-2575

**RE: Submission of Record in:**  
***Pennsylvania Historical and Museum Commission v. Alec Ferretti,***  
**No. 190 CD 2023**

Dear Mr. Krimmel:

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

**Office of Open Records Docket No. AP 2022-2106:**

1. The appeal filed by Alec Ferretti (“Requester”) to the Office of Open Records (“OOR”), received September 9, 2022.
2. Official Notice of Appeal (“Appeal”) dated September 13, 2022, sent to both parties by the OOR, advising them of the docket number and identifying the appeals officer for the matter.
3. Pennsylvania Historical and Museum Commission (“PHMC”) submission received September 30, 2022.

4. OOR correspondence dated October 25, 2022, regarding appeal reassignment.
5. Requester submission dated October 25, 2022.
6. OOR correspondence dated October 26, 2022, acknowledging receipt of the Requester submission and directing the parties to make further submissions via the OOR E-File Portal.
7. OOR correspondence dated October 28, 2022, establishing submission deadlines and final determination issuance date.
8. OOR correspondence dated November 8, 2022, establishing revised submission deadlines and final determination issuance date.
9. PHMC Entry of Appearance received November 14, 2022.
10. PHMC submission dated November 14, 2022.
11. OOR correspondence dated November 23, 2022, seeking additional time to issue the final determination.
12. OOR correspondence dated November 29, 2022, seeking additional information from PHMC and seeking a final determination extension agreement from the Requester.
13. PHMC submission dated December 6, 2022.
14. Requester submission dated December 8, 2022.
15. OOR correspondence dated December 16, 2022, asking PHMC if they had provided notice to a potential direct interest participant, TGN/Ancestry ("Ancestry") and seeking Requester agreement to final determination extension.
16. Email chain dated December 20, 2022, wherein PHMC's forward their appeal notice to Ancestry and the OOR responds to PHMC's questions regarding redactions in OOR E-File Portal submissions.
17. Email chain dated December 20, 2022, between Ancestry and the OOR regarding participation in the appeal.
18. OOR correspondence dated January 12, 2023, seeking additional time to issue the final determination.

19. Requester correspondence received January 12, 2023, granting the OOR the requested extension.

20. Final Determination dated January 26, 2023, issued by the OOR.

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

Sincerely,

A handwritten signature in black ink, reading "Kyle Applegate". The signature is written in a cursive, flowing style.

Kyle Applegate  
Chief Counsel

Attachments

cc: Terry L. Mutchler, Esq. (for Requester)  
Gerard A. Leone, Esq. (PHMC)

# Commonwealth of Pennsylvania

**Agency Docket Number: AP 2022-2106**

**Appellate Court Docket Number: 190 CD 2023**

I, Elizabeth Wagenseller, certify that the accompanying electronically transmitted materials are true and correct copies of all materials filed in the Office of Open Records and constitute the record for :

Pennsylvania Historical and  
Museum Commission,  
Petitioner

v.

Alec Ferretti  
(Office of Open Records),  
Respondent

/s/ Elizabeth Wagenseller

05/23/2023

Executive Director

Volumes:

Agency Record (2)



IN THE COMMONWEALTH COURT OF PENNSYLVANIA

**PENNSYLVANIA HISTORICAL  
and MUSEUM COMMISSION**

**Petitioner,**

**v.**

**ALEC FERRETTI**

**Respondent.**

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: **190 CD 2023**  
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**CERTIFIED RECORD**

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

May 23, 2023

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PENNSYLVANIA HISTORICAL  
and MUSEUM COMMISSION

Petitioner,

v.

ALEC FERRETTI  
Respondent.

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: 190 CD 2023  
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CERTIFICATE OF SERVICE

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

Terry L. Mutchler, Esq.  
Evan Kramer, Esq.  
Obermayer, Rebmann, Maxwell  
& Hippel LLP  
1500 Market Street, Suite 3400  
Philadelphia, PA 19102  
[terry.mutchler@obermayer.com](mailto:terry.mutchler@obermayer.com)  
[evan.kramer@obermayer.com](mailto:evan.kramer@obermayer.com)

Gerard A. Leone, Esq.  
Assistant Counsel  
Pennsylvania Historical and  
Museum Commission  
401 North Street  
Harrisburg, PA 17120  
[geleone@pa.gov](mailto:geleone@pa.gov)



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Faith Henry, Administrative Officer  
Office of Open Records  
333 Market Street 16<sup>th</sup> floor  
Harrisburg, PA 17101-2234  
Phone: (717) 346-9903  
Fax: (717) 425-5343  
Email: [fahenry@pa.gov](mailto:fahenry@pa.gov)

Dated: May 23, 2023

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

<b>PENNSYLVANIA HISTORICAL</b>	:
<b>and MUSEUM COMMISSION</b>	:
<b>Petitioner,</b>	:
	: <b>190 CD 2023</b>
<b>v.</b>	:
	:
<b>ALEC FERRETTI</b>	:
<b>Respondent.</b>	:

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RECORD**

*Alec Ferretti v. Pennsylvania Historical & Museum Commission,*  
OOR Dkt. AP 2022-2106

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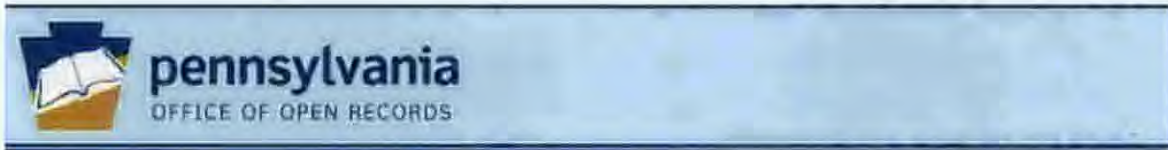
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# OOR Exhibit 1

**From:** [no-reply@openrecordspennsylvania.com](mailto:no-reply@openrecordspennsylvania.com)  
**To:** [al13fe26@gmail.com](mailto:al13fe26@gmail.com)  
**Subject:** [External] PA Office of Open Records - Appeal Confirmation  
**Date:** Friday, September 9, 2022 3:13:13 PM  
**Attachments:** [oor\\_logo\\_email.png](#)

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



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

<b>Name:</b>	Alec Ferretti
<b>Company:</b>	
<b>Address 1:</b>	242 E 38th St
<b>Address 2:</b>	Apt 2F
<b>City:</b>	New York
<b>State:</b>	New York
<b>Zip:</b>	10016
<b>Phone:</b>	631-672-7020
<b>Email:</b>	al13fe26@gmail.com
<b>Email2:</b>	al13fe26@gmail.com
<b>Agency (list):</b>	Pennsylvania Historical and Museum Commission
<b>Agency Address 1:</b>	350 North St
<b>Agency Address 2:</b>	
<b>Agency City:</b>	Harrisburg

<b>Agency State:</b>	Pennsylvania
<b>Agency Zip:</b>	17120
<b>Agency Phone:</b>	717-787-7180
<b>Agency Email:</b>	RA-rtkphmc@pa.gov
<b>Records at Issue in this Appeal:</b>	I requested digital copies of analog records, held by PHMC, that were digitized by the Generations Network (TGN), AKA Ancestry.com, starting in 2008. The contract signed between PHMC and TGN states that TGN would provide PHMC a copy of the digitized material. In PHMC's response, they claim that they, an archive empowered to preserve the state's records, decided not to take possession of the digitized records, and instead, allowed TGN to be the only entity to possess them. This strains credulity.
<b>Request Submitted to Agency Via:</b>	e-mail
<b>Request Date:</b>	09/01/2022
<b>Response Date:</b>	09/09/2022
<b>Deemed Denied:</b>	No
<b>Agency Open Records Officer:</b>	Anne Marie Ickes
<b>Attached a copy of my request for records:</b>	Yes
<b>Attached a copy of all responses from the Agency regarding my request:</b>	Yes
<b>Attached any letters or</b>	Yes

notices  
extending the  
Agency's time  
to respond to  
my request:

Agree to 30 Days  
permit the  
OOR  
additional  
time to issue a  
final  
determination:

Interested in No  
resolving this  
issue through  
OOR  
mediation:

**Attachments:**

- Gmail - RTKL PHMC Response\_09092022.pdf
- RTKRequestForm - Updated 11-27-2018.pdf
- FerrettiResponseSent.pdf
- 2008\_Ancestry digitization FIRST agreement.pdf

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





COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA HISTORICAL & MUSEUM COMMISSION

September 9, 2022

**Email to:** AL13FE26@gmail.com  
Alec Ferretti  
242 E 38<sup>th</sup> St Apt 2F  
New York, NY 10016  
Conklin, NY 13748

**RE:** RTKL Request 2022-24

Dear Mr. Ferretti:

This letter acknowledges the Pennsylvania Historical and Museum Commission's ("PHMC") receipt of your written request for records under the Pennsylvania Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101-67.3104 received September 1, 2022. PHMC received your request stated as follows:

"All documents scanned (and subsequent indexes and metadata created) pursuant to the contract signed in 2008 between the PHMC and The Generations Network, along with all documents scanned (and subsequent indexes and metadata created) pursuant to any addenda to that contract, including but not limited to all birth and death records and all metadata for birth and death records."

To the best of PHMC's knowledge, it never had the record you requested, or it no longer exists. After initially receiving copies of the records digitized by Ancestry, PHMC concluded that the volume exceeded its capacity to retain these records and therefore relies on Ancestry's copies for their own reference. In responding to requests for access to public records, an agency is not required to "create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which the agency does not currently compile, maintain, format or organize the record." 65 P.S. § 67.705. The Right-to-Know-Law provides that records not in the agency's custody, possession or control do not exist such that they can be requested of the agency.<sup>1</sup>

If you disagree with the above determination(s), then you have the right to appeal this response to the Office of Open Records. If you choose to file an appeal, you must send a written appeal (e.g., via e-mail, fax, regular U.S. mail) to both PHMC 300 North St, Harrisburg, PA 17120 and the Office of Open Records at: Office of Open Records, 333 Market St 16th floor, Harrisburg, PA 17101. This appeal must

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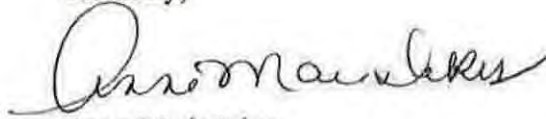
<sup>1</sup> See Saunders v. Dep't of Corr., 172 A.3d 110, 112 (Pa.Cmwlth. 2017)

be sent within 15 business days of the mailing date of this response. If you choose to file an appeal, you must include the following:

- (1) a copy of your request;
- (2) a copy of this response; and
- (3) in a letter or message directed at the Executive Director of the Office of Open Records, the reason(s) in support of your appeal and/or why you believe the agency is in possession of records, or unable to meet any of the exemptions as stated in this response.

The Office of Open Records has an appeal form available on its website at:  
<https://www.openrecords.pa.gov/Appeals/AppealForm.cfm> (online form)  
or [https://www.openrecords.pa.gov/Documents/Appeals/Appeal\\_Form.pdf](https://www.openrecords.pa.gov/Documents/Appeals/Appeal_Form.pdf)

Sincerely,



Anne Marie Ickes  
Associate Agency Open Records Officer  
Pennsylvania Historical & Museum Commission |  
Pennsylvania State Archives  
350 North St., Harrisburg, PA 17120-0090  
Phone: 717-787-7180

Date of Mailing: September 9, 2022

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**RTKL PHMC Response\_09092022**

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PH, right to know <RA-rtkphmc@pa.gov>  
To: Alec Ferretti <al13fe26@gmail.com>

Fri, Sep 9, 2022 at 9:58 AM

**Anne Marie Ickes** | Archivist | PHMC Records Coordinator

Records Division | PA State Archives

PA Historical & Museum Commission

350 North Street, Harrisburg, PA 17120-0090

Phone: 717-787-7180

[www.phmc.pa.gov/Archives/Records-Management](http://www.phmc.pa.gov/Archives/Records-Management)



**Pennsylvania State Archives**  
PENNSYLVANIA HISTORICAL AND MUSEUM COMMISSION

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**From:** Alec Ferretti <al13fe26@gmail.com>  
**Sent:** Thursday, September 1, 2022 7:08 PM  
**To:** PH, right to know <RA-rtkphmc@pa.gov>  
**Subject:** [External] RTK Request

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

Dear Ms Bendroth

Please see attached.

--

Alec Ferretti



**FerrettiResponseSent.pdf**  
437K





**pennsylvania**  
OFFICE OF OPEN RECORDS

## Standard Right-to-Know Law Request Form

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

SUBMITTED TO AGENCY NAME: Pennsylvania Historical and Museum Commission (Attn: AORO)

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

### PERSON MAKING REQUEST:

Name: Alec Ferretti Company (if applicable): \_\_\_\_\_

Mailing Address: 242 E 38th St Apt 2F

City: New York State: NY Zip: 10016 Email: AL13FE26@Gmail.com

Telephone: 631-672-7020 Fax: \_\_\_\_\_

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

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

All documents scanned (and subsequent indexes and metadata created) pursuant to the contract signed in 2008 between the PHMC and The Generations Network, along with all documents scanned (and subsequent indexes and metadata created) pursuant to any addenda to that contract, including but not limited to all birth and death records and all metadata for birth and death records.

**DO YOU WANT COPIES?** ☒ Yes, electronic copies preferred if available

☐ Yes, printed copies preferred

☐ No, in-person inspection of records preferred (may request copies later)

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

RTKL requests may require payment or prepayment of fees. See the [Official RTKL Fee Schedule](#) for more details.

Please notify me if fees associated with this request will be more than ☐ \$100 (or) ☒ \$50.

### ITEMS BELOW THIS LINE FOR AGENCY USE ONLY

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

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

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

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

NOTE: In most cases, a completed RTKL request form is a public record.  
More information about the RTKL is available at <https://www.openrecords.pa.gov>

Form updated Nov. 27, 2018

MSC 17173

**License Agreement**

This License Agreement ("AGREEMENT") is entered into as of the date last signed below, between The Generations Network, Inc., Delaware corporation with its principal office at Provo, Utah ("TGN"), and the Pennsylvania Historical and Museum Commission, an independent agency of the Commonwealth of Pennsylvania ("Commonwealth"), located in Harrisburg, Pennsylvania ("PHMC").

WHEREAS, TGN operates multiple genealogy and family history related Web properties, including Ancestry.com, that provide family-oriented services, genealogy research and access to other related services (the "TGN Network").

WHEREAS, PHMC owns or has rights to historical records, including the records covered in Appendix A (the "Records"), as may be supplemented from time to time by mutual agreement; and

WHEREAS, TGN desires to access the Records for the purpose of digitization, index creation and distribution. The resulting digital images and indexes created by TGN from the Records are referred to as the "Licensed Materials."

THEREFORE, the parties, intending to be legally bound, agree to the following:

**Definitions:**

**Records.** The term "Records" shall mean those PHMC Collections as described in Appendix A.

**Licensed Materials.** The term "Licensed Materials" shall mean those digital images and indexes that TGN creates as a result of digitizing and indexing the records.

**1. Records Access.**

- 1.1. **By PHMC.** PHMC shall: a) deliver to TGN a copy of the Records on microfilm, and b) provide TGN with copies of digital records, as specified in Appendix A.
- 1.2. **By TGN.** TGN agrees to digitize and create a basic index of the Records, and, prior to or simultaneously to posting such records to the TGN Network, provide PHMC with a digital copy of the images and indexes, in a digital format approved by PHMC, subject to the use restrictions stated below. TGN agrees to provide free access for up to 20 simultaneous users to Ancestry.com, including the Licensed Materials, on location at the state archive. TGN agrees to provide the PHMC logo and sourcing credit and quarterly usage reports on web pages containing the Licensed Materials. TGN warrants that the digitized and indexed images provided to PHMC will be free from defect and that if defective, it will repair or replace the digitized and indexed images at its own expense.

**2. Grant of Licenses.**

- 2.1. **By PHMC.** PHMC grants to TGN the right and license to digitize, index, copy, publish, republish, market, distribute, and sell the Licensed Materials anywhere in the world within any media, including but not limited to printed and Electronic Products. "Electronic Product" shall mean the publication and/or distribution of the Licensed Materials in any and all electronic media, now known or developed in the future, including but not limited to floppy disk, CD-ROM, DVD, hand held devices, Internet (or any other method of on-line publication or distribution). For each collection, this right and license will be held exclusively by TGN for a period of three years (the "Exclusive Period") beginning the date on which TGN posts the Licensed Materials online, except as specified in the Appendixes.

- 2.2. By TGN. TGN grants PHMC a non-exclusive, non-transferable right and license to use the Licensed Materials for the benefit of its patrons. (Licensed Materials provided to PHMC may be used for internal purposes at any time during or after the Exclusive Period.) PHMC may not post the Licensed Materials on its website for a period of three years from the date when the Licensed Materials were posted online by TGN. The Licensed Materials may not be distributed or resold by PHMC to any company or institution for any purpose, and is solely for the use of individual patrons. Following the three-year exclusive period, PHMC can post the Licensed Materials on its website for use by the general public. In the event that PHMC chooses to post the Licensed Materials online following the Exclusive Period, TGN is no longer obligated to provide free access to the Licensed Materials on-site, at the state archive.
- 2.3. While either party may use third parties to assist in the development and production of the Electronic Product, the license granted to PHMC does not allow partnering, or co-publishing relationships by PHMC, whereby any third party becomes a publisher of the Licensed Materials in an Electronic Product, or shares in the profit from the publication of the Licensed Materials in an Electronic Product.
- 2.4. The PHMC reserves all rights pertaining to use of the original records, as described in Appendix A, provided to TGN.
3. Representations. Each party represents and warrants that it has the right to enter into this AGREEMENT and that by doing so it shall not violate or infringe the rights of any third party.
4. Background Checks.
- 4.1. TGN must, at its expense, arrange for a background check for each of its employees, as well as for the employees of its subcontractors, who will have access to Commonwealth facilities. Background checks are to be conducted via the Request for Criminal Record Check form and procedure found at <http://www.psp.state.pa.us/psplib/psp/sp4-164.pdf>. The background check must be conducted prior to initial access by an IT employee and annually thereafter.
- 4.2. Before the Commonwealth will permit a contract employee access to Commonwealth facilities, TGN must provide written confirmation to the office designated by the agency that the background check has been conducted. If, at any time, it is discovered that a contract employee has a criminal record that includes a felony or misdemeanor involving terroristic threats, violence, use of a lethal weapon, or breach of trust/fiduciary responsibility; or which raises concerns about building, system, or personal security, or is otherwise job-related, TGN shall not assign that employee to any Commonwealth facilities, shall remove any access privileges already given to the employee, and shall not permit that employee remote access to Commonwealth facilities or systems, unless the agency consents, in writing, prior to the access being provided. The agency may withhold its consent at its sole discretion. Failure of TGN to comply with the terms of this paragraph may result in default of TGN under its Agreement with the Commonwealth.
- 4.3. The Commonwealth specifically reserves the right of the Commonwealth to conduct background checks over and above that described herein.
5. Insurance (applicable only if TGN employees or contractors perform work onsite at PHMC).
- 5.1. TGN shall procure and maintain at its expense and require its subcontractors to procure and maintain, as appropriate, the following types of insurance, issued by companies acceptable to PHMC and authorized to conduct such business under the laws of the Commonwealth of Pennsylvania.

- 5.1.1. Worker's Compensation Insurance for all of TGN's employees and those of any subcontractor engaged in performing Services in accordance with the *Worker's Compensation Act* (77 P.S. § 101, *et seq.*).
- 5.1.2. Public liability and property damage insurance to protect the Commonwealth of Pennsylvania, TGN and any and all subcontractors from claims for damages for personal injury (including bodily injury), sickness or disease, accidental death, and damage to property, including loss of use resulting from any property damage which may arise from its operations under this AGREEMENT, whether such operation be by TGN, by any subcontractor, or by anyone directly or indirectly employed by either. The limits of such insurance shall be in an amount not less than \$500,000 per person and \$2,000,000 per occurrence, personal injury and property damage combined. Such policies shall be occurrence rather than claims-made policies and shall name the Commonwealth of Pennsylvania as an additional insured. The insurance shall not contain any endorsements or any other form designed to limit and restrict any action by the Commonwealth as an additional insured against the insurance coverages in regard to the work performed for the Commonwealth.
- 5.2. Prior to commencing work under the AGREEMENT, TGN shall provide PHMC with a copy of each current certificate of insurance. These certificates shall contain a provision that coverages afforded under the policies will not be canceled or changed in such a way to cause the coverage to fail to comply with the requirements of this Section until at least thirty (30) days prior written notice has been given to PHMC.
- 5.3. TGN agrees to maintain such insurance for the life of the AGREEMENT.

6. Conflicts.

- 6.1. In the event of a controversy or claim arising from the AGREEMENT, TGN must, within six months after the cause of action accrues, file a written claim with the Contracting Officer for a determination. The claim shall state all grounds upon which TGN asserts a controversy exists. If TGN fails to file a claim or files an untimely claim, TGN is deemed to have waived its right to assert a claim in any forum.
- 6.2. The Contracting Officer shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within 120 days of the receipt of the claim, unless extended by consent of the Contracting Officer and TGN. The Contracting Officer shall send his/her written determination to TGN. If the Contracting Officer fails to issue a final determination within the 120 days (unless extended by consent of the parties), the claim shall be deemed denied. The Contracting Officer's determination shall be the final order of the purchasing agency.
- 6.3. Within fifteen (15) days of the mailing date of the determination denying a claim or within 135 days of filing a claim if, no extension is agreed to by the parties, whichever occurs first, TGN may file a statement of claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, TGN shall proceed diligently with the performance of the AGREEMENT in a manner consistent with the determination of the Contracting Officer and PHMC shall compensate TGN pursuant to the terms of the AGREEMENT.

7. Confidentiality.

- 7.1. TGN agrees to guard the confidentiality of the PHMC with the same diligence with which it guards its own proprietary information. PHMC agrees to protect the confidentiality of

TGN's confidential information with the same diligence with which it guards its own proprietary information. In order for information to be deemed to be confidential, the party claiming confidentiality must designate the information as "confidential" in such a way as to give notice to the other party. The parties agree that such confidential information shall not be copied, in whole or in part, except when essential for authorized use under this AGREEMENT. Each copy of such confidential information shall be marked by the party making the copy with all confidentiality notices appearing in the original.

7.2. The obligations stated in this Section do not apply to information:

- 7.2.1. already known to the recipient at the time of disclosure other than through the contractual relationship;
- 7.2.2. independently generated by the recipient and not derived from the information supplied by the disclosing party;
- 7.2.3. known or available to the public, except where such knowledge or availability is the result of unauthorized disclosure by the recipient of the proprietary information;
- 7.2.4. disclosed to the recipient without a similar restriction by a third party who has the right to make such disclosure; or
- 7.2.5. required to be disclosed by the recipient by law, regulation, court order, or other legal process.

7.3. There shall be no restriction with respect to the use or disclosure of any ideas, concepts, know-how, or data processing techniques developed alone or jointly with PHMC in connection with services provided to PHMC under this AGREEMENT.

8. Termination.

- 8.1. Termination for Cause by PHMC: If, through any cause, TGN fails to fulfill, in a timely and proper manner, its obligations under this AGREEMENT, PHMC shall give TGN written notice of a deficiency in its performance. If TGN does not correct the deficiency to the reasonable satisfaction of PHMC within thirty (30) days of its receipt of the notice of deficiency, PHMC may terminate this AGREEMENT.
- 8.2. Termination for Cause by TGN: If, through any cause, PHMC fails to fulfill, in a timely and proper manner, its obligations under this AGREEMENT, TGN shall give PHMC written notice of a deficiency in its performance. If PHMC does not correct the deficiency to the reasonable satisfaction of TGN within thirty (30) days of its receipt of the notice of deficiency, TGN may terminate this AGREEMENT.
- 8.3. Return of Materials. If this Agreement is terminated for cause by either party, PHMC agrees to return to TGN any Licensed Materials it has received from TGN and TGN agrees to return to PHMC any records, as described in Appendix A, it has received from PHMC.

9. Assignability

- 9.1. Subject to the terms and conditions of this Section, the AGREEMENT is binding upon the parties and their respective successors and assigns.



- 9.2. TGN may not assign, in whole or in part, the AGREEMENT or its rights, duties, obligations, or responsibilities hereunder without the prior written consent of PHMC, which consent may be withheld at the sole and absolute discretion of PHMC.
  - 9.3. For the purposes of the AGREEMENT, the term "assign" shall include, but shall not be limited to, the sale, gift, assignment, encumbrance, pledge, or other transfer of any ownership interest in TGN provided, however, that the term shall not apply to the sale or other transfer of stock of a publicly traded company.
  - 9.4. Any assignment consented to by PHMC shall be evidenced by a written assignment agreement executed by TGN and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of the AGREEMENT and to assume the duties, obligations, and responsibilities being assigned.
  - 9.5. Notwithstanding the foregoing, TGN may, without the consent of PHMC, assign its rights to payment to be received under the AGREEMENT, provided that TGN provides written notice of such assignment to the PHMC together with a written acknowledgement from the assignee that any such payments are subject to all of the terms and conditions of the AGREEMENT.
  - 9.6. A change of name by TGN, following which the TGN federal identification number remains unchanged, is not considered to be an assignment. TGN shall give PHMC written notice of any such change of name.
10. Commonwealth Held Harmless
- 10.1. TGN shall hold the Commonwealth harmless from and indemnify the Commonwealth against any and all third party claims, demands and actions based upon or arising out of any activities performed by TGN and its employees and agents under this AGREEMENT, provided the Commonwealth gives TGN prompt notice of any such claim of which it learns. Pursuant to the *Commonwealth Attorneys Act* (71 P.S. § 732-101, et seq.), the Office of Attorney General ("OAG") has the sole authority to represent the Commonwealth in actions brought against the Commonwealth. The OAG may, however, in its sole discretion and under such terms as it deems appropriate, delegate its right of defense. If OAG delegates the defense to TGN, the Commonwealth will cooperate with all reasonable requests of TGN made in the defense of such suits.
  - 10.2. Notwithstanding the above, neither party shall enter into any settlement without the other party's written consent, which shall not be unreasonably withheld. The Commonwealth may, in its sole discretion, allow TGN to control the defense and any related settlement negotiations.
11. Independent Capacity of TGN
- 11.1. The parties to this AGREEMENT agree that the services performed by TGN under the terms of this AGREEMENT are performed as an independent contractor. The services performed by TGN are performed neither as an employee of the Commonwealth of Pennsylvania nor as a partnership or joint venture between the PHMC and TGN.
  - 11.2. Except as otherwise provided by the terms of this AGREEMENT, PHMC shall have no control over the manner in which the contractual services are performed by TGN, or any subcontractor. Any job specifications or standards of work attached to or incorporated into this AGREEMENT or any subcontracting restrictions contained in this AGREEMENT

shall not be construed as PHMC's direction or control over the manner of the performance of services provided by TGN.

12. Notices. Notices provided under this AGREEMENT will be effective if delivered to the then current principal business address of the other party. The current addresses are:

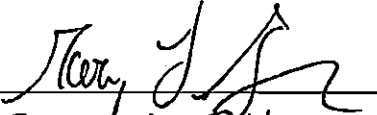
If to TGN: 360 West 4800 North Provo, Utah, 84604 Attn: Al Viera, with a copy to General Counsel at the same address TGN's telephone: 801-705-7000. TGN's fax: 801-705-7001.

If to PHMC: 300 North Street, Harrisburg, PA 17120-0090 Attn: Barbara Franco, Executive Director, Pa. Historical & Museum Commission, telephone 717-787-2891, fax 717-705-0482. Notices may be given by first class mail, express courier or confirmed facsimile.

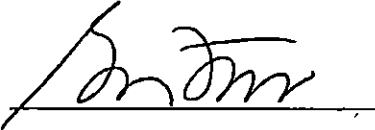
13. Applicable Law. This AGREEMENT shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of the Pennsylvania courts. TGN consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal courts in Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. TGN agrees that any such court shall have in personam jurisdiction over it, and consents to service of process in any manner authorized by Pennsylvania law.
14. Incorporation of Exhibits. Commonwealth Non-Discrimination/Sexual Harassment, Contractor Integrity Provisions, Contractor Responsibility Provisions, Tax Offset Clause, and Provisions Regarding the Americans with Disabilities Act are hereto attached and incorporated as Exhibits "A", "B", "C", "D" and "E", respectively. TGN shall be known as "Contractor" for purposes of these provisions

The signatures of the parties below indicate their respective acknowledgment of the terms outlined in this AGREEMENT.

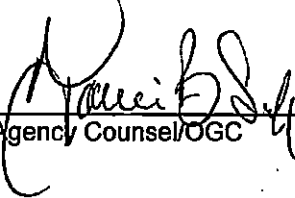
**The Generations Network, Inc.**

Signed:   
Name: Gary L. Gibb  
Title: V.P. Content  
Date: Nov 18, 2008

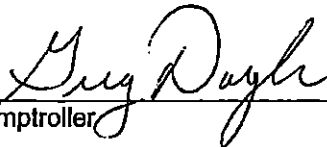
**Pennsylvania Historical and Museum Commission**

Signed:   
Name: Barbara A. Franco  
Title: Executive Director  
Date: 12/15/08

**APPROVED AS TO FORM AND LEGALITY**

By  12/18/08  
Agency Counsel/OGC Date

  
Office of the Attorney General

7-3-09  
By  2/6/09  
Comptroller Date

## Appendix A

Collections considered the Records for purposes of this AGREEMENT:

Project Name	Approx. # of Images	Years Covered	Format	Exclusivity
Septennial Census	11000	1775-1863	Microfilm	3 Years
Oyer and Terminer	4800	1757-1786	Microfilm	3 Years
Warrant Applications	90000	1734-1952	Microfilm	3 Years
Tax and Exoneration	31000	1761-1801	Microfilm	3 Years
Warrants	150,000	1682-	Microfilm	3 Years
Spanish-American Veterans' Compensation	73,000	1934	Microfilm	3 Years
War of 1812 Pension Files	21,600	1866-1896	Microfilm	3 Years
Civil War Border Claims	43000	1871-1879	Microfilm	3 Years
Supreme Court Naturalization Papers	40000	1794-1868	Microfilm	3 Years
WPA Church Archives	123,000	1937-1940	Microfilm	3 Years
Records of Marriages RG14	1500	1885-1889	Microfilm	3 Years
Births, Deaths Marriages RG26	5500	1852-1854	Microfilm	3 Years
Pennsylvania Veterans' Burial Cards	750,000	1929-1990	Digital	None

## Exhibit A

### NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE

During the term of the Contract, the Contractor agrees as follows:

- a. In the hiring of any employees for the manufacture of supplies, performance of work, or any other activity required under the Contract or any subcontract, the Contractor, subcontractor or any person acting on behalf of the Contractor or subcontractor shall not by reason of gender, race, creed, or color discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
- b. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work or any other activity required under the Contract on account of gender, race, creed, or color.
- c. The Contractor and any subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.
- d. The Contractor shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
- e. The Contractor and each subcontractor shall furnish all necessary employment documents and records to and permit access to its books, records, and accounts by the Contracting Officer and the Department of General Services Bureau of Contract Administration and Business Development for purposes of investigation to ascertain compliance with the provisions of this Nondiscrimination/Sexual Harassment Clause. If the Contractor or any subcontractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the Contracting Officer or the Bureau of Contract Administration and Business Development.
- f. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that such provisions will be binding upon each subcontractor.
- g. The Commonwealth may cancel or terminate the Contract, and all money due or to become due under the Contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

## Exhibit B

### CONTRACTOR INTEGRITY PROVISIONS

1. Definitions.
  - a. Confidential Information means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the Commonwealth.
  - b. Consent means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of execution of this agreement.
  - c. Contractor means the individual or entity that has entered into this agreement with the Commonwealth, including directors, officers, partners, managers, key employees, and owners of more than a 5% interest.
  - d. Financial interest means:
    - (1) ownership of more than a 5% interest in any business; or
    - (2) holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.
  - e. Gratuity means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.
2. The contractor shall maintain the highest standards of integrity in the performance of this agreement and shall take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with the Commonwealth.
3. The contractor shall not disclose to others any confidential information gained by virtue of this agreement.
4. The contractor shall not, in connection with this or any other agreement with the Commonwealth, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the Commonwealth.
5. The contractor shall not, in connection with this or any other agreement with the Commonwealth, directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the Commonwealth.
6. Except with the consent of the Commonwealth, neither the contractor nor anyone in privity with him shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under this agreement except as provided therein.
7. Except with the consent of the Commonwealth, the contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project.
8. The contractor, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify the Commonwealth in writing.
9. The contractor, by execution of this agreement and by the submission of any bills or invoices for payment pursuant thereto, certifies and represents that he has not violated any of these provisions.
10. The contractor, upon the inquiry or request of the Inspector General of the Commonwealth or any of that official's agents or representatives, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to the Contractor's integrity or responsibility, as those terms are defined by the Commonwealth's statutes, regulations, or management directives. Such information may include, but shall not be limited to, the contractor's business or financial records, documents or files of any type or form which refer to or concern this agreement. Such information shall be retained by the contractor for a period of three years beyond the termination of the contract unless otherwise provided by law.
11. For violation of any of the above provisions, the Commonwealth may terminate this and any other agreement with the contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another contractor to complete performance hereunder, and debar and suspend the contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

## Exhibit C

### CONTRACTOR RESPONSIBILITY PROVISIONS

For the purpose of these provisions, the term contractor is defined as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee, or subgrantee, who has furnished or seeks to furnish goods, supplies, services, or leased space, or who has performed or seeks to perform construction activity under contract, subcontract, grant, or subgrant with the Commonwealth, or with a person under contract, subcontract, grant, or subgrant with the Commonwealth or its state-affiliated entities, and state-related institutions. The term contractor may include a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other entity of the Commonwealth.

1. The contractor must certify, in writing, for itself and all its subcontractors, that as of the date of its execution of any Commonwealth contract, that neither the contractor, nor any subcontractors, nor any suppliers are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the contractor cannot so certify, then it agrees to submit, along with the bid/proposal, a written explanation of why such certification cannot be made.

2. The contractor must also certify, in writing, that as of the date of its execution, of any Commonwealth contract it has no tax liabilities or other Commonwealth obligations.

3. The contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the contractor shall have an obligation to inform the contracting agency if, at any time during the term of the contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.

4. The failure of the contractor to notify the contracting agency of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the contract with the Commonwealth.

5. The contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the contractor's compliance with the terms of this or any other agreement between the contractor and the Commonwealth, which results in the suspension or debarment of the contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The contractor shall not be responsible for investigative costs for investigations that do not result in the contractor's suspension or debarment.

6. The contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the internet at <http://www.dgs.state.pa.us/debarment.htm> or contacting the:

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

## **Exhibit D**

### **Tax Offset Clause**

The Contractor authorizes the Commonwealth to offset any state and local tax liabilities of the contractor of any of its subsidiaries, as well as, any other amount due to the Commonwealth from the contractor, against any payment due to the contractor under this or any other contract with the Commonwealth.



## Exhibit E

### AMERICANS WITH DISABILITIES ACT

- a. Pursuant to federal regulations promulgated under the authority of The Americans With Disabilities Act, 28 C.F.R. § 35.101 et seq., the Contractor understands and agrees that it shall not cause any individual with a disability to be excluded from participation in this Contractor from activities provided for under this Contract on the basis of the disability. As a condition of accepting this contract, the Contractor agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. § 35.130, and all other regulations promulgated under Title I of The Americans With Disabilities Act which are applicable to all benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.
- b. The Contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of the Contractor's failure to comply with the provisions of subparagraph a above.

# 00R Exhibit 2

## **NOTICE OF DEADLINES**

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

The Final Determination is currently due on **November 10, 2022**.

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

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

Submissions in this case are currently due on **September 22, 2022**.

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

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

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

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



September 13, 2022

**Via Email Only:**

Alec Ferretti  
242 E 38th Street  
Apt 2F  
New York, NY 10016  
al13fe26@gmail.com

**Via Email Only:**

Cynthia Bendroth  
Agency Open Records Officer  
Pennsylvania Historical and Museum  
Commission  
350 North Street  
Harrisburg, PA 17120-0090  
ra-rtkphmc@pa.gov

**RE: OFFICIAL NOTICE OF APPEAL - Ferretti v. Pennsylvania Historical and Museum  
Commission OOR Dkt. AP 2022-2106**

Dear Parties:

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

The Office of Open Records ("OOR") received this appeal under the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101, et seq. on September 9, 2022. A binding Final Determination ("FD") will be issued pursuant to the timeline required by the RTKL, **please see the attached information for more information about deadlines.**

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

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

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

Sincerely,

A handwritten signature in black ink that reads "Elizabeth Wagenseller". The signature is fluid and cursive, with the first name "Elizabeth" and last name "Wagenseller" clearly legible.

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)).

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

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

## **Agency Must Notify Third Parties**

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

Such notice must be made by: (1) Providing a copy of all documents included with this letter; **and** (2) Advising relevant third parties that interested persons may request to participate in this appeal by contacting the Appeals Officer or completing the form at <https://www.openrecords.pa.gov/Appeals/DIPRequest.cfm>. (see 65 P.S. § 67.1101(c)).

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

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

*NOTE TO AGENCIES: If you have questions about this requirement, please*

*contact the Appeals Officer immediately.*

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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.*

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## **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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## **Mediation**

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

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

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

Either party can end mediation at any time.

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

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

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# pennsylvania

## OFFICE OF OPEN RECORDS

IN THE MATTER OF

ALEC FERRETTI,  
Requester

v.

PENNSYLVANIA HISTORICAL AND  
MUSEUM COMMISSION,  
Respondent

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Docket No.: AP 2022-2106

This correspondence confirms the above-referenced Requester's agreement to an additional thirty (30) day extension of time to issue a Final Determination in this matter as indicated in the Requester's appeal form. Accordingly, pursuant to 65 P.S. § 67.1101(b)(1), the Office of Open Records will now issue a Final Determination in the above-captioned matter on or before November 10, 2022.





**APPEALS OFFICER:**

**Ryan Liggitt, 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:**

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

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

EMAIL

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

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

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

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



IN THE MATTER OF

\_\_\_\_\_  
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.

**From:** [DC, OpenRecords](#)  
**To:** ["al13fe26@gmail.com"](mailto:al13fe26@gmail.com)  
**Subject:** Ferretti v. Pennsylvania Historical and Museum Commission: AP 2022-2106 Portal Appeal,  
**Date:** Tuesday, September 13, 2022 3:22:00 PM

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Dear Requester,

Portal access has been granted in this OOR Appeal: AP 2022-2106 Ferretti v. Pennsylvania Historical and Museum Commission. You should receive login credentials separately to access the E-File Appeal Portal at <https://www.openrecords.pa.gov/portal/login.cfm>. If you have not received your credential, use the Reset Password.

A User Guide can be found by visiting [https://www.openrecords.pa.gov/Documents/Appeals/E-File\\_AppealPortal-UserGuide.pdf](https://www.openrecords.pa.gov/Documents/Appeals/E-File_AppealPortal-UserGuide.pdf).

Technical issues can be directed to the OOR at [openrecords@pa.gov](mailto:openrecords@pa.gov).

Sincerely,



**Michele K. Grant**  
**Administrative Officer**  
**Office of Open Records**  
333 Market Street, 16th Floor  
Harrisburg, PA 17101-2234  
[\(717\) 346-9903](tel:7173469903) | Fax (717) 425-5343  
<https://openrecords.pa.gov>  
[@OpenRecordsPA](#)  
[Open Records in Pennsylvania Blog](#)

**From:** [Microsoft Outlook](#)  
**To:** [al13fe26@gmail.com](mailto:al13fe26@gmail.com)  
**Subject:** Relayed: Ferretti v. Pennsylvania Historical and Museum Commission: AP 2022-2106 Portal Appeal,  
**Date:** Tuesday, September 13, 2022 3:22:08 PM  
**Attachments:** [Ferretti v. Pennsylvania Historical and Museum Commission AP 2022-2106 Portal Appeal.msg](#)

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Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:  
al13fe26@gmail.com (al13fe26@gmail.com) <mailto:al13fe26@gmail.com>  
Subject: Ferretti v. Pennsylvania Historical and Museum Commission: AP 2022-2106 Portal Appeal,

**From:** [Kusery-Grant, Michele](#)  
**To:** [Liggitt, Ryan](#)  
**Subject:** Ferretti v. Pennsylvania Historical and Museum Commission: AP 2022-2106 Portal Appeal has been assigned to you.  
**Date:** Tuesday, September 13, 2022 3:30:00 PM

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**Michele K. Grant**  
**Administrative Officer**  
**Office of Open Records**  
**333 Market Street, 16th Floor**  
**Harrisburg, PA 17101-2234**  
[\(717\) 346-9903](tel:(717)346-9903) | Fax (717) 425-5343  
<https://openrecords.pa.gov>  
[@OpenRecordsPA](#)  
[Open Records in Pennsylvania Blog](#)

**From:** [Microsoft Outlook](#)  
**To:** [Liggitt, Ryan](#)  
**Subject:** Delivered: Ferretti v. Pennsylvania Historical and Museum Commission: AP 2022-2106 Portal Appeal has been assigned to you.  
**Date:** Tuesday, September 13, 2022 3:30:51 PM  
**Attachments:** [Ferretti v. Pennsylvania Historical and Museum Commission AP 2022-2106 Portal Appeal has been assigned to you.msg](#)

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Your message has been delivered to the following recipients:

Liggitt, Ryan (rliggitt@pa.gov) <mailto:rliggitt@pa.gov>

Subject: Ferretti v. Pennsylvania Historical and Museum Commission: AP 2022-2106 Portal Appeal has been assigned to you.

# OOB Exhibit 3





Commonwealth of Pennsylvania  
**Pennsylvania Historical and Museum  
Commission**  
The State Museum Building  
300 North Street  
Harrisburg, Pennsylvania 17120-0024  
[www.phmc.state.pa.us](http://www.phmc.state.pa.us)

September 30, 2022

**VIA ELECTRONIC MAIL**

Ryan Liggitt, Esq.  
Commonwealth of Pennsylvania  
Office of Open Records  
333 Market Street, 16<sup>th</sup> Floor  
Harrisburg, PA 17101  
[rliggitt@pa.gov](mailto:rliggitt@pa.gov)

Re: Docket No. AP 2022-2106

Dear Appeals Officer Liggitt:

Thank you for contacting the Pennsylvania Historical and Museum Commission ("PHMC") to notify us of the appeal filed in this matter under the Pennsylvania Right-To-Know Law, 65 P.S. §§ 67.101, et seq. ("RTKL"), which your Office has docketed at number 2022-2106.

Alec Ferretti ("Requester") initially filed a Right-to-Know-Law request with the PHMC requesting: "All documents scanned (and subsequent indexes and metadata created) pursuant to the contract signed in 2008 between PHMC and The Generations Network, along with all documents scanned (and subsequent indexes and metadata created) pursuant to any addenda to that contract, including but not limited to all birth and death records and all metadata for birth and death records."

PHMC denied the request as it does not possess or control the documents requested such that they can be requested of the agency. In its reply, PHMC explained that it currently relies on The Generations Network/Ancestry to provide storage and public access to the records for Pennsylvania residents.

The Requester's thinly veiled allegation of dishonesty is without any foundation whatsoever.

PHMC cannot accommodate the request partly because while it does not possess the records, it could not even manage to accommodate the request working with Ancestry because the request is so immense that to fulfill it would be a gross misapplication of the RTKL. In 2016, when PHMC received a copy of the data that comprised all the documents scanned by Ancestry to that point, it comprised approximately 45 terabytes, which would have required nearly \$300,000 annually to maintain. That immense maintenance burden was why PHMC ultimately arranged for Ancestry to maintain the scanned records for the Commonwealth. The sum total of scanned documents has only grown since. The Requester has effectively asked for a transfer of state property worth hundreds of thousands of dollars.

Even if PHMC could have provided the requested records, the Request lacked sufficient specificity so as to permit the agency to do so: it failed to identify “identify or describe the record sought with sufficient specificity to enable” PHMC “to ascertain which records are being requested.” 65 P.S. § 67.703. An actionable request will specify the subject matter of the documents, a finite timeframe, the kind of document, and/or its recipient(s).<sup>1</sup> The Requester has asked for “all documents scanned...including but not limited to all birth and death records and all metadata for birth and death record.” The request is insufficiently specific: it identifies a universe of records that comprises terabytes of data. A requester may ask for the birth and death record of a specific person or group of people, but a request for “all birth and death records” possessed by Ancestry, to use the Requester’s terminology, “strains credulity.” No Requester is entitled to receive all or entire categories of the entire Archives of the Commonwealth, yet that is what the Requester has effectively asked for.

For these reasons, the PHMC respectfully requests that the Requester’s appeal be Denied and Dismissed.

Thank you for consideration of this matter.

Respectfully,

*/s/ Gerard A. Leone*  
Gerard A. Leone  
Assistant Counsel, PHMC

cc: Rodney R. Akers, Chief Counsel, PHMC  
Alec Ferretti

---

<sup>1</sup> See Carey v. Pennsylvania Dep’t of Corr., 61 A.3d 367, 372 (Pa. Commw. Ct. 2013); Pa. Dep’t of Educ. v. Pittsburgh Post-Gazette, 2015 Pa. Commw. 316 (Pa. Cmwlth. Ct. 2015)

## AFFIDAVIT

Commonwealth of Pennsylvania  
County of Dauphin

1. My name is Cynthia Bendroth. I currently serve as Agency Open Records Officer for the Pennsylvania Historical and Museum Commission ("PHMC"), which is headquartered in Harrisburg, Pennsylvania.
2. PHMC's main office is located at 300 North Street in Harrisburg.
3. On September 9, 2022, PHMC sent to Mr. Alec Ferretti a response to his request for all of the documents scanned "pursuant to the contract signed in 2008 between PHMC and the Generations Network."
4. With regard to the contract referred to by Mr. Ferretti: PHMC had signed an agreement effective February 2009 with The Generations Network "TGN", now known as Ancestry. According to the contract, TGN would have access to and be permitted to copy PHMC's microfilm records including census, tax, pension, birth, death, and marriage records. In exchange for scanning those records, PHMC would receive a digital copy of those records.
5. In 2016, it became clear to the Archives and PHMC leadership that the volume of data created by TGN through the scanning and indexing process would be immense. In 2016, the volume of data received by PHMC from TGN was near 45 Terabytes of data, which would cost between \$297,000 and \$321,000 to maintain per year.
6. Because of this immense cost, PHMC signed a new agreement with TGN to maintain this data on their servers. In exchange, the staff, patrons, and researchers in the State Archives may access this data for free, and TGN's customers continue to access it for a fee.
7. Since 2016, that volume of data and the cost of its maintenance has only grown.

Cynthia Bendroth  
Cynthia Bendroth, Agency Open Records Officer  
Pennsylvania Historical and Museum Commission

Dated: September 30, 2022

County/City of DAUPHIN / HARRISBURG  
Commonwealth/State of Pennsylvania  
The foregoing instrument was subscribed and  
sworn before me this 30<sup>th</sup> day of September  
2022, by  
CYNTHIA BENDROTH  
(name of person seeking acknowledgement)  
Cheri Garrett  
Notary Public  
My Commission Expires: 3/16 2025

Commonwealth of Pennsylvania - Notary Seal  
CHERI GARRETT - Notary Public  
Dauphin County  
My Commission Expires March 16, 2025  
Commission Number 1248245

# OOB Exhibit 4

October 25, 2022

**Via Email Only:**

Alec Ferretti  
242 E 38th St  
Apt 2F  
New York, NY 10016  
al13fe26@gmail.com

**Via Email Only:**

Gerard Leone, Esq.  
300 North St.  
State Museum  
Harrisburg, PA 17120  
geleone@pa.gov

Cynthia Bendroth  
Agency Open Records Officer  
Pennsylvania Historical and Museum  
Commission  
350 North Street  
Harrisburg, PA 17120-0090  
ra-rtkphmc@pa.gov

**RE: Ferretti v. Pennsylvania Historical and Museum Commission OOR Dkt. AP 2022-2106**

Dear Parties:

The above-captioned appeal has been reassigned to me for adjudication. All of the submissions have been uploaded to the E-File Portal docket sheet; therefore, I have access to all documents related to the appeal. This correspondence is merely to inform you about the reassignment and also, to inform you that there is no need for further action on your part. If you have any questions, feel free to contact me through the E-File Portal.

Regards,

*/s/ Kelly Isenberg*

Kelly Isenberg  
Senior Appeals Officer

# OOR Exhibit 5

**From:** [Alec Ferretti](#)  
**To:** [Leone, Gerard](#); [Akers, Rodney \(GC\)](#); [Isenberg, Kelly](#)  
**Subject:** [External] OOR Submission 2022-2106  
**Date:** Tuesday, October 25, 2022 10:50:04 PM  
**Attachments:** [2008-2021 Contracts.pdf](#)  
[Ferretti Response 2022-2106.pdf](#)

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

To whom it may concern,

I have just posted two documents in the OOR Portal. I am emailing them as well because not all parties have portal access.

--

Alec Ferretti

Alec Ferretti  
242 E 38th St Apt 2F  
New York, NY 10016

October 25, 2022

VIA ELECTRONIC MAIL

Kelly Isenberg  
Senior Appeals Officer  
Commonwealth of Pennsylvania  
Office of Open Records  
333 Market Street, 16th Floor  
Harrisburg, PA 17101

Re: Docket No. AP 2022-2106

Dear Appeals Officer Isenberg,

I hope you will still accept this response as timely, as the final determination has not yet been rendered. This dispute centers on a few different concepts, regarding the production of records scanned pursuant to contracts with Ancestry.com AKA The Generations Network: (1) the difference between *physical* custody and *legal* custody of potentially responsive records, (2) the implications of an *immense* request, and (3) if the request was *sufficiently* described. I address each in my response below:

PHMC's claim appears to be, in part, that because they do not maintain physical custody of the records, they do not need to produce them under RTK. Because they are still the legal custodian, the physical location of the records has no relevance to this RTK request, other than, perhaps, to determine a cost estimate for the reproduction. PHMC informed me that they outsourced the storage of the requested records to Ancestry, citing in their affidavit their need to avoid the high costs of running a digital repository. The Agency "currently relies on The Generations Network/Ancestry to provide storage and public access to the records." Thus, Ancestry is functionally an offsite storage facility, which preserves records legally possessed by PHMC. This does not obviate their obligations under RTK.

The text of RTK defines a "record" as "Information, regardless of physical form or characteristics, that documents a transaction or activity of an agency and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency. The term includes a document, paper, letter, map, book, tape, photograph, film or sound recording, information stored or maintained electronically and a dataprocessed or image-processed document." The requested records, digitized historical documents, clearly fit into this definition, as they are *information, created [and] retained pursuant to law, connected to activity of the agency, and stored electronically*. It would be preposterous if an agency could exempt themselves from RTK by simply storing their records in a warehouse owned by a private company. The text of the law rightfully makes no exemption for this, and instead, requires that records legally in the custody of the agency be produced, regardless of where the files live.



The agency's response noted that in 2016, "PHMC received a copy of the data that comprised all the documents scanned by Ancestry to that point [...] which would have required nearly \$300,000 annually to maintain. That immense maintenance burden was why PHMC ultimately arranged for Ancestry to maintain the scanned records for the Commonwealth." PHMC further claims that "it does not possess or control the documents requested such that they can be requested" [from Ancestry] but yet they concede that Ancestry provided them essentially the same data in 2016, but that they threw away, returned, or otherwise disposed of the hard drives.

These statements are contradictory. If Ancestry maintains records *for* the commonwealth, PHMC is still the legal custodian. If Ancestry provided the records to PHMC in the past, it is certainly both possible and reasonable to do so again. Thus, via a circuitous path, and despite some statements suggesting otherwise, PHMC appears to actually agree that they *are* the legal custodian of the records, and that Ancestry *is* willing and able to provide PHMC a copy of the data upon request.

Thus, we arrive at the second issue, contemplating if a request being immense can suffice as an exemption to RTK. The response claims that PHMC they could work with Ancestry to produce the records for me, if only the request were simply not so immense. PHMC cites no statutory provision or judicial decree that provides for such an exemption. Moreover, they provide no evidence that the request is even immense in the first place. They simply state that Ancestry, their offsite vendor, a multi-billion dollar technology firm, would be unable to transfer the data, "because the request is so immense that to fulfill it would be a gross misapplication of the RTKL." Even if they had not admitted that Ancestry had provided them this data in the past, Ancestry is surely able to produce the responsive records because 45 terabytes is simply not that much. Three hard drives on Amazon can fit the entirety of the data, at a cost of less than \$600 (presumably to be paid by the requester)<sup>1</sup>. Assuming the data was being transferred from and to standard USB 3.0 hard drives, at standard USB 3.0 speeds, the entire transfer would take less than 5 days<sup>2</sup>. At the technology's upper bound transfer rate, the transfer would take less than a single day. Insofar that an immense request is grounds for denial, which it is not, these records are not immense.

In some circumstances, this much data *could* reasonably be considered immense, namely, if the agency needed to conduct a lengthy page-by-page legal review. However, this data is all publicly available at the Archives, and online to those who pay for an Ancestry subscription. All parties agree that the entirety of the records are public records. The only part of this particular request that could be construed as immense are the costs to the agency to create a digital repository of these records to proper archival standards. RTK does not compel PHMC to create a digital repository, nor did I ask them to do so. The law, instead, compels PHMC to produce records when requested, as I have done.

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<sup>1</sup> [https://smile.amazon.com/dp/B08KTRKB6S/ref=twister\\_B0BGM428M4?\\_encoding=UTF8&th=1](https://smile.amazon.com/dp/B08KTRKB6S/ref=twister_B0BGM428M4?_encoding=UTF8&th=1).

<sup>2</sup> <https://www.macworld.com/article/221042/how-fast-is-usb-3-0-really.html>

The Agency seems to be suggesting that, in order to provide me with a copy of the data, they will have to undertake the \$300,000 annual cost of creating a digital repository. This is false. The records are sitting on a hard drive somewhere in Utah, and Ancestry just needs to copy them and ship them to me. If Ancestry is storing records “for the commonwealth,” doing such action would be congruent with RTK. If permitted by the Agency, I can work directly with the Ancestry and remove PHMC from having to manage the request at all, however, they could also request the data from Ancestry, and then ship the hard drives to me once they have received them.

PHMC also claims that “[t]he Requester has effectively asked for a transfer of state property worth hundreds of thousands of dollars,” but this is not true. There is no financial value to public archival records. What they mean is that I am asking for data that a private entity, spent a lot of money to digitize, with a contractual understanding between the entity and the PHMC that the data would eventually be given back to the Agency for public release. This is explicitly written into the contracts that were signed. Of course, this is all irrelevant because just as there is no RTL exemption for *immense* records, or *offsite* records, there is no exemption for *financially valuable* records, or records *which have been contractually restricted*. PHMC has cited nothing suggesting there is. While perhaps these are potential exemptions that the legislature could contemplate, they do not exist in RTK as the law is written today. If there is case law supporting this, the Agency did not find any.

Finally, we arrive at the third issue, and the only issue for which PHMC has provided any citation. They claim that my request was not sufficiently specific “to enable the agency to ascertain which records are being requested,” as required by 65 P.S. § 67.703. This is nonsense. If the agency did not know what I had requested, they would not have been able to quote me the exact size of the data. There is no legitimate question as to what records I have requested. If there were, PHMC would have brought this up in my original denial.

Due to the idiosyncratic nature of the Commonwealth Court, this does not necessarily preclude case law from permitting an agency to deny my request. PHMC cited two cases that purport to show my request as *insufficiently* specific, but a close reading of these two cases demonstrates that neither does. First, they cite Carey v. Pennsylvania Dep't of Corr., 61 A.3d 367, 372 (Pa. Commw. Ct. 2013). This case in fact deemed a request sufficiently specific because it sought “a discrete group of documents” limited by recipient. My request was similarly specific. My request was for a discrete set of records: “All documents scanned (and subsequent indexes and metadata created)” pursuant to a number of contracts. The contracts specifically itemize what is being scanned, which I am submitting to OOR as a separate exhibit. For the purposes of the standard set by the court, the recipient of the records would be Ancestry/The Generations Network. They received the records, and continue to maintain them today.

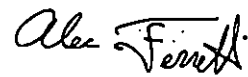
PHMC next cited the famous case of Pa. Dep't of Educ. v. Pittsburgh Post-Gazette, 2015 Pa. Commw. 316 (Pa. Cmwlth. Ct. 2015), which established a three-part balancing test to determine if a request was sufficiently specific. My request easily satisfies all parts of this test. The transaction or activity would be the digitization of historical records. The scope of the documents are those which were received by Ancestry. The timeframe is 2008-2021, the dates of their contracts. All of this is spelled out clearly in the contracts, which I obtained pursuant to a

prior RTK request. It, dare I say, strains credulity, that a request is not sufficiently specific, if the potentially responsive materials to the request are discrete deliverables from clearly itemized agreements. It would likely take more effort on the part the custodian to divide out specific subsets of records than to simply copy everything over in bulk.

There is perhaps a bigger picture here, separate from these three issues. There is a massive public interest in ensuring that these records do not only exist (in digital form) at Ancestry headquarters. The costs to digitize the collections were monumental, and if Ancestry were to have a data loss, go bankrupt, or even decide to change their business model, then PHMC may be unable to retrieve the data. The Agency, the citizens of the Commonwealth, and researchers from around the world would have no choice but to go back to retrieving these records from microfilm or degrading books. The metadata that Ancestry created, which PHMC also claims not to have, would be lost forever. Instead of having robust indexes which cross reference many fields of data contained within the documents, they would have to rely on whatever clunky analog indexes were created decades ago. This request seeks to ensure that 45 terabytes of the Commonwealth's history have a backup. As it stands now, were Ancestry to shutter, these records would be rendered nearly inaccessible. The costs to recreate what Ancestry has done would legitimately be immense, and PHMC would probably never be able to afford them. If OOR dismisses this appeal, then a sizable chunk of Pennsylvania's history will rest in the hands of Blackstone and the Sovereign Wealth Fund of Singapore<sup>3</sup>.

There is no reason why PHMC cannot provide me the requested information. Despite the fact that the records are stored off-site and are fairly large in size, there is no legal or technical impediment that would prevent me from receiving copies. Most importantly, the request was sufficiently specific, and disclosure is clearly in the public interest. It passes the test set by the Commonwealth Court as well as the test of the court of common sense.

Respectfully,

A handwritten signature in black ink, appearing to read "Alec Ferretti". The signature is stylized with a large, flowing "A" and "F".

Alec Ferretti

---

<sup>3</sup> <https://www.ancestry.com/corporate/about-ancestry/our-team>

MSC 17173

**License Agreement**

This License Agreement ("AGREEMENT") is entered into as of the date last signed below, between The Generations Network, Inc., Delaware corporation with its principal office at Provo, Utah ("TGN"), and the Pennsylvania Historical and Museum Commission, an independent agency of the Commonwealth of Pennsylvania ("Commonwealth"), located in Harrisburg, Pennsylvania ("PHMC").

WHEREAS, TGN operates multiple genealogy and family history related Web properties, including Ancestry.com, that provide family-oriented services, genealogy research and access to other related services (the "TGN Network").

WHEREAS, PHMC owns or has rights to historical records, including the records covered in Appendix A (the "Records"), as may be supplemented from time to time by mutual agreement; and

WHEREAS, TGN desires to access the Records for the purpose of digitization, index creation and distribution. The resulting digital images and indexes created by TGN from the Records are referred to as the "Licensed Materials."

THEREFORE, the parties, intending to be legally bound, agree to the following:

**Definitions:**

**Records.** The term "Records" shall mean those PHMC Collections as described in Appendix A.

**Licensed Materials.** The term "Licensed Materials" shall mean those digital images and indexes that TGN creates as a result of digitizing and indexing the records.

**1. Records Access.**

- 1.1. **By PHMC.** PHMC shall: a) deliver to TGN a copy of the Records on microfilm, and b) provide TGN with copies of digital records, as specified in Appendix A.
- 1.2. **By TGN.** TGN agrees to digitize and create a basic index of the Records, and, prior to or simultaneously to posting such records to the TGN Network, provide PHMC with a digital copy of the images and indexes, in a digital format approved by PHMC, subject to the use restrictions stated below. TGN agrees to provide free access for up to 20 simultaneous users to Ancestry.com, including the Licensed Materials, on location at the state archive. TGN agrees to provide the PHMC logo and sourcing credit and quarterly usage reports on web pages containing the Licensed Materials. TGN warrants that the digitized and indexed images provided to PHMC will be free from defect and that if defective, it will repair or replace the digitized and indexed images at its own expense.

**2. Grant of Licenses.**

- 2.1. **By PHMC.** PHMC grants to TGN the right and license to digitize, index, copy, publish, republish, market, distribute, and sell the Licensed Materials anywhere in the world within any media, including but not limited to printed and Electronic Products. "Electronic Product" shall mean the publication and/or distribution of the Licensed Materials in any and all electronic media, now known or developed in the future, including but not limited to floppy disk, CD-ROM, DVD, hand held devices, Internet (or any other method of on-line publication or distribution). For each collection, this right and license will be held exclusively by TGN for a period of three years (the "Exclusive Period") beginning the date on which TGN posts the Licensed Materials online, except as specified in the Appendixes.

- 2.2. By TGN. TGN grants PHMC a non-exclusive, non-transferable right and license to use the Licensed Materials for the benefit of its patrons. (Licensed Materials provided to PHMC may be used for internal purposes at any time during or after the Exclusive Period.) PHMC may not post the Licensed Materials on its website for a period of three years from the date when the Licensed Materials were posted online by TGN. The Licensed Materials may not be distributed or resold by PHMC to any company or institution for any purpose, and is solely for the use of individual patrons. Following the three-year exclusive period, PHMC can post the Licensed Materials on its website for use by the general public. In the event that PHMC chooses to post the Licensed Materials online following the Exclusive Period, TGN is no longer obligated to provide free access to the Licensed Materials on-site, at the state archive.
- 2.3. While either party may use third parties to assist in the development and production of the Electronic Product, the license granted to PHMC does not allow partnering, or co-publishing relationships by PHMC, whereby any third party becomes a publisher of the Licensed Materials in an Electronic Product, or shares in the profit from the publication of the Licensed Materials in an Electronic Product.
- 2.4. The PHMC reserves all rights pertaining to use of the original records, as described in Appendix A, provided to TGN.
3. Representations. Each party represents and warrants that it has the right to enter into this AGREEMENT and that by doing so it shall not violate or infringe the rights of any third party.
4. Background Checks.
- 4.1. TGN must, at its expense, arrange for a background check for each of its employees, as well as for the employees of its subcontractors, who will have access to Commonwealth facilities. Background checks are to be conducted via the Request for Criminal Record Check form and procedure found at <http://www.psp.state.pa.us/psp/lib/psp/sp4-164.pdf>. The background check must be conducted prior to initial access by an IT employee and annually thereafter.
- 4.2. Before the Commonwealth will permit a contract employee access to Commonwealth facilities, TGN must provide written confirmation to the office designated by the agency that the background check has been conducted. If, at any time, it is discovered that an contract employee has a criminal record that includes a felony or misdemeanor involving terroristic threats, violence, use of a lethal weapon, or breach of trust/fiduciary responsibility; or which raises concerns about building, system, or personal security, or is otherwise job-related, TGN shall not assign that employee to any Commonwealth facilities, shall remove any access privileges already given to the employee, and shall not permit that employee remote access to Commonwealth facilities or systems, unless the agency consents, in writing, prior to the access being provided. The agency may withhold its consent at its sole discretion. Failure of TGN to comply with the terms of this paragraph may result in default of TGN under its Agreement with the Commonwealth.
- 4.3. The Commonwealth specifically reserves the right of the Commonwealth to conduct background checks over and above that described herein.
5. Insurance (applicable only if TGN employees or contractors perform work onsite at PHMC).
- 5.1. TGN shall procure and maintain at its expense and require its subcontractors to procure and maintain, as appropriate, the following types of insurance, issued by companies acceptable to PHMC and authorized to conduct such business under the laws of the Commonwealth of Pennsylvania.

- 5.1.1. Worker's Compensation Insurance for all of TGN's employees and those of any subcontractor engaged in performing Services in accordance with the *Worker's Compensation Act* (77 P.S. § 101, *et seq.*).
- 5.1.2. Public liability and property damage insurance to protect the Commonwealth of Pennsylvania, TGN and any and all subcontractors from claims for damages for personal injury (including bodily injury), sickness or disease, accidental death, and damage to property, including loss of use resulting from any property damage which may arise from its operations under this AGREEMENT, whether such operation be by TGN, by any subcontractor, or by anyone directly or indirectly employed by either. The limits of such insurance shall be in an amount not less than \$500,000 per person and \$2,000,000 per occurrence, personal injury and property damage combined. Such policies shall be occurrence rather than claims-made policies and shall name the Commonwealth of Pennsylvania as an additional insured. The insurance shall not contain any endorsements or any other form designed to limit and restrict any action by the Commonwealth as an additional insured against the insurance coverages in regard to the work performed for the Commonwealth.
- 5.2. Prior to commencing work under the AGREEMENT, TGN shall provide PHMC with a copy of each current certificate of insurance. These certificates shall contain a provision that coverages afforded under the policies will not be canceled or changed in such a way to cause the coverage to fail to comply with the requirements of this Section until at least thirty (30) days prior written notice has been given to PHMC.
- 5.3. TGN agrees to maintain such insurance for the life of the AGREEMENT.

6. Conflicts.

- 6.1. In the event of a controversy or claim arising from the AGREEMENT, TGN must, within six months after the cause of action accrues, file a written claim with the Contracting Officer for a determination. The claim shall state all grounds upon which TGN asserts a controversy exists. If TGN fails to file a claim or files an untimely claim, TGN is deemed to have waived its right to assert a claim in any forum.
- 6.2. The Contracting Officer shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within 120 days of the receipt of the claim, unless extended by consent of the Contracting Officer and TGN. The Contracting Officer shall send his/her written determination to TGN. If the Contracting Officer fails to issue a final determination within the 120 days (unless extended by consent of the parties), the claim shall be deemed denied. The Contracting Officer's determination shall be the final order of the purchasing agency.
- 6.3. Within fifteen (15) days of the mailing date of the determination denying a claim or within 135 days of filing a claim if, no extension is agreed to by the parties, whichever occurs first, TGN may file a statement of claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, TGN shall proceed diligently with the performance of the AGREEMENT in a manner consistent with the determination of the Contracting Officer and PHMC shall compensate TGN pursuant to the terms of the AGREEMENT.

7. Confidentiality.

- 7.1. TGN agrees to guard the confidentiality of the PHMC with the same diligence with which it guards its own proprietary information. PHMC agrees to protect the confidentiality of

TGN's confidential information with the same diligence with which it guards its own proprietary information. In order for information to be deemed to be confidential, the party claiming confidentiality must designate the information as "confidential" in such a way as to give notice to the other party. The parties agree that such confidential information shall not be copied, in whole or in part, except when essential for authorized use under this AGREEMENT. Each copy of such confidential information shall be marked by the party making the copy with all confidentiality notices appearing in the original.

7.2. The obligations stated in this Section do not apply to information:

- 7.2.1. already known to the recipient at the time of disclosure other than through the contractual relationship;
- 7.2.2. independently generated by the recipient and not derived from the information supplied by the disclosing party;
- 7.2.3. known or available to the public, except where such knowledge or availability is the result of unauthorized disclosure by the recipient of the proprietary information;
- 7.2.4. disclosed to the recipient without a similar restriction by a third party who has the right to make such disclosure; or
- 7.2.5. required to be disclosed by the recipient by law, regulation, court order, or other legal process.

7.3. There shall be no restriction with respect to the use or disclosure of any ideas, concepts, know-how, or data processing techniques developed alone or jointly with PHMC in connection with services provided to PHMC under this AGREEMENT.

8. Termination.

- 8.1. Termination for Cause by PHMC: If, through any cause, TGN fails to fulfill, in a timely and proper manner, its obligations under this AGREEMENT, PHMC shall give TGN written notice of a deficiency in its performance. If TGN does not correct the deficiency to the reasonable satisfaction of PHMC within thirty (30) days of its receipt of the notice of deficiency, PHMC may terminate this AGREEMENT.
- 8.2. Termination for Cause by TGN: If, through any cause, PHMC fails to fulfill, in a timely and proper manner, its obligations under this AGREEMENT, TGN shall give PHMC written notice of a deficiency in its performance. If PHMC does not correct the deficiency to the reasonable satisfaction of TGN within thirty (30) days of its receipt of the notice of deficiency, TGN may terminate this AGREEMENT.
- 8.3. Return of Materials. If this Agreement is terminated for cause by either party, PHMC agrees to return to TGN any Licensed Materials it has received from TGN and TGN agrees to return to PHMC any records, as described in Appendix A, it has received from PHMC.

9. Assignability

- 9.1. Subject to the terms and conditions of this Section, the AGREEMENT is binding upon the parties and their respective successors and assigns.

- 9.2. TGN may not assign, in whole or in part, the AGREEMENT or its rights, duties, obligations, or responsibilities hereunder without the prior written consent of PHMC, which consent may be withheld at the sole and absolute discretion of PHMC.
- 9.3. For the purposes of the AGREEMENT, the term "assign" shall include, but shall not be limited to, the sale, gift, assignment, encumbrance, pledge, or other transfer of any ownership interest in TGN provided, however, that the term shall not apply to the sale or other transfer of stock of a publicly traded company.
- 9.4. Any assignment consented to by PHMC shall be evidenced by a written assignment agreement executed by TGN and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of the AGREEMENT and to assume the duties, obligations, and responsibilities being assigned.
- 9.5. Notwithstanding the foregoing, TGN may, without the consent of PHMC, assign its rights to payment to be received under the AGREEMENT, provided that TGN provides written notice of such assignment to the PHMC together with a written acknowledgement from the assignee that any such payments are subject to all of the terms and conditions of the AGREEMENT.
- 9.6. A change of name by TGN, following which the TGN federal identification number remains unchanged, is not considered to be an assignment. TGN shall give PHMC written notice of any such change of name.
10. Commonwealth Held Harmless
- 10.1. TGN shall hold the Commonwealth harmless from and indemnify the Commonwealth against any and all third party claims, demands and actions based upon or arising out of any activities performed by TGN and its employees and agents under this AGREEMENT, provided the Commonwealth gives TGN prompt notice of any such claim of which it learns. Pursuant to the *Commonwealth Attorneys Act* (71 P.S. § 732-101, et seq.), the Office of Attorney General ("OAG") has the sole authority to represent the Commonwealth in actions brought against the Commonwealth. The OAG may, however, in its sole discretion and under such terms as it deems appropriate, delegate its right of defense. If OAG delegates the defense to TGN, the Commonwealth will cooperate with all reasonable requests of TGN made in the defense of such suits.
- 10.2. Notwithstanding the above, neither party shall enter into any settlement without the other party's written consent, which shall not be unreasonably withheld. The Commonwealth may, in its sole discretion, allow TGN to control the defense and any related settlement negotiations.
11. Independent Capacity of TGN
- 11.1. The parties to this AGREEMENT agree that the services performed by TGN under the terms of this AGREEMENT are performed as an independent contractor. The services performed by TGN are performed neither as an employee of the Commonwealth of Pennsylvania nor as a partnership or joint venture between the PHMC and TGN.
- 11.2. Except as otherwise provided by the terms of this AGREEMENT, PHMC shall have no control over the manner in which the contractual services are performed by TGN, or any subcontractor. Any job specifications or standards of work attached to or incorporated into this AGREEMENT or any subcontracting restrictions contained in this AGREEMENT



shall not be construed as PHMC's direction or control over the manner of the performance of services provided by TGN.

12. Notices. Notices provided under this AGREEMENT will be effective if delivered to the then current principal business address of the other party. The current addresses are:

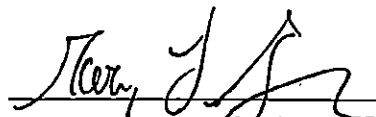
If to TGN: 360 West 4800 North Provo, Utah, 84604 Attn: Al Viera, with a copy to General Counsel at the same address TGN's telephone: 801-705-7000. TGN's fax: 801-705-7001.

If to PHMC: 300 North Street, Harrisburg, PA 17120-0090 Attn: Barbara Franco, Executive Director, Pa. Historical & Museum Commission, telephone 717-787-2891, fax 717-705-0482. Notices may be given by first class mail, express courier or confirmed facsimile.

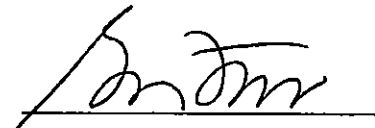
13. Applicable Law. This AGREEMENT shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of the Pennsylvania courts. TGN consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal courts in Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. TGN agrees that any such court shall have in personam jurisdiction over it, and consents to service of process in any manner authorized by Pennsylvania law.
14. Incorporation of Exhibits. Commonwealth Non-Discrimination/Sexual Harassment, Contractor Integrity Provisions, Contractor Responsibility Provisions, Tax Offset Clause, and Provisions Regarding the Americans with Disabilities Act are hereto attached and incorporated as Exhibits "A", "B", "C", "D" and "E", respectively. TGN shall be known as "Contractor" for purposes of these provisions

The signatures of the parties below indicate their respective acknowledgment of the terms outlined in this AGREEMENT.

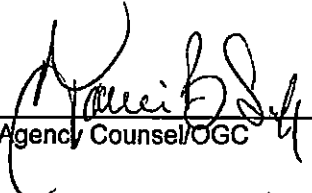
**The Generations Network, Inc.**

Signed:   
Name: Gary L. Gibb  
Title: V.P. Content  
Date: Nov 18, 2008


**Pennsylvania Historical and Museum Commission**

Signed:   
Name: Barbara A. Franco  
Title: Executive Director  
Date: 12/15/08

**APPROVED AS TO FORM AND LEGALITY**

By  12/18/08  
Agency Counsel/OGC Date

  
Office of the Attorney General

<sup>10/28/09</sup>  
By  2/6/09  
Comptroller Date

## Appendix A

Collections considered the Records for purposes of this AGREEMENT:

Project Name	Approx. # of Images	Years Covered	Format	Exclusivity
Septennial Census	11000	1775-1863	Microfilm	3 Years
Oyer and Terminer	4800	1757-1786	Microfilm	3 Years
Warrant Applications	90000	1734-1952	Microfilm	3 Years
Tax and Exoneration	31000	1761-1801	Microfilm	3 Years
Warrants	150,000	1682-	Microfilm	3 Years
Spanish-American Veterans' Compensation	73,000	1934	Microfilm	3 Years
War of 1812 Pension Files	21,600	1866-1896	Microfilm	3 Years
Civil War Border Claims	43000	1871-1879	Microfilm	3 Years
Supreme Court Naturalization Papers	40000	1794-1868	Microfilm	3 Years
WPA Church Archives	123,000	1937-1940	Microfilm	3 Years
Records of Marriages RG14	1500	1885-1889	Microfilm	3 Years
Births, Deaths Marriages RG26	5500	1852-1854	Microfilm	3 Years
Pennsylvania Veterans' Burial Cards	750,000	1929-1990	Digital	None

Exhibit A

NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE

During the term of the Contract, the Contractor agrees as follows:

- a. In the hiring of any employees for the manufacture of supplies, performance of work, or any other activity required under the Contract or any subcontract, the Contractor, subcontractor or any person acting on behalf of the Contractor or subcontractor shall not by reason of gender, race, creed, or color discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
- b. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work or any other activity required under the Contract on account of gender, race, creed, or color.
- c. The Contractor and any subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.
- d. The Contractor shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
- e. The Contractor and each subcontractor shall furnish all necessary employment documents and records to and permit access to its books, records, and accounts by the Contracting Officer and the Department of General Services Bureau of Contract Administration and Business Development for purposes of investigation to ascertain compliance with the provisions of this Nondiscrimination/Sexual Harassment Clause. If the Contractor or any subcontractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the Contracting Officer or the Bureau of Contract Administration and Business Development.
- f. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that such provisions will be binding upon each subcontractor.
- g. The Commonwealth may cancel or terminate the Contract, and all money due or to become due under the Contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

## Exhibit B

### CONTRACTOR INTEGRITY PROVISIONS

1. Definitions.
  - a. Confidential Information means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the Commonwealth.
  - b. Consent means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of execution of this agreement.
  - c. Contractor means the individual or entity that has entered into this agreement with the Commonwealth, including directors, officers, partners, managers, key employees, and owners of more than a 5% interest.
  - d. Financial interest means:
    - (1) ownership of more than a 5% interest in any business; or
    - (2) holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.
  - e. Gratuity means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.
2. The contractor shall maintain the highest standards of integrity in the performance of this agreement and shall take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with the Commonwealth.
3. The contractor shall not disclose to others any confidential information gained by virtue of this agreement.
4. The contractor shall not, in connection with this or any other agreement with the Commonwealth, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the Commonwealth.
5. The contractor shall not, in connection with this or any other agreement with the Commonwealth, directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the Commonwealth.
6. Except with the consent of the Commonwealth, neither the contractor nor anyone in privity with him shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under this agreement except as provided therein.
7. Except with the consent of the Commonwealth, the contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project.
8. The contractor, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify the Commonwealth in writing.
9. The contractor, by execution of this agreement and by the submission of any bills or invoices for payment pursuant thereto, certifies and represents that he has not violated any of these provisions.
10. The contractor, upon the inquiry or request of the Inspector General of the Commonwealth or any of that official's agents or representatives, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to the Contractor's integrity or responsibility, as those terms are defined by the Commonwealth's statutes, regulations, or management directives. Such information may include, but shall not be limited to, the contractor's business or financial records, documents or files of any type or form which refer to or concern this agreement. Such information shall be retained by the contractor for a period of three years beyond the termination of the contract unless otherwise provided by law.
11. For violation of any of the above provisions, the Commonwealth may terminate this and any other agreement with the contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another contractor to complete performance hereunder, and debar and suspend the contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

## Exhibit C

### CONTRACTOR RESPONSIBILITY PROVISIONS

For the purpose of these provisions, the term contractor is defined as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee, or subgrantee, who has furnished or seeks to furnish goods, supplies, services, or leased space, or who has performed or seeks to perform construction activity under contract, subcontract, grant, or subgrant with the Commonwealth, or with a person under contract, subcontract, grant, or subgrant with the Commonwealth or its state-affiliated entities, and state-related institutions. The term contractor may include a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other entity of the Commonwealth.

1. The contractor must certify, in writing, for itself and all its subcontractors, that as of the date of its execution of any Commonwealth contract, that neither the contractor, nor any subcontractors, nor any suppliers are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the contractor cannot so certify, then it agrees to submit, along with the bid/proposal, a written explanation of why such certification cannot be made.

2. The contractor must also certify, in writing, that as of the date of its execution, of any Commonwealth contract it has no tax liabilities or other Commonwealth obligations.

3. The contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the contractor shall have an obligation to inform the contracting agency if, at any time during the term of the contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.

4. The failure of the contractor to notify the contracting agency of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the contract with the Commonwealth.

5. The contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the contractor's compliance with the terms of this or any other agreement between the contractor and the Commonwealth, which results in the suspension or debarment of the contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The contractor shall not be responsible for investigative costs for investigations that do not result in the contractor's suspension or debarment.

6. The contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the internet at <http://www.dgs.state.pa.us/debarment.htm> or contacting the:

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

## **Exhibit D**

### **Tax Offset Clause**

**The Contractor authorizes the Commonwealth to offset any state and local tax liabilities of the contractor of any of its subsidiaries, as well as, any other amount due to the Commonwealth from the contractor, against any payment due to the contractor under this or any other contract with the Commonwealth.**

## Exhibit E

### AMERICANS WITH DISABILITIES ACT

a. Pursuant to federal regulations promulgated under the authority of The Americans With Disabilities Act, 28 C.F.R. § 35.101 et seq., the Contractor understands and agrees that it shall not cause any individual with a disability to be excluded from participation in this Contractor from activities provided for under this Contract on the basis of the disability. As a condition of accepting this contract, the Contractor agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. § 35.130, and all other regulations promulgated under Title I of The Americans With Disabilities Act which are applicable to all benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.

b. The Contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of the Contractor's failure to comply with the provisions of subparagraph a above.



## **EXPANDED USE AGREEMENT**

**GENEALOGICAL SOCIETY OF UTAH**, a nonprofit corporation organized under the laws of the State of Utah in the United States of America, with principal offices located at 50 East North Temple Street, Suite 500, Salt Lake City, Utah, United States of America (Society), and the Pennsylvania Museum and Historical Commission, with offices at State Museum Building, 300 North Street Harrisburg, PA 17120 (Records Custodian), represent and agree as follows:

1. The Society has previously microfilmed/digitally imaged and/or purchased copies of records (Records), under the custody of the Records Custodian as briefly described below or on an attached list:

See appendix "A" – Records acquired from the Pennsylvania Historical & Museum Commission

This has resulted in the creation of Microfilmed/Digital Records.

2. This Expanded Use Agreement memorializes, amends and is supplemental to prior verbal or implied Agreements.

3. The Society may reproduce, distribute, transmit, display, use and permit the use of the Microfilmed/Digital Records, for nonprofit purposes, via any technology and in any medium now known or later developed (Use Rights). The Society may also utilize information from the Microfilmed/Digital Records to create resources such as indices and research aids. The Society may not sell copies of the Microfilmed/Digital Records in any medium without the written consent of the Records Custodian but may sell any resources it creates from the Microfilmed/Digital Records. The Society may also charge users a use fee to help cover the cost of providing access to the Microfilmed/Digital Records.

4. The Records Custodian represents that it has the authority to allow use of the Records as specified in this Agreement.

5. The Society agrees to provide the Records Custodians with one (1) complete set of digital images of each of our collections digitized under this agreement.

6. This Agreement constitutes the entire agreement between the parties. If any provision of this Agreement is or is deemed invalid or unenforceable, the remaining provisions shall remain in force. Any modification or addition to this Agreement must be in writing and signed by both parties.

7. Either party may assign its rights under this Agreement to any successor or affiliate.

**RECORDS CUSTODIAN:**

<u>David A. Haury</u>	<u>David A. Haury</u>
Signature	(print name)
<u>State Archivist</u>	<u>9/17/07</u>
Title	Date

In behalf of the Pennsylvania Museum and Historical Commission

**SOCIETY:**

<u>Ransom H. Love</u>	<u>Ransom H. Love</u>
Signature	(print name)
<u>Senior Vice President</u>	<u>19 Feb 2009</u>
Title	Date

In behalf of Genealogical Society of Utah

Pennsylvania Museum and Historical Commission  
Records preserved by the Genealogical Society of Utah

Record Type	Time period	Year filmed	Number of rolls
Accounts Receipt books	1775-1779 1775-1776	1978	2
Accounts	1777-1790	1978	2
Admission and discharge books Clemency file Mortgage books Mortgages and valuations for Bedford, Chester, Cumberland, Philadelphia and York counties Pardon books	1844-1888 1790-1873 1774-1788 1773-1793 1791-1877	1979	57
Application for passes	1775-1790	1978	1
Applications for patents when the present owner cannot give a complete statement of the title from the warrantee Applications for release of liens Philadelphia city lots	1786-1884 1816-1929 1682-1790	1976	1
Applications for release of liens Applications for patents when the present owner cannot give a complete statement of the title from the warrantee Philadelphia city lots	1816-1929 1786-1884 1682-1790	1976	2
Applications for warrants	1734-1865	1975	173
Applications for warrants	1755-1866	1976	4
Applications for warrants not issued	1786-1909	1976	13
Applications: new purchase # 1-3683 Index to old rights in Bucks & Chester counties Index to old rights in Philadelphia county	1770-1790 1682-1761 1682-1748	1976	1
Appointments files Bankruptcy files	1775-1790 1785-1790	1979	4
Assessor's duplicate tax list for Allen Township Assessor's duplicate tax list for Buffalo Township Assessor's duplicate tax list for Dickinson Township Assessor's duplicate tax list for East Pennsboro Assessor's duplicate tax list for Fannett Township Assessor's duplicate tax list for Frankford Township Assessor's duplicate tax list for Greenwood Township  Assessor's duplicate tax list for Hopewell Township Assessor's duplicate tax list for Middleton Township Assessor's duplicate tax list for Mifflin Township  Assessor's duplicate tax list for Newton Township Assessor's duplicate tax list for Rye Township Assessor's duplicate tax list for Shippensburg Assessor's duplicate tax list for South Middleton Township Assessor's duplicate tax list for Southampton Township	1796-1798 1808-1809 1793, 1802, 1803 1798, 1809, 1810 1783 1804 1798, 1801, 1810 & 1813 1798 1798, 1809 1798, 1804, 1809, 1812 & 1814 1798, 1817 1798, 1813, 1817 1817 1813 1803, 1809, 1812	1982	1

Assessor's duplicate tax list for Toboyne Township	1798		
Assessor's duplicate tax list for Tyrone Township	1798		
Cumberland Co, Negro Slaves name & age returns	1780, 1791, 1828		
Baynton, Wharton and Morgan papers in PA State Arch.	--	?	10
Births, marriages and deaths	1852-1854	1977	6
Board of Property papers	1682-1850	1976	19
Board of Property petitions, undated	1682-1815	1976	5
Board of War and State Navy Board file	1776-1777	1978	1
Caveats	1699-1890	1976	20
Certified townships of Luzerne County	--	1966	79
Index to old rights in Philadelphia County	1682-1748		
Master register of Commonwealth property	1919-1957		
Original purchases	1683-1702		
Patent books	1676-1960		
Civil War veterans card file	1861-1866	1978	80
Clemency files	1775-1790	1978	12
Election returns	1776-1790		
Forfeited estates file	1777-1790		
Marriage bonds	1784-1786		
Militia returns	1775-1790		
Oaths of allegiance	1777-1790		
Connecticut patents for land in the 17 <sup>th</sup> townships of Luzerne Co.	1785-1810	1976	25
Convict docket	1826-1859	1979	1
Coroner's inquisitions	1751-1796	1977	1
County surveys	1683-1859	1976	3
Court of Admiralty records	1780-1795	1976	2
Court records for the Eastern District	1736-1856	1977	24
Day books	1809-1879	1978	50
Declarations of intention	1832-1906		
Marriage records	1885-1889		
Military accounts, line	1775-1809		
Military accounts, militia	1793-1809		
Military accounts, Navy	1775-1794		
Passenger & street railway companies reports & Railroads & steam railway companies reports	1861-1903		
Pilot indentures	1806-1896 & 1908-31		
Practitioners of Medicine and Surgery	1881-1889		
Register of Physicians in Pennsylvania	1870-1917		
Revolutionary War pensions	1785-1809		
Revolutionary War pensions accounts	1807-1883		
War, list of soldiers	1812		
Death warrants	1794-1873	1977	4
Death warrants	1874-1899	1979	19
Land office journal	1738-1773		
Population records	1889-1910		

Rent rolls	1703-1744		
Deeds	1792-1795	1976	2
Depositions	1683-1881	1976	14
Depreciation lands records	1780-1800	1976	1
Donation lands or military tracts	1780-1800		
Master register of Commonwealth property	1919-1957		
Descriptive books of Pennsylvania regiments	1861-1864	1979	4
List of deserters	1866		
Mexican service index	1846-1848		
Military records	1864-1870		
Muster roll for Pennsylvania soldiers	1869-1880		
Names of sick and wounded soldiers of PA volunteers	1861-1866		
Naturalization lists	1740-1773		
New Castle County survey notes	1675-1679		
Pennsylvania soldier's home records	1866-1883		
Pennsylvania soldiers and sailors homes	1864-1872		
Registrar book	1720-1739		
Diaries	--	1979	4
Divorce papers	1786-1815	1978	6
Escheats	1796-1822		
Dockets	1828-1910	?	1
Docket of JP. Houser	1858-1893		
List of taxables, Harmony Township	1852-1876		
Donation lands records	1780-1800	1976	9
East & West side applications	1765-1769	1976	1
Equity papers	1836-1880	1978	2
Executive Correspondence	1775-1790	1978	16
General motions docket	1750-1837	1977	1
Divorce docket	1800-1805		
Grand Army of the Republic collection, descriptive books	1866-1956	1995	5
Habeas Corpus	1771-1773, 1775 & 1785-1787	1978	1
Index to old rights in Bucks and Chester Counties	1682-1761	1976	1
Index to old rights in Philadelphia County	1682-1748		
New purchase of Applications	1770-1790		
Index to old rights in Philadelphia County	1682-1748	1966	1
Master register of Commonwealth property	1919-1957		
Inventory of Church archives in Pennsylvania	--	1977	72
Island records (sales, surveys, appraisals, etc.)	1757-1865	1976	13
Judgment dockets (indices)	1756-1896	1977	3
Land drafts and warrants	1738-1890	1976	5
Land papers from Board of property	1753-1868		
Land office journal	1738-1773	1979	1
Rent rolls	1703-1744		
Last purchase original warrants	1780-1810	1976	16
Letters of attorney	1681-1895	1976	9

List of people received into the marine hospital out of sundry	1784	1978	1
Return of officers and soldiers from unpatented lots	--		
Return of Pennsylvania Line entitled to donation lands	1785-1809 &		
Revolutionary war pension accounts	1834-38		
Mexican War military accounts	1846-1880	1978	11
War of 1812 militia accounts	1812-1827		
Military abstract card for the Revolutionary War	1775-1783	1978	42
Military claims not settled	1862-1905	1977	5
Military claims settled	1862-1905	1977	63
Militia absentee returns for Philadelphia city	1777-1791	1978	2
Militia accounts	1777-1794	1978	38
Minutes books	1775-1776		9
Records	1776-1790		
Misc. manuscripts of the Revolutionary War era	1771-1791	197?	1
Mortgage records	1687-1820	1976	6
Names of foreigners who took the oath of allegiance to the province and state of Pennsylvania	1727-1775	1967	1
With foreign arrivals	1786-1808		
Naturalization records	1794-1868	1977-78	42
Index to naturalization	1794-1824 1842-1868		
New and last purchases	1769, 1784	1976	1
Nicholson lands-commissioner's return of sale	1769-1843	1976	1
Record of land applicants	1786		
Original surveys	1682-1920	1976	499
Original warrants	--	197?	156
Original warrants of depreciation lands	1780-1800	1976	4
Patent books	1676-1960	1976	78
Certified townships of Luzerne county	--		
Index to old rights in Bucks and Chester counties	1682-1761		
Index to old rights in Philadelphia county	1682-1748		
Original purchases	1683-1702		
Patents issued for in-lots and out-lots at the town of Beaver, Erie, Franklin, Warren and Waterford	1796-1919	1976	5
Pennsylvania Archives Series - 1 <sup>st</sup> to 7 <sup>th</sup> Series	--	1961-1974	65
Perpetuation of testimony docket	1781-1801	1977	1
Proof of settlement records	1797-1869	1976	15
Proprietary papers	1682-1850	1976	25
Proprietary towns	1751-1829	1976	1
Record of land surveyed by the Deputy Surveyors	1683-1859	1976	6
Record of the proprietary Governments	1700-1763	1979	1
Revolutionary War pension file	1809-1893	1977	3
Sheriff's deed book for the Eastern District	1796-1876	1977	4
Spanish American War Veteran's compensation file	--	1979	46

Tax and exoneration lists for Allegheny Co	1791	1978	1
Tax and exoneration lists for Bedford Co	1773-1782		
Tax and exoneration lists for Bedford Co	1782-1789	1978	1
Tax and exoneration lists for Berks Co	1767-1780		
Tax and exoneration lists for Berks Co	1781-1789	1978	9
Tax and exoneration lists for Bucks Co	1777-1789		
Tax and exoneration lists for Chester Co	1764-1788		
Tax and exoneration lists for Cumberland Co	1778-1789		
Tax and exoneration lists for Dauphin Co	1785-1789	1978	3
Tax and exoneration lists for Fayette Co	1783-1789		
Tax and exoneration lists for Franklin Co	1785-1789		
Tax and exoneration lists for Huntingdon Co	1788-1789		
Tax and exoneration lists for Lancaster Co	1772-1786		
Tax and exoneration lists for Montgomery Co	1785-1789	1978	1
Tax and exoneration lists for Northampton Co	1772-1790	1978	14
Tax and exoneration lists for Northumberland Co	1778-1787		
Tax and exoneration lists for Philadelphia Co	1762-1794		
Minutes of County Commissioners (Philadelphia)	1797-1801		
Carriage and billiard table taxes (Philadelphia)	1791-1794		
Tax and exoneration lists for Washington Co	1781-1789		
Tax and exoneration lists for Westmoreland Co	1783-1794		
Tax and exoneration lists for York Co	1779-1789		
Title papers	1784-1852	1976	11
US volunteers of the Spanish American War	1793-1901	1979	1
War of 1812 pension records	1866-1896	1977	27
Warrant of attorney docket	1795-1874	1977	3
Warrant register	1682-1950	1976	6
<b>Total Rolls:</b>			<b>2,118</b>

## **EXPANDED USE AGREEMENT**

**GENEALOGICAL SOCIETY OF UTAH**, a nonprofit corporation organized under the laws of the State of Utah in the United States of America, with principal offices located at 50 East North Temple Street, Suite 500, Salt Lake City, Utah, United States of America (Society), and the Pennsylvania Museum and Historical Commission, with offices at State Museum Building, 300 North Street Harrisburg, PA 17120 (Records Custodian), represent and agree as follows:

1. The Society has previously microfilmed/digitally imaged and/or purchased copies of records (Records), under the custody of the Records Custodian as briefly described below or on an attached list:

See appendix "A" – Records acquired from the Pennsylvania Historical & Museum Commission

This has resulted in the creation of Microfilmed/Digital Records.

2. This Expanded Use Agreement memorializes, amends and is supplemental to prior verbal or implied Agreements.

3. The Society may reproduce, distribute, transmit, display, use and permit the use of the Microfilmed/Digital Records, for nonprofit purposes, via any technology and in any medium now known or later developed (Use Rights). The Society may also utilize information from the Microfilmed/Digital Records to create resources such as indices and research aids. The Society may not sell copies of the Microfilmed/Digital Records in any medium without the written consent of the Records Custodian but may sell any resources it creates from the Microfilmed/Digital Records. The Society may also charge users a use fee to help cover the cost of providing access to the Microfilmed/Digital Records.

4. The Records Custodian represents that it has the authority to allow use of the Records as specified in this Agreement.

5. The Society agrees to provide the Records Custodians with one (1) complete set of digital images of each of our collections digitized under this agreement.

6. This Agreement constitutes the entire agreement between the parties. If any provision of this Agreement is or is deemed invalid or unenforceable, the remaining provisions shall remain in force. Any modification or addition to this Agreement must be in writing and signed by both parties.



7. Either party may assign its rights under this Agreement to any successor or affiliate.

**RECORDS CUSTODIAN:**

<u>David A. Haury</u> Signature	<u>David A. Haury</u> (print name)
<u>State Archivist</u> Title	<u>9/17/07</u> Date

In behalf of the Pennsylvania Museum and Historical Commission

**SOCIETY:**

<u>Ransom H. Love</u> Signature	<u>Ransom H. Love</u> (print name)
<u>Senior Vice President</u> Title	<u>19 Feb 2009</u> Date

In behalf of Genealogical Society of Utah

Pennsylvania Museum and Historical Commission  
Records preserved by the Genealogical Society of Utah

Record Type	Time period	Year filmed	Number of rolls
Accounts Receipt books	1775-1779 1775-1776	1978	2
Accounts	1777-1790	1978	2
Admission and discharge books Clemency file Mortgage books Mortgages and valuations for Bedford, Chester, Cumberland, Philadelphia and York counties Pardon books	1844-1888 1790-1873 1774-1788 1773-1793 1791-1877	1979	57
Application for passes	1775-1790	1978	1
Applications for patents when the present owner cannot give a complete statement of the title from the warrantee Applications for release of liens Philadelphia city lots	1786-1884 1816-1929 1682-1790	1976	1
Applications for release of liens Applications for patents when the present owner cannot give a complete statement of the title from the warrantee Philadelphia city lots	1816-1929 1786-1884 1682-1790	1976	2
Applications for warrants	1734-1865	1975	173
Applications for warrants	1755-1866	1976	4
Applications for warrants not issued	1786-1909	1976	13
Applications: new purchase # 1-3683 Index to old rights in Bucks & Chester counties Index to old rights in Philadelphia county	1770-1790 1682-1761 1682-1748	1976	1
Appointments files Bankruptcy files	1775-1790 1785-1790	1979	4
Assessor's duplicate tax list for Allen Township Assessor's duplicate tax list for Buffalo Township Assessor's duplicate tax list for Dickinson Township Assessor's duplicate tax list for East Pennsboro Assessor's duplicate tax list for Fannett Township Assessor's duplicate tax list for Frankford Township Assessor's duplicate tax list for Greenwood Township  Assessor's duplicate tax list for Hopewell Township Assessor's duplicate tax list for Middleton Township Assessor's duplicate tax list for Mifflin Township  Assessor's duplicate tax list for Newton Township Assessor's duplicate tax list for Rye Township Assessor's duplicate tax list for Shippensburg Assessor's duplicate tax list for South Middleton Township Assessor's duplicate tax list for Southampton Township	1796-1798 1808-1809 1793, 1802, 1803 1798, 1809, 1810 1783 1804 1798, 1801, 1810 & 1813 1798 1798, 1809 1798, 1804, 1809, 1812 & 1814 1798, 1817 1798, 1813, 1817 1817 1813 1803, 1809, 1812	1982	1

Assessor's duplicate tax list for Toboyne Township	1798		
Assessor's duplicate tax list for Tyrone Township	1798		
Cumberland Co, Negro Slaves name & age returns	1780, 1791, 1828		
Baynton, Wharton and Morgan papers in PA State Arch.	--	?	10
Births, marriages and deaths	1852-1854	1977	6
Board of Property papers	1682-1850	1976	19
Board of Property petitions, undated	1682-1815	1976	5
Board of War and State Navy Board file	1776-1777	1978	1
Caveats	1699-1890	1976	20
Certified townships of Luzerne County	--	1966	79
Index to old rights in Philadelphia County	1682-1748		
Master register of Commonwealth property	1919-1957		
Original purchases	1683-1702		
Patent books	1676-1960		
Civil War veterans card file	1861-1866	1978	80
Clemency files	1775-1790	1978	12
Election returns	1776-1790		
Forfeited estates file	1777-1790		
Marriage bonds	1784-1786		
Militia returns	1775-1790		
Oaths of allegiance	1777-1790		
Connecticut patents for land in the 17 <sup>th</sup> townships of Luzerne Co.	1785-1810	1976	25
Convict docket	1826-1859	1979	1
Coroner's inquisitions	1751-1796	1977	1
County surveys	1683-1859	1976	3
Court of Admiralty records	1780-1795	1976	2
Court records for the Eastern District	1736-1856	1977	24
Day books	1809-1879	1978	50
Declarations of intention	1832-1906		
Marriage records	1885-1889		
Military accounts, line	1775-1809		
Military accounts, militia	1793-1809		
Military accounts, Navy	1775-1794		
Passenger & street railway companies reports & Railroads & steam railway companies reports	1861-1903		
Pilot indentures	1806-1896 & 1908-31		
Practitioners of Medicine and Surgery	1881-1889		
Register of Physicians in Pennsylvania	1870-1917		
Revolutionary War pensions	1785-1809		
Revolutionary War pensions accounts	1807-1883		
War, list of soldiers	1812		
Death warrants	1794-1873	1977	4
Death warrants	1874-1899	1979	19
Land office journal	1738-1773		
Population records	1889-1910		

Rent rolls	1703-1744		
Deeds	1792-1795	1976	2
Depositions	1683-1881	1976	14
Depreciation lands records	1780-1800	1976	1
Donation lands or military tracts	1780-1800		
Master register of Commonwealth property	1919-1957		
Descriptive books of Pennsylvania regiments	1861-1864	1979	4
List of deserters	1866		
Mexican service index	1846-1848		
Military records	1864-1870		
Muster roll for Pennsylvania soldiers	1869-1880		
Names of sick and wounded soldiers of PA volunteers	1861-1866		
Naturalization lists	1740-1773		
New Castle County survey notes	1675-1679		
Pennsylvania soldier's home records	1866-1883		
Pennsylvania soldiers and sailors homes	1864-1872		
Registrar book	1720-1739		
Diaries	--	1979	4
Divorce papers	1786-1815	1978	6
Escheats	1796-1822		
Dockets	1828-1910	?	1
Docket of JP. Houser	1858-1893		
List of taxables, Harmony Township	1852-1876		
Donation lands records	1780-1800	1976	9
East & West side applications	1765-1769	1976	1
Equity papers	1836-1880	1978	2
Executive Correspondence	1775-1790	1978	16
General motions docket	1750-1837	1977	1
Divorce docket	1800-1805		
Grand Army of the Republic collection, descriptive books	1866-1956	1995	5
Habeas Corpus	1771-1773, 1775 & 1785-1787	1978	1
Index to old rights in Bucks and Chester Counties	1682-1761	1976	1
Index to old rights in Philadelphia County	1682-1748		
New purchase of Applications	1770-1790		
Index to old rights in Philadelphia County	1682-1748	1966	1
Master register of Commonwealth property	1919-1957		
Inventory of Church archives in Pennsylvania	--	1977	72
Island records (sales, surveys, appraisals, etc.)	1757-1865	1976	13
Judgment dockets (indices)	1756-1896	1977	3
Land drafts and warrants	1738-1890	1976	5
Land papers from Board of property	1753-1868		
Land office journal	1738-1773	1979	1
Rent rolls	1703-1744		
Last purchase original warrants	1780-1810	1976	16
Letters of attorney	1681-1895	1976	9

List of people received into the marine hospital out of sundry	1784	1978	1
Return of officers and soldiers fro unpatented lots	--		
Return of Pennsylvania Line entitled to donation lands	--		
Revolutionary war pension accounts	1785-1809 & 1834-38		
Mexican War military accounts	1846-1880	1978	11
War of 1812 militia accounts	1812-1827		
Military abstract card for the Revolutionary War	1775-1783	1978	42
Military claims not settled	1862-1905	1977	5
Military claims settled	1862-1905	1977	63
Militia absentee returns for Philadelphia city	1777-1791	1978	2
Militia accounts	1777-1794	1978	38
Minutes books	1775-1776		9
Records	1776-1790		
Misc. manuscripts of the Revolutionary War era	1771-1791	1977	1
Mortgage records	1687-1820	1976	6
Names of foreigners who took the oath of allegiance to the province and state of Pennsylvania	1727-1775	1967	1
With foreign arrivals	1786-1808		
Naturalization records	1794-1868	1977-78	42
Index to naturalization	1794-1824 1842-1868		
New and last purchases	1769, 1784	1976	1
Nicholson lands-commissioner's return of sale	1769-1843	1976	1
Record of land applicants.	1786		
Original surveys	1682-1920	1976	499
Original warrants	--	1977	156
Original warrants of depreciation lands	1780-1800	1976	4
Patent books	1676-1960	1976	78
Certified townships of Luzerne county	--		
Index to old rights in Bucks and Chester counties	1682-1761		
Index to old rights in Philadelphia county	1682-1748		
Original purchases	1683-1702		
Patents issued for in-lots and out-lots at the town of Beaver, Erie, Franklin, Warren and Waterford	1796-1919	1976	5
Pennsylvania Archives Series - 1 <sup>st</sup> to 7 <sup>th</sup> Series	--	1961-1974	65
Perpetuation of testimony docket	1781-1801	1977	1
Proof of settlement records	1797-1869	1976	15
Proprietary papers	1682-1850	1976	25
Proprietary towns	1751-1829	1976	1
Record of land surveyed by the Deputy Surveyors	1683-1859	1976	6
Record of the proprietary Governments	1700-1763	1979	1
Revolutionary War pension file	1809-1893	1977	3
Sheriff's deed book for the Eastern District	1796-1876	1977	4
Spanish American War Veteran's compensation file	--	1979	46

Tax and exoneration lists for Allegheny Co	1791	1978	1
Tax and exoneration lists for Bedford Co	1773-1782		
Tax and exoneration lists for Bedford Co	1782-1789	1978	1
Tax and exoneration lists for Berks Co	1767-1780		
Tax and exoneration lists for Berks Co	1781-1789	1978	9
Tax and exoneration lists for Bucks Co	1777-1789		
Tax and exoneration lists for Chester Co	1764-1788		
Tax and exoneration lists for Cumberland Co	1778-1789		
Tax and exoneration lists for Dauphin Co	1785-1789	1978	3
Tax and exoneration lists for Fayette Co	1783-1789		
Tax and exoneration lists for Franklin Co	1785-1789		
Tax and exoneration lists for Huntingdon Co	1788-1789		
Tax and exoneration lists for Lancaster Co	1772-1786		
Tax and exoneration lists for Montgomery Co	1785-1789	1978	1
Tax and exoneration lists for Northampton Co	1772-1790	1978	14
Tax and exoneration lists for Northumberland Co	1778-1787		
Tax and exoneration lists for Philadelphia Co	1762-1794		
Minutes of County Commissioners (Philadelphia)	1797-1801		
Carriage and billiard table taxes (Philadelphia)	1791-1794		
Tax and exoneration lists for Washington Co	1781-1789		
Tax and exoneration lists for Westmoreland Co	1783-1794		
Tax and exoneration lists for York Co	1779-1789		
Title papers	1784-1852	1976	11
US volunteers of the Spanish American War	1793-1901	1979	1
War of 1812 pension records	1866-1896	1977	27
Warrant of attorney docket	1795-1874	1977	3
Warrant register	1682-1950	1976	6
<b>Total Rolls:</b>			<b>2,118</b>

Addendum to the PHMC License Agreement – Appendix A

This Addendum is made pursuant to the License Agreement dated December 15, 2008 between Ancestry.com Operations Inc., formerly known as The Generations Network, Inc. ("Ancestry") and the Pennsylvania Historical and Museum Commission ("PHMC") (the "Agreement"), and covers the digitization, indexing and distribution of additional Records and Licensed Materials. Capitalized terms not defined herein shall have the meaning defined in the Agreement.

A. Amendment to Appendix A. "Appendix A" is hereby amended to add the following text to the end of the Appendix.

Project Name	Approx # of Images	Years Covered	Format	Exclusivity
Pennsylvania Deaths	6.5 million	1906-1961	Sheets	3 years
Pennsylvania Births	200 thousand	1906	Sheets	3 years

B. Transportation Process. Ancestry.com would like to propose the following guidelines for the handling of the vital records from the State of Pennsylvania.

Ancestry.com trained staff would make weekly visits to the Archive in a NARA approved secure van to pick up and return boxes of vital records. The van will not make any detours outside the approved route or be allowed to make any unplanned stops. Ancestry.com will typically transport 35 boxes of vitals with each trip, holding those boxes for a period of 2 weeks. This would mean that approximately 70 boxes of vitals would be stored at our Silver Spring facility at any one time. After each batch of boxes was scanned, Ancestry.com trained staff would re-file and re-box the records in new acid free files and boxes and return them with the next weekly trip. Initially those trips may be less frequent, with fewer boxes, but would eventually ramp up to meet the above outlined procedures.

All handling of documents will be performed by Ancestry staff, who have been trained and certified by NARA in the care of records. All records will be stored in a secured vault, with 24 hour surveillance.

Ancestry.com agrees to reimburse the Pennsylvania Historical & Museum Commission up to \$5,000 for the purchase of approximately 1000 acid free boxes.

In the event that a patron request is made for a record that is in our possession, Ancestry.com staff will scan the requested document and email the image to the Archive for fulfillment. We estimate that this process will be completed within a 24-48 hour period, if not sooner.

C. No Other Changes. The Agreement remains otherwise unchanged.

Ancestry.com Operations Inc.

By:

*[Signature]*

Title: VP, CONTENT

Date: 22 Aug 2012

Pennsylvania Historical and Museum Commission

By:

*[Signature]*

Title: State Archivist

Date: 8/20/12



**Addendum to the PHMC License Agreement – Appendix A**

This Addendum is made pursuant to the License Agreement dated December 15, 2008 between Ancestry.com Operations Inc., formerly known as The Generations Network, Inc. ("Ancestry") and the Pennsylvania Historical and Museum Commission ("PHMC") (the "Agreement"), and covers the digitization, indexing and distribution of additional Records and Licensed Materials. Capitalized terms not defined herein shall have the meaning defined in the Agreement.

A. **Amendment to Appendix A.** "Appendix A" is hereby amended to add the following text to the end of the Appendix.

Project Name	Approx # of Images	Years Covered	Format	Exclusivity
Burial Cards	100,000*	1777-2012	Sheets	3 years

B. **No Other Changes.** The Agreement remains otherwise unchanged.

Ancestry.com Operations Inc.

Pennsylvania Historical and Museum Commission

By: 

By: 

Title: CONTENT DIRECTOR

Title: State Archivist

Date: 2012-11-28

Date: 11/28/12

\*Series I consists of 57 boxes and 1 carton of approximately 500 cards each or 28,000+. Other cards from Series I have already been imaged and indexed, and the remaining cards were set aside when the others were microfilmed. Series IV consists of 36 cartons with some 2,000 cards per carton or 72,000+. It should be noted that some of these are not individual burial cards but computer printouts on green bar paper.

Addendum to the PHMC License Agreement – Appendix A

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A. "Appendix A" is hereby amended to add the following text to the end of the Appendix.

Project Name	Approx # of Images	Years Covered	Format	Exclusivity
Civil War Muster Rolls	5000	1861-1865	Sheets	3 years

The Agreement remains otherwise unchanged.

Ancestry.com Operations Inc.

By:

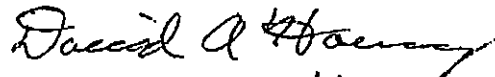


Title: CONTENT DIRECTOR

Date: 10/1/2012

Pennsylvania Historical and Museum Commission

By:



Title:

State Archivist

Date:

9/24/12

**Addendum to the PHMC License Agreement – Appendix A**

This Addendum is made pursuant to the License Agreement dated December 15, 2008 between Ancestry.com Operations Inc., formerly known as The Generations Network ("Ancestry") and the Pennsylvania Historical and Museum Commission ("PHMC") (the "Agreement"), and covers the digitization, indexing and distribution of additional Records and Licensed Materials. Capitalized terms not defined herein shall have the meaning defined in the Agreement.

A. "Appendix A" is hereby amended to add the following text to the end of the Appendix.

Project Name	Approx # of Rolls	Years Covered	Format	Exclusivity
Pennsylvania County Marriages	1234	1880-1950 (Approx)	Microfilm	3 years

The Agreement remains otherwise unchanged.

Ancestry.com Operations Inc.

By: 

Title: CONTENT DIRECTOR

Date: 6/23/14

Pennsylvania Historical and Museum Commission

By: 

Title: State Archivist

Date: 6/20/14

**Addendum to the PHMC License Agreement – Appendix A**

This Addendum is made pursuant to the License Agreement dated December 15, 2008 between Ancestry.com Operations Inc., formerly known as The Generations Network ("Ancestry") and the Pennsylvania Historical and Museum Commission ("PHMC") (the "Agreement"), and covers the digitization, indexing and distribution of additional Records and Licensed Materials. Capitalized terms not defined herein shall have the meaning defined in the Agreement.

A. "Appendix A" is hereby amended to add the following text to the end of the Appendix.

Project Name	Quantity	Years Covered	Format	Exclusivity
National Guard Enlistment Files		1876-1945	Paper	3 Years
Death Certificates	215,000	1964	Paper	3 Years
Birth Certificates	330,000	1909	Paper	3 years
PA Industrial Ref, Huntingdon – Bio Registers	4 rolls	1889-1932	Microfilm	3 years
PA Industrial Ref, Huntingdon – Registers of Prisoners	2 rolls	1889-1925	Microfilm	3 years
Eastern Penn Penitentiary – Bertillion Hand Books	6 rolls	1895-1937	Microfilm	3 years
Eastern Penn Penitentiary – Convict Reception Registers	39 rolls	1842-1929	Microfilm	3 years
Allegheny Workhouse – Discharge and Description Dock	16 rolls	1873-1971	Microfilm	3 years
Allegheny Workhouse – Reg of all prisoners tried/sente	13 rolls	1869-1971	Microfilm	3 years
West State Penn – Descriptive Lists	31 rolls	1876-1956	Microfilm	3 years
West State Penn – Prisoner Fingerprint ID Cards	86 rolls	1907-1965	Microfilm	3 years
PA County Slave Records – Adams, Bedford, Bucks, Centre, Cumberland, Fayette, Lancaster, and Washington counties	1986 images	1780-1849	Digital	none

Ancestry agrees to take possession and retain Licensed Materials identified in Appendix A (including as amended) and maintain them until such time as they are requested by PHMC or the Pennsylvania State Archives, at which time copies will be returned within six months of such request. Ancestry will also create digital images of other historic content, as mutually agreed upon by both parties, while Ancestry has scanning operations on location at the Archives.

The Agreement remains otherwise unchanged.

Ancestry.com Operations Inc.

By:

  
QUINTON ATKINSON

Title: DIRECTOR

Date: 2015-9-14

Pennsylvania Historical and Museum Commission

By:

Title:

Date:

Addendum to the PHMC License Agreement – Appendix A

This Addendum is made pursuant to the License Agreement dated December 15, 2008 between Ancestry.com Operations Inc., formerly known as The Generations Network ("Ancestry") and the Pennsylvania Historical and Museum Commission ("PHMC") (the "Agreement"), and covers the digitization, indexing and distribution of additional Records and Licensed Materials. Capitalized terms not defined herein shall have the meaning defined in the Agreement.

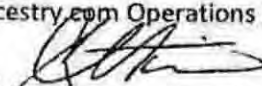
A. "Appendix A" is hereby amended to add the following text to the end of the Appendix.

Project Name	Quantity	Years Covered	Format	Exclusivity
National Guard Enlistment Files		1876-1945	Paper	3 Years
Death Certificates	215,000	1964	Paper	3 Years
Birth Certificates	330,000	1909	Paper	3 years
PA Industrial Ref, Huntingdon – Bio Registers	4 rolls	1889-1932	Microfilm	3 years
PA Industrial Ref, Huntingdon – Registers of Prisoners	2 rolls	1889-1925	Microfilm	3 years
Eastern Penn Penitentiary – Bertillion Hand Books	6 rolls	1895-1937	Microfilm	3 years
Eastern Penn Penitentiary – Convict Reception Registers	39 rolls	1842-1929	Microfilm	3 years
Allegheny Workhouse – Discharge and Description Dock	16 rolls	1873-1971	Microfilm	3 years
Allegheny Workhouse – Reg of all prisoners tried/sente	13 rolls	1869-1971	Microfilm	3 years
West State Penn – Descriptive Lists	31 rolls	1876-1956	Microfilm	3 years
West State Penn – Prisoner Fingerprint ID Cards	86 rolls	1907-1965	Microfilm	3 years
PA County Slave Records – Adams, Bedford, Bucks, Centre, Cumberland, Fayette, Lancaster, and Washington counties	1986 images	1780-1849	Digital	none

Ancestry agrees to take possession and retain Licensed Materials identified in Appendix A (including as amended) and maintain them until such time as they are requested by PHMC or the Pennsylvania State Archives, at which time copies will be returned within six months of such request. Ancestry will also create digital images of other historic content, as mutually agreed upon by both parties, while Ancestry has scanning operations on location at the Archives.

The Agreement remains otherwise unchanged.

Ancestry.com Operations Inc.

By:   
QUINTON ATKINSON

Title: DIRECTOR

Date: 2015-9-14

Pennsylvania Historical and Museum Commission

By:   
Title: DAVID W. CARMICHAEL, STATE ARCHIVIST

Date: 10/20/2015

**Addendum to the PHMC License Agreement – Appendix A  
(County Marriage Records)**

This Addendum is made pursuant to the License Agreement dated December 15, 2008 between Ancestry.com Operations Inc., formerly known as The Generations Network ("Ancestry") and the Pennsylvania Historical and Museum Commission ("PHMC") (the "Agreement"), and covers the digitization, indexing and distribution of additional Records and Licensed Materials. Ancestry has received permission/approval from the counties identified below to provide this digitization, indexing and distribution of these additional Records and Licensed Materials. Capitalized terms not defined herein shall have the meaning defined in the Agreement.

A. "Appendix A" is hereby amended to add the following text to the end of the Appendix.

County	Quantity	Years Covered	Format	Exclusivity
Clarion	9 rolls	1885-1916	Microfilm	3 years
Adams	15 rolls	1852-1855 & 1885-1950	Microfilm	3 Years
Montgomery	45 rolls	1885-1901 & 1885-1973	Microfilm	3 years
Potter	7 rolls	1885-1906	Microfilm	3 years
Clearfield	1 roll	1852-1854, 1868, 1877-1878	Microfilm	3 years
Allegheny	60 rolls	1885-1906 & 1885-1925	Microfilm	3 years
Fulton	9 rolls	1885-1963 & 1852-1854	Microfilm	3 years
Snyder	7 rolls	1885-1920	Microfilm	3 years

Ancestry agrees to take possession and retain Licensed Materials Identified in Appendix A (including as amended) and maintain them until such time as they are requested by PHMC or the Pennsylvania State Archives, at which time copies will be returned within six months of such request. Ancestry will also prepare a copy of the foregoing Licensed Materials and provide a copy to the named Counties above upon the respective county's request.

The Agreement remains otherwise unchanged.

Ancestry.com Operations Inc.

By: 

Title: ~~CONTENT~~ DIRECTOR

Date: 2016-5-6

Pennsylvania Historical and Museum Commission

By: 

Title: State Archivist

Date: 5/3/2016

**Addendum to the PHMC License Agreement – Appendix A**

This Addendum is made pursuant to the License Agreement dated December 15, 2008 between Ancestry.com Operations Inc., formerly known as The Generations Network ("Ancestry") and the Pennsylvania Historical and Museum Commission ("PHMC") (the "Agreement"), and covers the digitization, indexing and distribution of additional Records and Licensed Materials. Capitalized terms not defined herein shall have the meaning defined in the Agreement.

A. "Appendix A" is hereby amended to add the following text to the end of the Appendix.

Project Name	Approx # of Images	Years Covered	Format	Exclusivity
Pennsylvania Deaths	215,000	1965	Sheets	3 years
Pennsylvania Births	280,000	1910	Sheets	3 years

The Agreement remains otherwise unchanged.

Ancestry.com Operations Inc.

By:

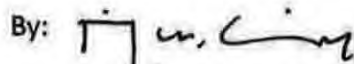


Title: SENIOR DIRECTOR - CONTENT

Date: 2016 / 9 / 30

Pennsylvania Historical and Museum Commission

By:



Title: Director, State Archivist

Date: 9/26/2016



**Addendum to the PHMC License Agreement – Appendix A**


This Addendum is made pursuant to the License Agreement dated December 15, 2008 between Ancestry.com Operations Inc., formerly known as The Generations Network ("Ancestry") and the Pennsylvania Historical and Museum Commission ("PHMC") (the "Agreement"), and covers the digitization, indexing and distribution of additional Records and Licensed Materials. Capitalized terms not defined herein shall have the meaning defined in the Agreement.

A. "Appendix A" is hereby amended to add the following text to the end of the Appendix.

Project Name	Approx # of Images	Years Covered	Format	Exclusivity
Pennsylvania Deaths	215,000	1966	Sheets	3 years
Pennsylvania Births	280,000	1911	Sheets	3 years

The Agreement remains otherwise unchanged.

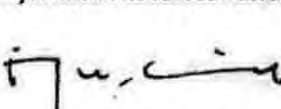
Ancestry.com Operations Inc.

By:   
QUINTON ATKINSON

Title: SENIOR DIRECTOR - CONTENT

Date: 5/9/2017

Pennsylvania Historical and Museum Commission

By: 

Title: Director, State Archivist

Date: May 5, 2017



**Addendum to the PHMC License Agreement – Appendix A**

This Addendum is made pursuant to the License Agreement dated December 15, 2008 between Ancestry.com Operations Inc., formerly known as The Generations Network, Inc. ("Ancestry") and the Pennsylvania Historical and Museum Commission ("PHMC") (the "Agreement"), and covers the digitization, indexing and distribution of additional Records and Licensed Materials. Capitalized terms not defined herein shall have the meaning defined in the Agreement.

A. **Amendment to Appendix A.** "Appendix A" is hereby amended to add the following text to the end of the Appendix.

Project Name	Approx # of Images	Years Covered	Format	Exclusivity
Delayed Birth Cert (Adams Co.)		1941-1970	Sheets	3 years
Register of Births (Adams Co.)		1893-1905		3 years
Register of Deaths (Adams Co.)		1893-1905		3 years
Birth and Death Records (Adams Co.)		1893-1905		3 years

B. **No Other Changes.** The Agreement remains otherwise unchanged.

Ancestry.com Operations Inc.

Pennsylvania Historical and Museum Commission

By: 

By: 

Title: VP Global Commerce

Title: Director, Pennsylvania State Archives

Date: 8/3/2018

Date: 8/1/2018

**Addendum to the PHMC License Agreement – Appendix A**

This Addendum is made pursuant to the License Agreement dated December 15, 2008 between Ancestry.com Operations Inc., formerly known as The Generations Network ("Ancestry") and the Pennsylvania Historical and Museum Commission ("PHMC") (the "Agreement"), and covers the digitization, indexing and distribution of additional Records and Licensed Materials. Capitalized terms not defined herein shall have the meaning defined in the Agreement.

A. "Appendix A" is hereby amended to add the following text to the end of the Appendix.

Project Name	Approx # of Images	Years Covered	Format	Exclusivity
Pennsylvania Deaths	130,000	1967	Sheets	3 years
Pennsylvania Births	250,000	1912	Sheets	3 years

The Agreement remains otherwise unchanged.

Ancestry.com Operations Inc.

Pennsylvania Historical and Museum Commission

By: 

By: 

Title: VP Content

Title: ARCHIVES DIRECTOR

Date: 1/22/18

Date: 1/23/2018

**Addendum to the PHMC License Agreement – Appendix A**

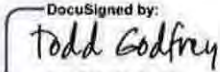
This Addendum is made pursuant to the License Agreement dated December 15, 2008 between Ancestry.com Operations Inc., formerly known as The Generations Network ("Ancestry") and the Pennsylvania Historical and Museum Commission ("PHMC") (the "Agreement"), and covers the digitization, indexing and distribution of additional Records and Licensed Materials. Capitalized terms not defined herein shall have the meaning defined in the Agreement.

A. "Appendix A" is hereby amended to add the following text to the end of the Appendix.

Project Name	Approx # of Images	Years Covered	Format	Exclusivity
Pennsylvania Deaths	130,000	1968	Sheets	3 years
Pennsylvania Births	250,000	1913	Sheets	3 years

The Agreement remains otherwise unchanged.

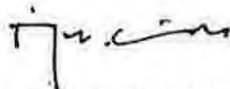
Ancestry.com Operations Inc.

By:   
26309467DED2485

Title: VP Content

Date: 1/16/2019 | 2:03 PM PST

Pennsylvania Historical and Museum Commission

By: 

Title: Director/State Archivist

Date: 01/16/2019

**Addendum to the PHMC License Agreement – Appendix A**

This Addendum is made pursuant to the License Agreement dated December 15, 2008 between Ancestry.com Operations Inc., formerly known as The Generations Network ("Ancestry") and the Pennsylvania Historical and Museum Commission ("PHMC") (the "Agreement"), and covers the digitization, indexing and distribution of additional Records and Licensed Materials. Capitalized terms not defined herein shall have the meaning defined in the Agreement.

A. "Appendix A" is hereby amended to add the following text to the end of the Appendix.

Project Name	Approx # of Images	Years Covered	Format	Exclusivity
Pennsylvania Deaths	130,000	1969	Sheets	3 years
Pennsylvania Births	250,000	1914	Sheets	3 years
PA National Guard Veterans Card File		1876-1921	Digital	none
Civil War Veterans Card File		1861-1866	Digital	none
Revolutionary War Military Abstract Card File		1785-1893	Digital	none
World War 1 Service Medal Application		1938-1950	Digital	none
Spanish American War Veterans Card			Digital	none
Mexican Border Campaign Veterans Card File		1916-1917	Digital	none
Militia Officers Index Cards		1775-1800	Digital	none

**Special Considerations:**

- Ancestry will pay for costs associated with duplicating/copying and delivering the digital content.
- Digital content will be delivered within 30 days of the signing of this Addendum.

The Agreement remains otherwise unchanged.

Ancestry.com Operations Inc.

By: *Todd Godfrey*

Title: VP Global Content

Date: 12 March 2020

Pennsylvania Historical and Museum Commission

By: *[Signature]*

Title: State Archivist/Bureau Director

Date: 01/27/2020

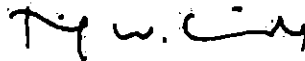
**Addendum #2 to the PHMC License Agreement – Appendix A**

This Addendum is made pursuant to the License Agreement dated December 15, 2008 between Ancestry.com Operations Inc., formerly known as The Generations Network, Inc. ("Ancestry") and the Pennsylvania Historical and Museum Commission ("PHMC") (the "Agreement"), and covers the digitization, indexing and distribution of additional Records and Licensed Materials. Capitalized terms not defined herein shall have the meaning defined in the Agreement.

A. "Appendix A" is hereby amended to add the following text to the end of the Appendix.

Project Name	Approx # of Images	Years Covered	Format	Exclusivity
Pennsylvania Deaths	130,000	1970	Sheets	3 years
Pennsylvania Births	250,000	1915	Sheets	3 years

The Agreement remains otherwise unchanged.



Ancestry.com Operations Inc.

Pennsylvania Historical and Museum Commission

By:

By: David W. Carnicheal

Title: VP Global Content

Title: State Archivist/Bureau Director

Date:

Date: 7/12/2021

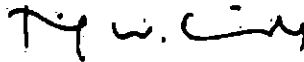
**Addendum #2 to the PHMC License Agreement – Appendix A**

This Addendum is made pursuant to the License Agreement dated December 15, 2008 between Ancestry.com Operations Inc., formerly known as The Generations Network, Inc. ("Ancestry") and the Pennsylvania Historical and Museum Commission ("PHMC") (the "Agreement"), and covers the digitization, indexing and distribution of additional Records and Licensed Materials. Capitalized terms not defined herein shall have the meaning defined in the Agreement.

A. "Appendix A" is hereby amended to add the following text to the end of the Appendix.

Project Name	Approx # of Images	Years Covered	Format	Exclusivity
Pennsylvania Deaths	130,000	1970	Sheets	3 years
Pennsylvania Births	250,000	1915	Sheets	3 years

The Agreement remains otherwise unchanged.



Ancestry.com Operations Inc.

Pennsylvania Historical and Museum Commission

By:

By: David W. Carmicheal

Title: VP Global Content

Title: State Archivist/Bureau Director

Date:

Date: 7/12/2021

# OOB Exhibit 6

**From:** [Isenberg, Kelly](#)  
**To:** [Alec Ferretti](#); [Leone, Gerard](#); [Akers, Rodney \(GC\)](#)  
**Subject:** RE: [External] OOR Submission 2022-2106  
**Date:** Wednesday, October 26, 2022 9:52:00 AM  
**Attachments:** [image001.png](#)

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Dear Mr. Ferretti and Attorney Leone:

I am confirming receipt of the email below, as well as the submission to the OOR E-File Portal. While we appreciate the courtesy email, such emails are not necessary going forward. The PHMC's Open Records Officer has portal access and receives alerts when a document is filed. If Mr. Leone or Mr. Akers wish to also receive alerts, they may complete an Entry of Appearance for this matter to receive portal login credentials. An Entry of Appearance may be electronically filed through the OOR website: <https://www.openrecords.pa.gov/Appeals/EntryOfAppearance.cfm>. Or, a party may submit a paper Entry of Appearance by uploading a completed form to the E-File Portal.

Thank you,  
Kelly Isenberg



**Kelly C. Isenberg** | Attorney  
Senior Appeals Officer  
Office of Open Records  
333 Market Street, 16th Floor  
Harrisburg, PA 17101-2234  
Phone: (717) 346-9903  
Fax: (717) 425-5343  
<https://www.openrecords.pa.gov>  
@OpenRecordsPA

---

**From:** Alec Ferretti <al13fe26@gmail.com>  
**Sent:** Tuesday, October 25, 2022 10:49 PM  
**To:** Leone, Gerard <geleone@pa.gov>; Akers, Rodney (GC) <roakers@pa.gov>; Isenberg, Kelly <kisenberg@pa.gov>  
**Subject:** [External] OOR Submission 2022-2106



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

To whom it may concern,

I have just posted two documents in the OOR Portal. I am emailing them as well because not all parties have portal access.

—

Alec Ferretti

# OOB Exhibit 7

October 28, 2022

**Via Email Only:**

Alec Ferretti  
242 E 38th St  
Apt 2F  
New York, NY 10016  
al13fe26@gmail.com

**Via Email Only:**

Gerard Leone , Esq.  
300 North St.  
State Museum  
Harrisburg, PA 17120  
geleone@pa.gov

Cynthia Bendroth  
Agency Open Records Officer  
Pennsylvania Historical and Museum  
Commission  
350 North Street  
Harrisburg, PA 17120-0090  
ra-rtkphmc@pa.gov

**RE: Ferretti v. Pennsylvania Historical and Museum Commission OOR Dkt. AP 2022-2106**

Dear Attorney Leone and Mr. Ferretti:

As the PHMC bears the burden of proof on appeal, to ensure adequate due process in this matter, we will provide the agency with the opportunity to make a supplemental submission in reply to Mr. Ferretti's position statement dated Oct. 25, 2022. To that end, the PHMC may submit a reply, limited to the issues raised in Mr. Ferretti's Oct. 25, 2022, statement, by the close of business on Fri., Nov. 4, 2022. In addition, we will be extending the Final Determination deadline by seven business days, until Nov. 21, 2022, to ensure sufficient time for the OOR to review the submissions and complete the research and analysis of the issues presented.

If you have any questions, please advise.

Regard,

*/s/ Kelly Isenberg*

Kelly Isenberg

# OOB Exhibit 8

November 8, 2022

**Via Email Only:**

Alec Ferretti  
242 E 38th St  
Apt 2F  
New York, NY 10016  
al13fe26@gmail.com

**Via Email Only:**

Gerard Leone , Esq.  
300 North St.  
State Museum  
Harrisburg, PA 17120  
geleone@pa.gov

Cynthia Bendroth  
Agency Open Records Officer  
Pennsylvania Historical and Museum  
Commission  
350 North Street  
Harrisburg, PA 17120-0090  
ra-rtkphmc@pa.gov

**RE: Ferretti v. Pennsylvania Historical and Museum Commission OOR Dkt. AP 2022-2106**

Dear Mr. Ferretti and Mr. Leone:

Based on an inquiry with PHMC yesterday, the OOR administrative staff learned that the supplemental submission filed by Mr. Ferretti, the OOR correspondence indicating that all communications and submissions should proceed through the OOR E-File Portal and that provided instructions on how Mr. Leone could gain access to the Portal, as well as the OOR correspondence that provided PHMC the opportunity to reply to Mr. Ferretti's supplemental submission were not accessed by Ms. Bendroth or forwarded to Mr. Leone. The OOR staff assisted PHMC with any access concerns and questions.

Because PHMC just learned of the most recent docket filings yesterday, in order to develop the appeal record and ensure adequate due process, we are respectfully requesting your agreement to an additional seven business day extension until Dec. 2, 2022. Such an extension will include a firm deadline for PHMC to submit a reply by Nov. 14, 2022, if it chooses to do so.

Absent an objection to this request by the close of business on Thur., Nov. 10, 2022, the docket will be amended to reflect the new Final Determination deadline. I thank you in advance for your understanding and cooperation in this request.

Regards,

*/s/ Kelly Isenberg*

Kelly Isenberg

# OOB Exhibit 9



Docket No.: AP 2022-2106

Please accept my appearance for the Agency in the above captioned case.

Attorney: Gerard Leone  
Firm:  
Address:  
Email: geleone@pa.gov  
Phone #:

# OOR Exhibit 10





Commonwealth of Pennsylvania  
**Pennsylvania Historical and Museum  
Commission**  
The State Museum Building  
300 North Street  
Harrisburg, Pennsylvania 17120-0024  
[www.phmc.state.pa.us](http://www.phmc.state.pa.us)

November 14, 2022

**VIA OFFICE OF OPEN RECORDS PORTAL**

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

Re: Docket No. AP 2022-2106

Dear Appeals Officer Isenberg:

On October 25, 2022, Mr. Alec Ferretti (the “Requester”) replied to PHMC’s request for denial of the Office of Open Records (“OOR”) case at Docket No. AP 2022-2016. PHMC respectfully submits the following reply.

First, PHMC’s denial of the request should be affirmed by the OOR because the request is non-specific and vague such that it cannot be fulfilled. Pennsylvania’s Right-To-Know Law (the “RTKL”) was meant to help the public find specific, identifiable records.<sup>1</sup> 65 P.S. § 67.703. The Requester, however, has sought “all documents scanned (and subsequent indexes and metadata created)” subject to an agency contract with a vendor, in this case Ancestry.com. The Requester argues that simply because the set of records is arguably finite and discrete that it is sufficiently specific. This argument is fatally flawed: it is conceivable that a request could be profitably rephrased as “all digitized, vital records for every deceased citizen of Pennsylvania who died between 1800 to 1975.” However, such a request would be arguably finite, discrete, and yet still so grossly vague as to make a mockery of the RTKL. Even if were as easy to transfer records as the Requestor groundlessly speculates, the request would still not identify any records with sufficient specificity. When PHMC provided information as to the actual size of the request in terms of terabytes of data, it was provided not to be a ground for denial, but only an illustration of how vague the request was.

Second, PHMC avers the entirety of the request is exempt from the RTKL request based on 65 P.S. § 67.708(24). The requested records are “archived materials” of the Commonwealth that are *already available to the public*. Id. They are maintained by Ancestry.com and are made available for no charge through the State Archives in the same way as collections of the State Library of Pennsylvania. As such, they are statutorily excluded from being provided according to the request at issue.

---

<sup>1</sup> “A written request should identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested.” 65 P.S. § 67.703.

Lastly, the Requestor's purported desire to "create a backup" is not only a poorly veiled attempt to leverage the RTKL to appropriate Commonwealth property but also a circumvention of the policy decisions of PHMC and the Commonwealth. Entirely without a shred of evidentiary support, the Requestor brazenly asserts that PHMC's sworn, expert testimony as to the costs to maintain archival data is false, and imagines it is just a matter of copying data onto a hard drive. The Requestor speculates without foundation about what would happen in the event Ancestry.com were to close. During this flurry of self-serving speculation, he offers himself as a "backup" of the Commonwealth's records. Leaving aside the fact that the Requestor has no knowledge of PHMC's precautions, safeguards, and policy decisions, PHMC would just note that the RTKL is intended to facilitate transparency and not such a wholesale transfer of valuable Commonwealth property.

For these reasons, the PHMC respectfully requests that the Requester's appeal be Denied and Dismissed.

Thank you for consideration of this matter.

Respectfully,

*/s/ Gerard A. Leone*  
Gerard A. Leone  
Assistant Counsel, PHMC

# OOB Exhibit 11

November 23, 2022

**Via E-File Portal Only:**

Alec Ferretti  
242 E 38th St  
Apt 2F  
New York, NY 10016  
al13fe26@gmail.com

**Via E-File Portal Only:**

Gerard Leone , Esq.  
300 North St.  
State Museum  
Harrisburg, PA 17120  
geleone@pa.gov

Cynthia Bendroth  
Agency Open Records Officer  
Pennsylvania Historical and Museum  
Commission  
350 North Street  
Harrisburg, PA 17120-0090  
ra-rtkphmc@pa.gov

**RE: Ferretti v. Pennsylvania Historical and Museum Commission OOR Dkt. AP 2022-2106**

Dear Mr. Ferretti:

I am respectfully requesting a fourteen business day extension of the Final Determination deadline in the above-referenced appeal. While cognizant of your wish to have the appeal finalized, a brief extension is necessary for the purpose of seeking further clarification from the PHMC regarding some points presented in the agency's Nov. 18, 2022, supplemental submission. To that end we would require that the Final Determination deadline be extended until Dec. 22, 2022. Kindly provide a reply to this request as soon as practicable. In the absence of an objection by the close of business on Mon., Nov. 28, 2022, the docket will be amended accordingly. I thank you in advance for your anticipated understanding and cooperation in this request.

Regard,

*/s/ Kelly Isenberg*

Kelly Isenberg

# OOB Exhibit 12



November 29, 2022

**Via Email Only:**

Alec Ferretti  
242 E 38th St  
Apt 2F  
New York, NY 10016  
al13fe26@gmail.com

**Via Email Only:**

Gerard Leone, Esq.  
300 North St.  
State Museum  
Harrisburg, PA 17120  
geleone@pa.gov

Cynthia Bendroth  
Agency Open Records Officer  
Pennsylvania Historical and Museum  
Commission  
350 North Street  
Harrisburg, PA 17120-0090  
ra-rtkphmc@pa.gov

**RE: Ferretti v. Pennsylvania Historical and Museum Commission OOR Dkt. AP 2022-2106**

Dear Mr. Leone:

After reviewing the parties' submissions, we have determined that clarification from the PHMC is necessary to further develop the appeal record. To that end, kindly provide responses to the following areas of inquiry:

- Ms. Bendroth affirms that, pursuant to the PHMC's agreement with TGN, "the staff, patrons, and researchers in the State Archives may access this data for free...." Provide additional detail on how an individual is able to access the digitized State Archive records that are currently housed with TGN/Ancestry. Indicate whether an individual must be present in the Pennsylvania State Archives building to be electronically accessible and if access outside of the State Archives building requires the payment of a fee to use the link to Pennsylvania records housed on the Ancestry website.
- Explain why having TGN/Ancestry download the requested records and charging the Requester a fee for the necessary equipment, if appropriate under RTKL, is not an option in this matter.
- Would the requested metadata be included in any records accessed through the PHMC link to the Ancestry website?
- Further clarify the PHMC's claim of that the Request is exempt in its entirety under Section 708(b)(24) of the RTKL and clarify the PHMC's statement in the supplemental submission that "[t]he requested records are 'archived materials' of the Commonwealth that are already available to the public."

A reply to these inquiries are due by the close of business on Dec. 6, 2022. If you have any questions, please advise.

Regards,

*/s/ Kelly Isenberg*

Kelly Isenberg  
Senior Appeals Officer

# OOB Exhibit 13





Commonwealth of Pennsylvania  
**Pennsylvania Historical and Museum  
Commission**  
The State Museum Building  
300 North Street  
Harrisburg, Pennsylvania 17120-0024  
[www.phmc.state.pa.us](http://www.phmc.state.pa.us)

December 6, 2022

**VIA OFFICE OF OPEN RECORDS PORTAL**

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

Re: Docket No. AP 2022-2106

Dear Appeals Officer Isenberg:

On November 29, 2022, the Office of Open Records ("OOR") requested additional information from the Pennsylvania Historical and Museum Commission's ("PHMC") to develop the record in its consideration of Mr. Alec Ferretti's (the Requestor) appeal docketed at APO 2022-2106. PHMC respectfully submits the following reply.

1. The OOR asks "whether an individual must be present in the Pennsylvania State Archives building [for the records] to be electronically accessible and if access outside of the State Archives building requires the payment of a fee to use the link to Pennsylvania records housed on the Ancestry website." PHMC presumes that the above question was in regard to the requested records, hence the brackets.

An individual does not have to present in the physical building of the State Archives of Pennsylvania to access the scanned records at issue. Pennsylvania residents can access all of the Pennsylvania records housed on the Ancestry website free of charge at any time, from any computer, by going to the Pennsylvania State Archives Ancestry page (<https://www.phmc.pa.gov/Archives/Research-Online/Pages/Ancestry-PA.aspx>). Users enter their zip code in the designated box, click 'Verify Zip Code', and are then taken to the Ancestry site and given a free Ancestry account through which to access the Pennsylvania records. All users, including non-Pennsylvanians, may access the entire Ancestry website (including the Pennsylvania records) free of charge in the State Archives Reading Room during the Archives' normal business hours.

2. The OOR asks if the requested metadata is "included in any records access through the PHMC link to the Ancestry website."

The metadata of each digital scan of a State Archives record is not available to the public via the Ancestry portal.

3. The OOR asks for clarification of the PHMC's claim that the request is exempt under Section 708(b)(24) of the RTKL, and to clarify the statement that the "requested records are 'archived materials' of the Commonwealth that are already available to the public."

First, PHMC avers that all the scans made of the records provided to Ancestry are "library archived and museum materials" exempt according to Section 708(b)(24) of the RTKL. 65 P.S. § 67.708. To be "archived" is to be "filed or collected in or as if in an archive" according to the standard dictionary definition of the word.<sup>1</sup> As such, because these records are stored according to statute in the Pennsylvania State Archives, they are archived, and therefore exempt by § 708(b)(24).<sup>2</sup> When PHMC describes these records as "already available" to the public, it does so to point to the attribute shared between all the elements in the list of "library archived and museum materials": the Commonwealth already makes all of the collections of the state libraries, museums, and archives available to the public for its education and pleasure.<sup>3</sup> As the General Assembly did not seek to make libraries or state museums needlessly copy or expose their collections to which the public already had access, so, too, archived materials like those requested records are exempt from the RTKL.

Second, PHMC would note that the metadata produced by Ancestry associated with the scan of each vital record would be exempted from production under the RTKL. According to the RTKL:

(d) Agency possession. —

(1) A public record that is not in the possession of an agency but is in the possession of a party with whom the agency has contracted to perform a governmental function on behalf of the agency, and which directly relates to the governmental function and is not exempt under this act, shall be considered a public record of the agency for purposes of this act.

(2) Nothing in this act shall be construed to require access to any other record of the party in possession of the public record.

65 P.S. § 67.506(d)

Ancestry is contracted with the State Archives to scan those vital records that are preserved in the State Archives so that more easily accessible electronic records may be made available to the public. Ancestry created both the scan and the associated metadata, which it maintains on its own servers. Assuming for the sake of argument that the scanned images of archival records are public records, the metadata would still be exempted. The scanned images of archival records would be records in possession of a contractor according to (d)(1), but the metadata Ancestry created when making the scan would be a record possessed by the contractor according to (d)(2). As such, the metadata of each scanned record is a record in possession of a private party to which the RTKL does not apply.

---

<sup>1</sup> Archived." Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/archived>. Accessed 2 Dec. 2022.

<sup>2</sup> See 35 P.S. § 450.801 ("To ensure the proper safekeeping of original birth records after one hundred five (105) years and death records after fifty (50) years the records shall be maintained by the State Archives.").

<sup>3</sup> See *Friends of Danny DeVito v. Wolf*, 658 Pa. 165, 192 (2020) (for the statutory construction doctrine of ejusdem generis "where general words follow the enumeration of particular classes of persons or things, the general words will be construed as applicable only to persons or things of the same general nature or class as those enumerated.")

4. The OOR asks how “having TGN/Ancestry download the requested records and charging the Requester a fee for the necessary equipment, if appropriate under RTKL, is not an option in this matter.”

Apart from exemption under the RTKL, neither PHMC nor Ancestry would attempt to provide a download of either scanned images or their metadata because both parties will need to preserve their rights under the contract between the parties. According to section 2.2. of the Contract mentioned in the request, “The Licensed Materials may not be distributed or resold by PHMC to any company or institution for any purpose, and is solely for the use of individual patrons.” If PHMC were to distribute these records to the Requester, Ancestry would be within its contractual rights to claim a breach of its license and withdraw the infrastructure that provides these records to the public free of charge. As such, PHMC cannot violate its contractual obligation to Ancestry and imperil the relationship through which it vastly expanded the public’s access to vital records.

Lastly, even if the legal impediments of the RTKL and the contract were removed, PHMC’s staff currently has no estimate of the costs either to download or of the dataset itself. PHMC would note that OOR’s question seems to assume that the costs of the transfer would simply be the costs of copying and downloading the records at issue. At the moment, PHMC has no estimate of such a cost. But we would note that the cost of the transfer itself is *not the cost of the total request* under the RTKL. Instead, under the RTKL the cost to be reckoned would be the market value of the requested extensive dataset. According to Section 1307 of the RTKL, the fees for copying “complex and extensive” datasets, must be based on “the reasonable market value of the same or closely related datasets.” § 67.1307(b)(4). Terabytes of catalogued and organized images of scanned archival documents self-evidently comprise an “extensive” dataset. As such, the relevant estimate that PHMC and Ancestry would have to be instructed by OOR to prepare would be an estimate of the market value of the request and not the cost of its download or transfer in and of itself.

Once again, PHMC respectfully requests that the Requester’s appeal be Denied and Dismissed for the above reasons.

Thank you for consideration of this matter.

Respectfully,

/s/ Gerard A. Leone  
Gerard A. Leone  
Assistant Counsel, PHMC

# OOB Exhibit 14

Alec Ferretti  
242 E 38th St Apt 2F  
New York, NY 10016

December 8, 2022

VIA ELECTRONIC Submission

Kelly Isenberg  
Senior Appeals Officer  
Commonwealth of Pennsylvania  
Office of Open Records  
333 Market Street, 16th Floor  
Harrisburg, PA 17101

Re: Docket No. AP 2022-2106

Dear Appeals Officer Isenberg,

I would like to respond to the points that were brought up in PHMC's letter of December 6, 2022, if such a response is permissible. In order of appearance:

1. The Right to Know Law (RTK) unlike some state freedom of information laws, permits out-of-state requesters, so long as they are a "legal resident of the United States". My request is thus valid, but I am not a Pennsylvania resident, so the procedures PHMC cites that allow in-state residents to view the records for free on Ancestry do not apply to me. That being said, even if the records were freely available on Ancestry to all, it would have no bearing on my request because PHMC would still have failed to fulfill their obligations under RTK.

The seminal text of RTK, Section 701, states that, "Unless otherwise provided by law, a public record, legislative record or financial record shall be accessible for **inspection and duplication** in accordance with this act. A record being provided to a requester **shall be provided in the medium requested** if it exists in that medium; otherwise, it shall be provided in the medium in which it exists." [emphasis mine]. RTK provides that records shall be made available by agencies for inspection and duplication. I do not seek to inspect them, as this was always possible by visiting the Pennsylvania Archives in person. In the last few years, for Pennsylvania residents, it is also possible to inspect them, to a degree, on Ancestry, but because my request was to receive copies of the records, this is irrelevant.

Ancestry is a subscription database, the use of which is governed by a contractual agreement. While in theory, over the course of years, I could physically download every record page by page, this would surely violate Ancestry's terms and conditions<sup>1</sup>, which read in relevant part:

2.2 Your Use of Ancestry Content. When accessing Ancestry Content, you agree:

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<sup>1</sup> <https://www.ancestry.com/c/legal/termsandconditions>

- To use Ancestry Content only in connection with your personal use of the Services or professional family history research;
- To download Ancestry Content only in connection with your family history research or where expressly permitted by Ancestry;
- Not to remove any copyright or other proprietary notices on any Ancestry Content;
- Not to use significant portions of Ancestry Content outside the Services, or in a manner inconsistent with your subscription; and
- To contact us to obtain written permission to use more than a small number of photos and documents that are Public Domain Content

Downloading every record, ostensibly my goal, would be a violation of the implicit contract to which all Ancestry users must agree. In fact, it is arguable that even *browsing* every image, page by page, would violate the user agreement, as that would presumably not be in connection with my “personal use” or my “professional family history research.” Thus, even ignoring my lack of Pennsylvania residency, and the fact that I am seeking copies of records, even in the best of circumstances, PHMC would not necessarily be able shirk their RTK responsibilities by advising requesters to use Ancestry because doing so may be a violation of the user agreement. It certainly would be a violation in my instance. The very reason that I am requesting a complete set of the digital records from PHMC is to obtain a copy for posterity, free from any contractual encumbrances.

2. Even if OOR were to rule that Ancestry’s publication of the records fulfills much of PHMC’s obligations, by PHMC’s own admission, they must still produce the metadata because it is not available on the website. The fact that the agency does not have physical possession of the metadata files right now does not mean that it is not still their property, much like the images themselves.

3. PHMC is misreading the RTK exemption by ignoring the inconvenient second half of the statutory text. Exemption 24 states that the following records need not be produced under RTK: “Library archived and museum materials, or valuable or rare book collections or documents contributed by gift, grant, bequest or devise, **to the extent of any limitations imposed by the donor as a condition of the contribution,**” [emphasis mine]. This exemption does not exempt PHMC from producing *all* of their archival materials; it exempts them from producing archival materials that were donated with confidentiality clauses as part of a donor agreement. However, the records germane to this request were not donated to PHMC, so this exemption does not apply. This request is purely for records which originated from other Commonwealth agencies which were transferred to PHMC largely pursuant to statute. Ancestry was not the *source* of these records; PHMC itself was. Thus, no agreement with Ancestry can constitute a RTK exemption.

It would be very problematic, and inapposite to the ideals of RTK, to permit the agency to contract away its obligations under the law via an agreement with a third party. Taken to its logical conclusion, this line of reasoning would mean that PHMC could sign *any* agreement with *any* private entity, whereby in exchange for some nominal consideration, the agency could exempt their entire collection of Commonwealth records from RTK. This is simply not the intention of

the law, nor what a textual analysis of the words would indicate, because Ancestry is not the donor of the records - the records already do and always will belong to the Commonwealth.

To the extent that OOR considers Ancestry to have "donated" PHMC's own records to PHMC pursuant to "limitations imposed," the limitations *still* do not preclude the disclosure of the vast majority of the records, because the exclusivity periods written into the agreements have lapsed. The 2008 agreement set an exclusivity period for most collection of three years from the date of publication on Ancestry. Some collections had no exclusivity periods. Subsequent agreements had similar timeframes, with many collections again having no exclusivity whatsoever. Thus, even if OOR were to accept this brazen power grab by PHMC, then the only records that would be exempt would be the few that are still in their exclusivity periods, namely a few years of birth and death records. The exclusivity period for all other records, which I contend are not legally binding to PHMC anyway, have all sunset. These would all still need to be produced.

With regard to PHMC's claim that the metadata is not an agency record, we must look at the contracts that governed these transactions. They all clearly stated that Ancestry was to provide PHMC with digital images and indexes of each record. The indexes were created by Ancestry, but pursuant to their agreements, a copy of the indexes became property of PHMC, regardless of if PHMC physically stored the records on-site.

4. As stated before, an agency cannot contract their way around RTK, or else every agency would simply do so in order to exempt all of their records in one swoop. However, even if due to some loophole in the law, OOR were to rule this permissible here due to the unique exemption pertaining to archives, the agreements do not actually purport to do that. According to the contractual text PHMC itself cited, "The Licensed Materials may not be distributed or resold by PHMC to any company or institution for any purpose, and is solely for the use of individual patrons." Unless PHMC is claiming that I am a *company* or an *institution*, nothing in the agreement prevents me from receiving a copy of the records<sup>2</sup>. In fact, the agreement expressly permits patrons access to the materials.

Furthermore, while the records are extensive, they are not complex. Because of this lack of complexity, 1307(b)(4) does not apply, and the only costs I should bear are the direct reproduction costs. Ancestry scanned books and microfilm and keyed basic metadata about what had been scanned. There is no complex analysis or skill that was employed in this process, in the way that GIS, as the statute cites as an example, is complex. For the purposes of this analysis, Ancestry acted as a vendor that provided clerical work - scanning and data entry.

PHMC suggests that these records have a massive market value, yet is unable to provide any figure for this value. While there is a massive historical and research value to these records, their financial value is minimal, especially now that they have been published on Ancestry for years, and the exclusivity windows have lapsed. It is worth noting that many states have provided me Ancestry-digitized content without issue. While I cannot prove a negative, that is, that scanned historical government records lack market value, I do submit as exhibits, two email exchanges

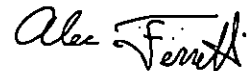
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<sup>2</sup> I, Alec Ferretti, affirm under penalty of perjury that I am neither a company nor an institution, and that I am in fact, human.

documenting responses from the Idaho Health Department and the New York State Archives regarding similar records requests. Both happily provided Ancestry-digitized data, and do not appear to be concerned about destroying their working relationship with Ancestry. To put it another way, nobody has ever purchased these records from PHMC; PHMC provides no evidence that anyone ever *will* purchase them. Other agencies have not raised this concern when I have obtained very similar records. I have no intention to derive profit from the records, nor do I have the infrastructure to try. For that reason, even if OOR were to consider the scans of records to be complex, the financial value is negligible, if non-existent. While there are certainly costs to maintain, digitize, and index the records, that does not give them inherent market value. The market value is determined by what one is willing to pay for them. Who is willing to pay? Ancestry didn't even pay for the underlying records.

Thus, I ask OOR again to grant this request, as a denial would give PHMC impunity to exempt all of their public records from RTK by drafting cleverly worded agreements with private entities, while ensuring that the records subject to this request only exist in the hands of yet another private entity, and not even with PHMC itself.

Respectfully,

A handwritten signature in black ink, appearing to read "Alec Ferretti". The signature is stylized with a large, looped "F" and a cursive "A".

Alec Ferretti



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**FOIL Request**

Alec Ferretti &lt;al13fe26@gmail.com&gt;

Fri, Mar 18, 2022 at 3:49 PM

To: "New York State Archives, Researcher Services Unit" &lt;archives@nysed.libanswers.com&gt;

Cc: Jim Folts &lt;jim.folts@nysed.gov&gt;, Tom Ruller &lt;tom.ruller@nysed.gov&gt;

I consent to these charges. As always, I thank the New York State archives for following the freedom of information law. You are a model to many other agencies. Please let me know what you need.

On Fri, Mar 18, 2022 at 3:38 PM New York State Archives, Researcher Services Unit <archives@nysed.libanswers.com> wrote:

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Mar 18 2022, 03:38pm via System

To: Alec Ferretti [al13fe26@gmail.com](mailto:al13fe26@gmail.com)

This e-mail is the final response to your request received on Feb. 14, 2022, and acknowledged on Feb. 17, for "a digital copy of all scans of records and associated metadata which have been provided to the New York State Archives by Ancestry.com or its affiliates or subsidiaries." Your request was made pursuant to the New York Freedom of Information Law (FOIL, Public Officers Law Art. 6).

Your request is granted. Digital files in the possession of the New York State Archives that are responsive to your request are listed in the attached Microsoft Excel spreadsheet. The files are in Tagged Image File Format (TIFF). Entries in the spreadsheet have three sortings:

1. NYSA series order
2. Ancestry hard drive order
3. Hard drive list

The files contain digital images and embedded technical metadata for each image. The metadata includes the following information:

- Creation date
- Pixel dimensions
- Resolution
- Compression level
- File format
- Software application used to create image

For most of the record series digitized, the Archives has not received descriptive metadata for the images, that is, name indexing data created by Ancestry.com. For a few of the smaller series, there is descriptive metadata, in the form of Notepad files, in comma-separated value (csv) format.



The total quantity of electronic data is about 38 terabytes (TB). The data will be provided to you on physical storage media (hard drives) upon your payment of charges allowed by the Freedom of Information Law, as follows:

- A. Four (4) 10 TB hard drives @ \$200-\$250 per drive = \$800-\$1000
- B. Preparing copies of digital files @ \$21.24 per hour (actual time required to prepare the copies, if in excess of two hours, at the hourly salary of the lowest paid employee who has the skill needed to perform the task) = amount TBD
- C. Shipping via UPS Ground = amount TBD

If you agree in writing to pay the above-listed charges, the State Archives will then provide an exact cost quotation in form of an invoice. Upon receipt of your payment (by credit card or check), we will provide you a receipt. The hard drives will be sent to you within a reasonable time thereafter, and a UPS tracking number will be provided. (Please note that UPS requires a street address for delivery.)

Please contact us via [ARCHREF@nysed.gov](mailto:ARCHREF@nysed.gov) or (518) 474-8955 if you have any questions.

### **Thomas J. Ruller**

Assistant Commissioner for Archives and Records

New York State Archivist and Records Access Officer

New York State Education Department

Room 9B52

Cultural Education Center, Albany NY 12230

P: (518) 474-5561

[www.archives.nysed.gov](http://www.archives.nysed.gov) | [tom.ruller@nysed.gov](mailto:tom.ruller@nysed.gov)

[Facebook](#) | [Twitter](#) | [New York Archives Magazine](#) | [YouTube](#)

#### **Attached Files**

- [Ancestry\\_digital\\_inventory\\_2022-03-18.xlsx](#)

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#### **Original Question**

Feb 14 2022, 09:48pm via Email

#### **FOIL Request**

Pursuant to FOIL, I hereby request a digital copy of all scans of records and associated metadata which have been provided to the New York State Archives by Ancestry.com or its affiliates or subsidiaries, including but not limited to The Generations Network. For reference, I have included three contracts with Ancestry (this is not necessarily an exhaustive list), which cover some of the content I am requesting. Please let me know how much this will cost. Thank you.

--  
Alec Ferretti

Attached Files

- [NYSED\\_Contract\\_With\\_Ancestry2.pdf](#)
  - [NYSED\\_Contract\\_With\\_Ancestry1.pdf](#)
  - [NYS\\_Archive\\_-\\_Ancestry\\_Contract\\_2017.pdf](#)
- 

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New York State Archives  
Researcher Services  
11A36 Cultural Education Center  
[222 Madison Avenue](#)  
Albany, NY 12230  
518-474-8955  
[archref@nysed.gov](mailto:archref@nysed.gov)

Have you read "New York Archives" magazine? Visit the New York State Archives Partnership [website](#) for more information.

This email is sent from LibAnswers in relationship to ticket #8938908.

[Read our privacy policy.](#)

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Alec Ferretti

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**RE: Idaho Vital Statistics Public Records Acquisition request**

2 messages

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**Peterson, Jeremy S. - CO 1st** <Jeremy.Peterson@dhw.idaho.gov>  
To: Alec Ferretti <al13fe26@gmail.com>

Thu, Mar 10, 2022 at 12:05 PM

Good Morning Alec:

I wanted to let you know that your flash drive has been fulfilled and is on its way to you. Please find enclosed the FedEx tracking number associated with this package. If there is anything additional I or we can provide, please let us know.

Jeremy S. Peterson

Deputy State Registrar and Automated Systems Manager

Bureau of Vital Records and Health Statistics

Idaho Department of Health and Welfare Division of Public Health



**From:** Alec Ferretti <al13fe26@gmail.com>

**Sent:** March 1, 2022 12:42

**To:** Peterson, Jeremy S. - CO 1st <Jeremy.Peterson@dhw.idaho.gov>

**Subject:** Re: Idaho Vital Statistics Public Records Acquisition request [EXTERNAL EMAIL]

Hi again

I sent a 256gb flash drive to you from Amazon. It should arrive on Friday.

My address is 242 E 38th St, Apt 2F, New York, NY 10016.

Thank you.



On Tue, Mar 1, 2022 at 2:28 PM Alec Ferretti <[al13fe26@gmail.com](mailto:al13fe26@gmail.com)> wrote:

Dear Mr Peterson

Thank you very much. I will get on this today.

On Tue, Mar 1, 2022 at 2:25 PM Peterson, Jeremy S. - CO 1st <[Jeremy.Peterson@dhw.idaho.gov](mailto:Jeremy.Peterson@dhw.idaho.gov)> wrote:

Good Afternoon Mr. Ferretti:

I have received your request concerning acquisition of Idaho Vital Statistics Public Records. I can certainly assist with this request. We currently have a singular Excel file that provides indexed information for Births, Deaths, Stillbirths/Fetal Deaths, Marriages, and Divorces (one file per type) for the years available (1911-1921 Births, 1911-1971 Deaths and Stillbirths/Fetal Deaths, and 1947-1971 Marriages and Divorces). As well as the Excel index files, we have all digital images of these records in .TIF format.

The total collection comes up to approximately 192GB of total space. While there is no financial charge for acquisition, we would kindly ask that a clean external hard drive be provided that could then be loaded and shipped back to you. This hard drive can be addressed to me directly at:

Idaho Bureau of Vital Records and Health Statistics

Attn: Jeremy Peterson

[450 West State Street](#) – First Floor West

PO Box 83720

Boise ID 83720-0036

Once the hard drive has been loaded and sent back to your attention, I can provide a tracking shipping number for your usage. If there is anything further I can provide, please feel free to reach out.

Jeremy S. Peterson

Deputy State Registrar and Automated Systems Manager

Bureau of Vital Records and Health Statistics

Idaho Department of Health and Welfare Division of Public Health



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—  
Alec Ferretti

—  
Alec Ferretti

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Image\_001.pdf  
223K

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Alec Ferretti <al13fe26@gmail.com>  
To: "Peterson, Jeremy S. - CO 1st" <Jeremy.Peterson@dhw.idaho.gov>

Thu, Mar 10, 2022 at 12:08 PM

Hi

Thank you! I received it yesterday. I only skimmed the contents briefly but it's clearly all there. Thanks again for your help.

[Quoted text hidden]

—  
Alec Ferretti

# OOR Exhibit 15



December 16, 2022

**Via Email Only:**

Alec Ferretti  
242 E 38th St  
Apt 2F  
New York, NY 10016  
al13fe26@gmail.com

**Via Email Only:**

Gerard Leone, Esq.  
300 North St.  
State Museum  
Harrisburg, PA 17120  
geleone@pa.gov

Cynthia Bendroth  
Agency Open Records Officer  
Pennsylvania Historical and Museum  
Commission  
350 North Street  
Harrisburg, PA 17120-0090  
ra-rtkphmc@pa.gov

**RE: Ferretti v. Pennsylvania Historical and Museum Commission OOR Dkt. AP 2022-2106**

Dear Mr. Leone and Mr. Ferretti:

**Mr. Ferretti:** Based on our review of the record in this matter, we have determined that certain issues require additional review and discussion. To that end, additional time to issue the Final Determination is needed. A specific area of inquiry involves determining whether the PHMC has provided TGN/Ancestry notice of the pending appeal and if notice has not been provided, ensuring that TGN/Ancestry receives notice. Due to the upcoming holiday season and the likelihood that pertinent personnel will be unavailable, we are seeking a four week extension of the Final Determination deadline, until Jan. 19, 2023. I thank you in advance for your ongoing cooperation and anticipated agreement to an extension. Absent an objection by 5:00 p.m. on Mon., Dec. 19, 2022, the docket will be amended to reflect the new Final Determination deadline.

**Mr. Leone:** As the Request implicates records that are maintained by TGN/Ancestry and the PHMC has asserted that the metadata sought is a record of a contractor that is not accessible under the RTKL, kindly confirm whether the PHMC provided TGN/Ancestry notice of the instant appeal. If noticed has been provided, please submit a copy of the written notice. If notice has not been provided, then PHMC must notify TGN/Ancestry of the pending appeal, in order to afford them the opportunity to determine whether the company wishes to submit a Request to Participate under Section 1101(c) of the RTKL. In addition, please provide a copy of the notice sent to TGN/Ancestry.

If either party has any questions, please advise.

Regards,

/s/ Kelly Isenberg

Kelly Isenberg



# OOR Exhibit 16

**From:** [Isenberg, Kelly](#)  
**To:** [Leone, Gerard](#)  
**Subject:** RE: Question Regarding Agency Notice for 2022-2106  
**Date:** Tuesday, December 20, 2022 11:44:00 AM  
**Attachments:** [image001.png](#)

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Attorney Leone:

Thank you for your inquiry. When a document is uploaded in an OOR portal appeal, only the parties to the appeal that have login credentials are able to view the documents. We would request that you upload the notice sent to Ancestry's representative to the docket in this matter. Regarding the redaction of the individual's contact information, as Ancestry is not currently a party, it is not required. If you prefer to redact the information, we have no objection.

If you have additional questions, feel free to contact me.

Regards,  
Kelly Isenberg



**Kelly C. Isenberg** |Attorney  
Senior Appeals Officer  
Office of Open Records  
333 Market Street, 16th Floor  
Harrisburg, PA 17101-2234  
Phone: (717) 346-9903  
Fax: (717) 425-5343  
<https://www.openrecords.pa.gov>  
@OpenRecordsPA

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**From:** Leone, Gerard <geleone@pa.gov>  
**Sent:** Tuesday, December 20, 2022 11:06 AM  
**To:** Isenberg, Kelly <kisenberg@pa.gov>  
**Subject:** Question Regarding Agency Notice for 2022-2106

Hello Appeals Officer Isenberg,

PHMC just provided notice to Ancestry per your direction given on December 16, 2022. I wanted to ask: should this be recorded in the docket? In submissions using PAC-file for instance, there is usually

a redacted copy placed on the docket. I did not know if it would be best to redact Ancestry's representative's business email address and replace it with his name? Should both be submitted or is OOR's docket always sealed? Thank you for your help.

Sincerely,

**Gerard A. Leone** | Assistant Counsel  
Pennsylvania Historical and Museum Commission  
Commonwealth of Pennsylvania  
300 North Street, Room 513 | Harrisburg, PA 17120  
Phone: 717.346.3835 | Mobile: 717.329.2660  
| Fax: 717.783-9924

[geleone@pa.gov](mailto:geleone@pa.gov) | [www.ohc.pa.gov](http://www.ohc.pa.gov)

**PRIVILEGED AND CONFIDENTIAL COMMUNICATION**

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**From:** [Leone, Gerard](#)  
**To:** [REDACTED]@ancestry.com  
**Subject:** PA Right-to-Know-Law Request Regarding PA State Archives and Ancestry  
**Date:** Monday, December 19, 2022 4:25:00 PM  
**Attachments:** [2022-12-16 10.25.59AM OOR 2022-2106.pdf](#)

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Dear Mr. Akenhead,

On September 1, 2022, one Mr. Alec Ferretti filed a request under Pennsylvania's Right to Know Law (RTKL) asking that the PHMC provide him with "All documents scanned (and subsequent indexes and metadata created) pursuant to the contract signed in 2008 between the PHMC and The Generations Network, along with all documents scanned (and subsequent indexes and metadata created) pursuant to any addenda to that contract, including but not limited to all birth and death records and all metadata for birth and death records". PHMC denied the request on September 9th, and Mr. Ferretti filed an appeal with Pennsylvania's Office of Open Records (OOR), the agency responsible for adjudicating appeals under the RTKL. Since the date of the appeal, PHMC and Mr. Ferretti have provided arguments and further evidence to the OOR in support of and against PHMC's denial of Mr. Ferretti's request, respectively.

On December 16, 2022, the OOR further requested that Ancestry be "given notice" of this appeal process to see whether it would like to participate under Section 1101(c) of the RTKL (see [https://www.openrecords.pa.gov/Documents/RTKL/PA\\_Right-To-Know\\_Law.pdf?pdf=20220418](https://www.openrecords.pa.gov/Documents/RTKL/PA_Right-To-Know_Law.pdf?pdf=20220418)). This email is meant to comply with the request of OOR, which is attached to this email for reference. Ms. Kelly Isenberg of OOR is the presiding officer. Her contact information is below.

**Kelly C. Isenberg** | Attorney  
Senior Appeals Officer  
Office of Open Records  
333 Market Street, 16th Floor  
Harrisburg, PA 17101-2234  
Phone: (717) 346-9903  
Fax: (717) 425-5343  
[kisenberg@pa.gov](mailto:kisenberg@pa.gov)

If you have any questions regarding joining the matter, please direct them to the OOR. Thank you.

Sincerely,

**Gerard A. Leone** | Assistant Counsel  
Pennsylvania Historical and Museum Commission  
Commonwealth of Pennsylvania  
300 North Street, Room 513 | Harrisburg, PA 17120  
Phone: 717.346.3835 | Mobile: 717.329.2660  
| Fax: 717.783-9924  
[geleone@pa.gov](mailto:geleone@pa.gov) | [www.pgc.pa.gov](http://www.pgc.pa.gov)

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**From:** [Microsoft Outlook](#)  
**To:** [Leone, Gerard](#)  
**Subject:** Delivered: RE: Question Regarding Agency Notice for 2022-2106  
**Date:** Tuesday, December 20, 2022 11:44:15 AM  
**Attachments:** [RE Question Regarding Agency Notice for 2022-2106.msg](#)

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Your message has been delivered to the following recipients:  
Leone, Gerard (geleone@pa.gov) <mailto:geleone@pa.gov>  
Subject: RE: Question Regarding Agency Notice for 2022-2106

# OOB Exhibit 17



**From:** [Isenberg, Kelly](#)  
**To:** [Jared Akenhead](#); [Becca Bosen](#)  
**Subject:** RE: [External] Ancestry  
**Date:** Tuesday, December 20, 2022 2:30:00 PM  
**Attachments:** [2022-2106\\_Ferretti-PaHistoricalMuseumComm.pdf](#)  
[image002.png](#)

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Mr. Akenhead:

Thank you for your correspondence. Attached you will find the Pennsylvania Office of Open Records ("OOR") Notice of Appeal in *Ferretti v. Pa. Historical Museum Commission*, AP 2022-2106. You can find the OOR Request to Participate form on p. 9, of the packet, which includes instructions about the form. Information on how appeals proceed before the OOR may be found on the website: [www.openrecords.pa.gov](http://www.openrecords.pa.gov). In addition, here is a link to the OOR's procedural guidelines:

<https://www.openrecords.pa.gov/Appeals/ProceduralGuidelines.cfm>.

For any further information, I would refer you back to counsel for PHMC, who provided you the notice.

Regards,  
Kelly Isenberg



**Kelly C. Isenberg** |Attorney  
Senior Appeals Officer  
Office of Open Records  
333 Market Street, 16th Floor  
Harrisburg, PA 17101-2234  
Phone: (717) 346-9903  
Fax: (717) 425-5343  
<https://www.openrecords.pa.gov>  
@OpenRecordsPA

---

**From:** Jared Akenhead <[REDACTED]>  
**Sent:** Tuesday, December 20, 2022 12:12 PM  
**To:** Isenberg, Kelly <kisenberg@pa.gov>; Becca Bosen <[REDACTED]>  
**Subject:** [External] Ancestry

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

Ms. Isenberg,

I was given notice a couple of days ago of an appeal that was made relating to records/information that had been requested by an individual from PHMC. I would like to request a meeting with yourself to understand what level of participation we may want to have in this matter.

I know we are all at the end of the year and time may not be available as much as it usually is but if you would accommodate a zoom call today or tomorrow, that would be wonderful

I look forward to hearing back from you soon.

Kind Regards

**Jared Akenhead**

Senior Manager – Content Acquisition

[REDACTED]

M: (801) 995-1165

O: (801) 705-7135

1300 W. Traverse Pkwy

Lehi, UT 84043



We empower journeys of personal discovery to enrich lives.



## **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 **November 10, 2022**.

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

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

Submissions in this case are currently due on **September 22, 2022**.

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

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

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

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



September 13, 2022

**Via Email Only:**

Alec Ferretti  
242 E 38th Street  
Apt 2F  
New York, NY 10016  
all3fe26@gmail.com

**Via Email Only:**

Cynthia Bendroth  
Agency Open Records Officer  
Pennsylvania Historical and Museum  
Commission  
350 North Street  
Harrisburg, PA 17120-0090  
ra-rtkphmc@pa.gov

**RE: OFFICIAL NOTICE OF APPEAL - Ferretti v. Pennsylvania Historical and Museum  
Commission OOR Dkt. AP 2022-2106**

Dear Parties:

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

The Office of Open Records ("OOR") received this appeal under the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101, et seq. on September 9, 2022. A binding Final Determination ("FD") will be issued pursuant to the timeline required by the RTKL, **please see the attached information for more information about deadlines.**

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

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

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

Sincerely,

A handwritten signature in black ink that reads "Elizabeth Wagenseller". The signature is fluid and cursive, with the first name and last name clearly distinguishable.

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)).

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

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

## **Agency Must Notify Third Parties**

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

Such notice must be made by: (1) Providing a copy of all documents included with this letter; **and** (2) Advising relevant third parties that interested persons may request to participate in this appeal by contacting the Appeals Officer or completing the form at <https://www.openrecords.pa.gov/Appeals/DIPRequest.cfm>. (see 65 P.S. § 67.1101(c)).

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

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

*NOTE TO AGENCIES: If you have questions about this requirement, please*

*contact the Appeals Officer immediately.*

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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.*

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## **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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## **Mediation**

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

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

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

Either party can end mediation at any time.

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

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

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# pennsylvania

## OFFICE OF OPEN RECORDS

IN THE MATTER OF

ALEC FERRETTI,  
Requester

v.

PENNSYLVANIA HISTORICAL AND  
MUSEUM COMMISSION,  
Respondent

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Docket No.: AP 2022-2106

This correspondence confirms the above-referenced Requester's agreement to an additional thirty (30) day extension of time to issue a Final Determination in this matter as indicated in the Requester's appeal form. Accordingly, pursuant to 65 P.S. § 67.1101(b)(1), the Office of Open Records will now issue a Final Determination in the above-captioned matter on or before November 10, 2022.



**APPEALS OFFICER:**

**Ryan Liggitt, 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:**

**rliggitt@pa.gov**

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

**EMAIL**

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

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

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

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



IN THE MATTER OF

\_\_\_\_\_  
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.**

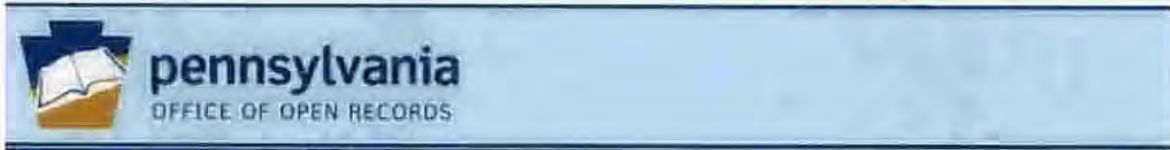
Respectfully submitted, \_\_\_\_\_ (must be signed)

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.

**From:** [no-reply@openrecordspennsylvania.com](mailto:no-reply@openrecordspennsylvania.com)  
**To:** [al13fe26@gmail.com](mailto:al13fe26@gmail.com)  
**Subject:** [External] PA Office of Open Records - Appeal Confirmation  
**Date:** Friday, September 9, 2022 3:13:13 PM  
**Attachments:** [oor\\_logo\\_email.png](#)

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



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

<b>Name:</b>	Alec Ferretti
<b>Company:</b>	
<b>Address 1:</b>	242 E 38th St
<b>Address 2:</b>	Apt 2F
<b>City:</b>	New York
<b>State:</b>	New York
<b>Zip:</b>	10016
<b>Phone:</b>	631-672-7020
<b>Email:</b>	<a href="mailto:al13fe26@gmail.com">al13fe26@gmail.com</a>
<b>Email2:</b>	<a href="mailto:al13fe26@gmail.com">al13fe26@gmail.com</a>
<b>Agency (list):</b>	Pennsylvania Historical and Museum Commission
<b>Agency Address 1:</b>	350 North St
<b>Agency Address 2:</b>	
<b>Agency City:</b>	Harrisburg

<b>Agency State:</b>	Pennsylvania
<b>Agency Zip:</b>	17120
<b>Agency Phone:</b>	717-787-7180
<b>Agency Email:</b>	RA-rtkphmc@pa.gov
<b>Records at Issue in this Appeal:</b>	I requested digital copies of analog records, held by PHMC, that were digitized by the Generations Network (TGN), AKA Ancestry.com, starting in 2008. The contract signed between PHMC and TGN states that TGN would provide PHMC a copy of the digitized material. In PHMC's response, they claim that they, an archive empowered to preserve the state's records, decided not to take possession of the digitized records, and instead, allowed TGN to be the only entity to possess them. This strains credulity.
<b>Request Submitted to Agency Via:</b>	e-mail
<b>Request Date:</b>	09/01/2022
<b>Response Date:</b>	09/09/2022
<b>Deemed Denied:</b>	No
<b>Agency Open Records Officer:</b>	Anne Marie Ickes
<b>Attached a copy of my request for records:</b>	Yes
<b>Attached a copy of all responses from the Agency regarding my request:</b>	Yes
<b>Attached any letters or</b>	Yes

notices  
extending the  
Agency's time  
to respond to  
my request:

Agree to   
permit the  
OOR  
additional  
time to issue a  
final  
determination:

Interested in   
resolving this  
issue through  
OOR  
mediation:

**Attachments:**

- Gmail - RTKL PHMC Response\_09092022.pdf
- RTKRequestForm - Updated 11-27-2018.pdf
- FerrettiResponseSent.pdf
- 2008\_Ancestry digitization FIRST agreement.pdf

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





COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA HISTORICAL & MUSEUM COMMISSION

September 9, 2022

**Email to:** AL13FE26@gmail.com  
Alec Ferretti  
242 E 38<sup>th</sup> St Apt 2F  
New York, NY 10016  
Conklin, NY 13748

**RE:** RTKL Request 2022-24

Dear Mr. Ferretti:

This letter acknowledges the Pennsylvania Historical and Museum Commission's ("PHMC") receipt of your written request for records under the Pennsylvania Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101-67.3104 received September 1, 2022. PHMC received your request stated as follows:

"All documents scanned (and subsequent indexes and metadata created) pursuant to the contract signed in 2008 between the PHMC and The Generations Network, along with all documents scanned (and subsequent indexes and metadata created) pursuant to any addenda to that contract, including but not limited to all birth and death records and all metadata for birth and death records."

To the best of PHMC's knowledge, it never had the record you requested, or it no longer exists. After initially receiving copies of the records digitized by Ancestry, PHMC concluded that the volume exceeded its capacity to retain these records and therefore relies on Ancestry's copies for their own reference. In responding to requests for access to public records, an agency is not required to "create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which the agency does not currently compile, maintain, format or organize the record." 65 P.S. § 67.705. The Right-to-Know-Law provides that records not in the agency's custody, possession or control do not exist such that they can be requested of the agency.<sup>1</sup>

If you disagree with the above determination(s), then you have the right to appeal this response to the Office of Open Records. If you choose to file an appeal, you must send a written appeal (e.g., via e-mail, fax, regular U.S. mail) to both PHMC 300 North St, Harrisburg, PA 17120 and the Office of Open Records at: Office of Open Records, 333 Market St 16th floor, Harrisburg, PA 17101. This appeal must

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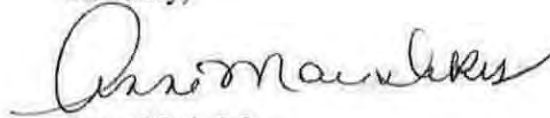
<sup>1</sup> See *Saunders v. Dep't of Corr.*, 172 A.3d 110, 112 (Pa.Cmwlth. 2017)

be sent within 15 business days of the mailing date of this response. If you choose to file an appeal, you must include the following:

- (1) a copy of your request;
- (2) a copy of this response; and
- (3) in a letter or message directed at the Executive Director of the Office of Open Records, the reason(s) in support of your appeal and/or why you believe the agency is in possession of records, or unable to meet any of the exemptions as stated in this response.

The Office of Open Records has an appeal form available on its website at:  
<https://www.openrecords.pa.gov/Appeals/AppealForm.cfm> (online form)  
or [https://www.openrecords.pa.gov/Documents/Appeals/Appeal\\_Form.pdf](https://www.openrecords.pa.gov/Documents/Appeals/Appeal_Form.pdf)

Sincerely,



Anne Marie Ickes  
Associate Agency Open Records Officer  
Pennsylvania Historical & Museum Commission |  
Pennsylvania State Archives  
350 North St., Harrisburg, PA 17120-0090  
Phone: 717-787-7180

Date of Mailing: September 9, 2022



Alec Ferretti <al13fe26@gmail.com>

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## RTKL PHMC Response\_09092022

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PH, right to know <RA-rtkphmc@pa.gov>  
To: Alec Ferretti <al13fe26@gmail.com>

Fri, Sep 9, 2022 at 9:58 AM

**Anne Marie Ickes** | Archivist | PHMC Records Coordinator

Records Division | PA State Archives

PA Historical & Museum Commission

350 North Street, Harrisburg, PA 17120-0090

Phone: 717-787-7180

[www.phmc.pa.gov/Archives/Records-Management](http://www.phmc.pa.gov/Archives/Records-Management)



**Pennsylvania State Archives**  
PENNSYLVANIA HISTORICAL AND MUSEUM COMMISSION

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**From:** Alec Ferretti <al13fe26@gmail.com>  
**Sent:** Thursday, September 1, 2022 7:08 PM  
**To:** PH, right to know <RA-rtkphmc@pa.gov>  
**Subject:** [External] RTK Request

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

Dear Ms Bendroth

Please see attached.

—

Alec Ferretti



**FerrettiResponseSent.pdf**  
437K





## Standard Right-to-Know Law Request Form

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

SUBMITTED TO AGENCY NAME: Pennsylvania Historical and Museum Commission (Attn: AORO)

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

### PERSON MAKING REQUEST:

Name: Alec Ferretti Company (if applicable): \_\_\_\_\_

Mailing Address: 242 E 38th St Apt 2F

City: New York State: NY Zip: 10016 Email: AL13FE26@Gmail.com

Telephone: 631-672-7020 Fax: \_\_\_\_\_

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

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

All documents scanned (and subsequent indexes and metadata created) pursuant to the contract signed in 2008 between the PHMC and The Generations Network, along with all documents scanned (and subsequent indexes and metadata created) pursuant to any addenda to that contract, including but not limited to all birth and death records and all metadata for birth and death records.

DO YOU WANT COPIES? ☒ Yes, electronic copies preferred if available

☐ Yes, printed copies preferred

☐ No, in-person inspection of records preferred (*may request copies later*)

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

RTKL requests may require payment or prepayment of fees. See the [Official RTKL Fee Schedule](#) for more details.

Please notify me if fees associated with this request will be more than ☐ \$100 (or) ☒ \$50.

### ITEMS BELOW THIS LINE FOR AGENCY USE ONLY

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

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

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

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

NOTE: In most cases, a completed RTKL request form is a public record.  
More information about the RTKL is available at <https://www.openrecords.pa.gov>

Form updated Nov. 27, 2018



MSC 17173

**License Agreement**

This License Agreement ("AGREEMENT") is entered into as of the date last signed below, between The Generations Network, Inc., Delaware corporation with its principal office at Provo, Utah ("TGN"), and the Pennsylvania Historical and Museum Commission, an independent agency of the Commonwealth of Pennsylvania ("Commonwealth"), located in Harrisburg, Pennsylvania ("PHMC").

WHEREAS, TGN operates multiple genealogy and family history related Web properties, including Ancestry.com, that provide family-oriented services, genealogy research and access to other related services (the "TGN Network");

WHEREAS, PHMC owns or has rights to historical records, including the records covered in Appendix A (the "Records"), as may be supplemented from time to time by mutual agreement; and

WHEREAS, TGN desires to access the Records for the purpose of digitization, index creation and distribution. The resulting digital images and indexes created by TGN from the Records are referred to as the "Licensed Materials."

THEREFORE, the parties, intending to be legally bound, agree to the following:

**Definitions:**

**Records.** The term "Records" shall mean those PHMC Collections as described in Appendix A.

**Licensed Materials.** The term "Licensed Materials" shall mean those digital images and indexes that TGN creates as a result of digitizing and indexing the records.

**1. Records Access.**

- 1.1. By PHMC. PHMC shall: a) deliver to TGN a copy of the Records on microfilm, and b) provide TGN with copies of digital records, as specified in Appendix A.
- 1.2. By TGN. TGN agrees to digitize and create a basic index of the Records, and, prior to or simultaneously to posting such records to the TGN Network, provide PHMC with a digital copy of the images and indexes, in a digital format approved by PHMC, subject to the use restrictions stated below. TGN agrees to provide free access for up to 20 simultaneous users to Ancestry.com, including the Licensed Materials, on location at the state archive. TGN agrees to provide the PHMC logo and sourcing credit and quarterly usage reports on web pages containing the Licensed Materials. TGN warrants that the digitized and indexed images provided to PHMC will be free from defect and that if defective, it will repair or replace the digitized and indexed images at its own expense.

**2. Grant of Licenses.**

- 2.1. By PHMC. PHMC grants to TGN the right and license to digitize, index, copy, publish, republish, market, distribute, and sell the Licensed Materials anywhere in the world within any media, including but not limited to printed and Electronic Products. "Electronic Product" shall mean the publication and/or distribution of the Licensed Materials in any and all electronic media, now known or developed in the future, including but not limited to floppy disk, CD-ROM, DVD, hand held devices, Internet (or any other method of on-line publication or distribution). For each collection, this right and license will be held exclusively by TGN for a period of three years (the "Exclusive Period") beginning the date on which TGN posts the Licensed Materials online, except as specified in the Appendixes.

- 2.2. By TGN. TGN grants PHMC a non-exclusive, non-transferable right and license to use the Licensed Materials for the benefit of its patrons. (Licensed Materials provided to PHMC may be used for internal purposes at any time during or after the Exclusive Period.) PHMC may not post the Licensed Materials on its website for a period of three years from the date when the Licensed Materials were posted online by TGN. The Licensed Materials may not be distributed or resold by PHMC to any company or institution for any purpose, and is solely for the use of individual patrons. Following the three-year exclusive period, PHMC can post the Licensed Materials on its website for use by the general public. In the event that PHMC chooses to post the Licensed Materials online following the Exclusive Period, TGN is no longer obligated to provide free access to the Licensed Materials on-site, at the state archive.
  - 2.3. While either party may use third parties to assist in the development and production of the Electronic Product, the license granted to PHMC does not allow partnering, or co-publishing relationships by PHMC, whereby any third party becomes a publisher of the Licensed Materials in an Electronic Product, or shares in the profit from the publication of the Licensed Materials in an Electronic Product.
  - 2.4. The PHMC reserves all rights pertaining to use of the original records, as described in Appendix A, provided to TGN.
3. Representations. Each party represents and warrants that it has the right to enter into this AGREEMENT and that by doing so it shall not violate or infringe the rights of any third party.
4. Background Checks.
  - 4.1. TGN must, at its expense, arrange for a background check for each of its employees, as well as for the employees of its subcontractors, who will have access to Commonwealth facilities. Background checks are to be conducted via the Request for Criminal Record Check form and procedure found at <http://www.psp.state.pa.us/psp/lib/psp/sp4-164.pdf>. The background check must be conducted prior to initial access by an IT employee and annually thereafter.
  - 4.2. Before the Commonwealth will permit a contract employee access to Commonwealth facilities, TGN must provide written confirmation to the office designated by the agency that the background check has been conducted. If, at any time, it is discovered that an contract employee has a criminal record that includes a felony or misdemeanor involving terroristic threats, violence, use of a lethal weapon, or breach of trust/fiduciary responsibility; or which raises concerns about building, system, or personal security, or is otherwise job-related, TGN shall not assign that employee to any Commonwealth facilities, shall remove any access privileges already given to the employee, and shall not permit that employee remote access to Commonwealth facilities or systems, unless the agency consents, in writing, prior to the access being provided. The agency may withhold its consent at its sole discretion. Failure of TGN to comply with the terms of this paragraph may result in default of TGN under its Agreement with the Commonwealth.
  - 4.3. The Commonwealth specifically reserves the right of the Commonwealth to conduct background checks over and above that described herein.
5. Insurance (applicable only if TGN employees or contractors perform work onsite at PHMC).
  - 5.1. TGN shall procure and maintain at its expense and require its subcontractors to procure and maintain, as appropriate, the following types of insurance, issued by companies acceptable to PHMC and authorized to conduct such business under the laws of the Commonwealth of Pennsylvania.

- 5.1.1. Worker's Compensation Insurance for all of TGN's employees and those of any subcontractor engaged in performing Services in accordance with the *Worker's Compensation Act* (77 P.S. § 101, *et seq.*)
- 5.1.2. Public liability and property damage insurance to protect the Commonwealth of Pennsylvania, TGN and any and all subcontractors from claims for damages for personal injury (including bodily injury), sickness or disease, accidental death, and damage to property, including loss of use resulting from any property damage which may arise from its operations under this AGREEMENT, whether such operation be by TGN, by any subcontractor, or by anyone directly or indirectly employed by either. The limits of such insurance shall be in an amount not less than \$500,000 per person and \$2,000,000 per occurrence, personal injury and property damage combined. Such policies shall be occurrence rather than claims-made policies and shall name the Commonwealth of Pennsylvania as an additional insured. The insurance shall not contain any endorsements or any other form designed to limit and restrict any action by the Commonwealth as an additional insured against the insurance coverages in regard to the work performed for the Commonwealth.
- 5.2. Prior to commencing work under the AGREEMENT, TGN shall provide PHMC with a copy of each current certificate of insurance. These certificates shall contain a provision that coverages afforded under the policies will not be canceled or changed in such a way to cause the coverage to fail to comply with the requirements of this Section until at least thirty (30) days prior written notice has been given to PHMC.

5.3. TGN agrees to maintain such insurance for the life of the AGREEMENT.

6. Conflicts.

- 6.1. In the event of a controversy or claim arising from the AGREEMENT, TGN must, within six months after the cause of action accrues, file a written claim with the Contracting Officer for a determination. The claim shall state all grounds upon which TGN asserts a controversy exists. If TGN fails to file a claim or files an untimely claim, TGN is deemed to have waived its right to assert a claim in any forum.
- 6.2. The Contracting Officer shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within 120 days of the receipt of the claim, unless extended by consent of the Contracting Officer and TGN. The Contracting Officer shall send his/her written determination to TGN. If the Contracting Officer fails to issue a final determination within the 120 days (unless extended by consent of the parties), the claim shall be deemed denied. The Contracting Officer's determination shall be the final order of the purchasing agency.
- 6.3. Within fifteen (15) days of the mailing date of the determination denying a claim or within 135 days of filing a claim if, no extension is agreed to by the parties, whichever occurs first, TGN may file a statement of claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, TGN shall proceed diligently with the performance of the AGREEMENT in a manner consistent with the determination of the Contracting Officer and PHMC shall compensate TGN pursuant to the terms of the AGREEMENT.

7. Confidentiality.

- 7.1. TGN agrees to guard the confidentiality of the PHMC with the same diligence with which it guards its own proprietary information. PHMC agrees to protect the confidentiality of

TGN's confidential information with the same diligence with which it guards its own proprietary information. In order for information to be deemed to be confidential, the party claiming confidentiality must designate the information as "confidential" in such a way as to give notice to the other party. The parties agree that such confidential information shall not be copied, in whole or in part, except when essential for authorized use under this AGREEMENT. Each copy of such confidential information shall be marked by the party making the copy with all confidentiality notices appearing in the original.

7.2. The obligations stated in this Section do not apply to information:

- 7.2.1. already known to the recipient at the time of disclosure other than through the contractual relationship;
- 7.2.2. independently generated by the recipient and not derived from the information supplied by the disclosing party;
- 7.2.3. known or available to the public, except where such knowledge or availability is the result of unauthorized disclosure by the recipient of the proprietary information;
- 7.2.4. disclosed to the recipient without a similar restriction by a third party who has the right to make such disclosure; or
- 7.2.5. required to be disclosed by the recipient by law, regulation, court order, or other legal process.

7.3. There shall be no restriction with respect to the use or disclosure of any ideas, concepts, know-how, or data processing techniques developed alone or jointly with PHMC in connection with services provided to PHMC under this AGREEMENT.

8. Termination.

- 8.1. Termination for Cause by PHMC: If, through any cause, TGN fails to fulfill, in a timely and proper manner, its obligations under this AGREEMENT, PHMC shall give TGN written notice of a deficiency in its performance. If TGN does not correct the deficiency to the reasonable satisfaction of PHMC within thirty (30) days of its receipt of the notice of deficiency, PHMC may terminate this AGREEMENT.
- 8.2. Termination for Cause by TGN: If, through any cause, PHMC fails to fulfill, in a timely and proper manner, its obligations under this AGREEMENT, TGN shall give PHMC written notice of a deficiency in its performance. If PHMC does not correct the deficiency to the reasonable satisfaction of TGN within thirty (30) days of its receipt of the notice of deficiency, TGN may terminate this AGREEMENT.
- 8.3. Return of Materials. If this Agreement is terminated for cause by either party, PHMC agrees to return to TGN any Licensed Materials it has received from TGN and TGN agrees to return to PHMC any records, as described in Appendix A, it has received from PHMC.

9. Assignability

- 9.1. Subject to the terms and conditions of this Section, the AGREEMENT is binding upon the parties and their respective successors and assigns.

- 9.2. TGN may not assign, in whole or in part, the AGREEMENT or its rights, duties, obligations, or responsibilities hereunder without the prior written consent of PHMC, which consent may be withheld at the sole and absolute discretion of PHMC.
- 9.3. For the purposes of the AGREEMENT, the term "assign" shall include, but shall not be limited to, the sale, gift, assignment, encumbrance, pledge, or other transfer of any ownership interest in TGN provided, however, that the term shall not apply to the sale or other transfer of stock of a publicly traded company.
- 9.4. Any assignment consented to by PHMC shall be evidenced by a written assignment agreement executed by TGN and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of the AGREEMENT and to assume the duties, obligations, and responsibilities being assigned.
- 9.5. Notwithstanding the foregoing, TGN may, without the consent of PHMC, assign its rights to payment to be received under the AGREEMENT, provided that TGN provides written notice of such assignment to the PHMC together with a written acknowledgement from the assignee that any such payments are subject to all of the terms and conditions of the AGREEMENT.
- 9.6. A change of name by TGN, following which the TGN federal identification number remains unchanged, is not considered to be an assignment. TGN shall give PHMC written notice of any such change of name.

10. Commonwealth Held Harmless

- 10.1. TGN shall hold the Commonwealth harmless from and indemnify the Commonwealth against any and all third party claims, demands and actions based upon or arising out of any activities performed by TGN and its employees and agents under this AGREEMENT, provided the Commonwealth gives TGN prompt notice of any such claim of which it learns. Pursuant to the *Commonwealth Attorneys Act* (71 P.S. § 732-101, et seq.), the Office of Attorney General ("OAG") has the sole authority to represent the Commonwealth in actions brought against the Commonwealth. The OAG may, however, in its sole discretion and under such terms as it deems appropriate, delegate its right of defense. If OAG delegates the defense to TGN, the Commonwealth will cooperate with all reasonable requests of TGN made in the defense of such suits.
- 10.2. Notwithstanding the above, neither party shall enter into any settlement without the other party's written consent, which shall not be unreasonably withheld. The Commonwealth may, in its sole discretion, allow TGN to control the defense and any related settlement negotiations.

11. Independent Capacity of TGN

- 11.1. The parties to this AGREEMENT agree that the services performed by TGN under the terms of this AGREEMENT are performed as an independent contractor. The services performed by TGN are performed neither as an employee of the Commonwealth of Pennsylvania nor as a partnership or joint venture between the PHMC and TGN.
- 11.2. Except as otherwise provided by the terms of this AGREEMENT, PHMC shall have no control over the manner in which the contractual services are performed by TGN, or any subcontractor. Any job specifications or standards of work attached to or incorporated into this AGREEMENT or any subcontracting restrictions contained in this AGREEMENT

shall not be construed as PHMC's direction or control over the manner of the performance of services provided by TGN.

12. Notices. Notices provided under this AGREEMENT will be effective if delivered to the then current principal business address of the other party. The current addresses are:

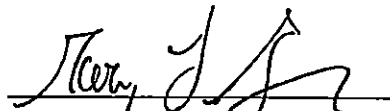
If to TGN: 360 West 4800 North Provo, Utah, 84604 Attn: Al Viera, with a copy to General Counsel at the same address TGN's telephone: 801-705-7000. TGN's fax: 801-705-7001.

If to PHMC: 300 North Street, Harrisburg, PA 17120-0090 Attn: Barbara Franco, Executive Director, Pa. Historical & Museum Commission, telephone 717-787-2891, fax 717-705-0482. Notices may be given by first class mail, express courier or confirmed facsimile.

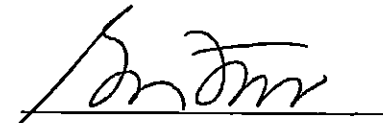
13. Applicable Law. This AGREEMENT shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of the Pennsylvania courts. TGN consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal courts in Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. TGN agrees that any such court shall have in personam jurisdiction over it, and consents to service of process in any manner authorized by Pennsylvania law.
14. Incorporation of Exhibits. Commonwealth Non-Discrimination/Sexual Harassment, Contractor Integrity Provisions, Contractor Responsibility Provisions, Tax Offset Clause, and Provisions Regarding the Americans with Disabilities Act are hereto attached and incorporated as Exhibits "A", "B", "C", "D" and "E", respectively. TGN shall be known as "Contractor" for purposes of these provisions

The signatures of the parties below indicate their respective acknowledgment of the terms outlined in this AGREEMENT.

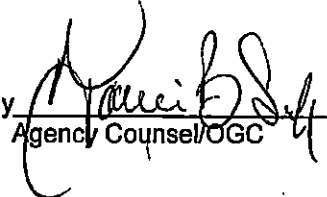
**The Generations Network, Inc.**

Signed:   
Name: Gary L. Gibb  
Title: V.P. Content  
Date: Nov 18, 2008

**Pennsylvania Historical and Museum Commission**

Signed:   
Name: Barbara A. Franco  
Title: Executive Director  
Date: 12/15/08

**APPROVED AS TO FORM AND LEGALITY**

By  12/18/08  
Agency Counsel/OGC Date

  
Office of the Attorney General

<sup>msb  
1-3-09</sup>  
By  2/6/09  
Comptroller Date



## Appendix A

Collections considered the Records for purposes of this AGREEMENT:

Project Name	Approx. # of Images	Years Covered	Format	Exclusivity
Septennial Census	11000	1775-1863	Microfilm	3 Years
Oyer and Terminer	4800	1757-1786	Microfilm	3 Years
Warrant Applications	90000	1734-1952	Microfilm	3 Years
Tax and Exoneration	31000	1761-1801	Microfilm	3 Years
Warrants	150,000	1682-	Microfilm	3 Years
Spanish-American Veterans' Compensation	73,000	1934	Microfilm	3 Years
War of 1812 Pension Files	21,600	1866-1896	Microfilm	3 Years
Civil War Border Claims	43000	1871-1879	Microfilm	3 Years
Supreme Court Naturalization Papers	40000	1794-1868	Microfilm	3 Years
WPA Church Archives	123,000	1937-1940	Microfilm	3 Years
Records of Marriages RG14	1500	1885-1889	Microfilm	3 Years
Births, Deaths Marriages RG26	5500	1852-1854	Microfilm	3 Years
Pennsylvania Veterans' Burial Cards	750,000	1929-1990	Digital	None

Exhibit A

NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE

During the term of the Contract, the Contractor agrees as follows:

- a. In the hiring of any employees for the manufacture of supplies, performance of work, or any other activity required under the Contract or any subcontract, the Contractor, subcontractor or any person acting on behalf of the Contractor or subcontractor shall not by reason of gender, race, creed, or color discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
- b. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work or any other activity required under the Contract on account of gender, race, creed, or color.
- c. The Contractor and any subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.
- d. The Contractor shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
- e. The Contractor and each subcontractor shall furnish all necessary employment documents and records to and permit access to its books, records, and accounts by the Contracting Officer and the Department of General Services Bureau of Contract Administration and Business Development for purposes of investigation to ascertain compliance with the provisions of this Nondiscrimination/Sexual Harassment Clause. If the Contractor or any subcontractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the Contracting Officer or the Bureau of Contract Administration and Business Development.
- f. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that such provisions will be binding upon each subcontractor.
- g. The Commonwealth may cancel or terminate the Contract, and all money due or to become due under the Contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

## Exhibit B

### CONTRACTOR INTEGRITY PROVISIONS

1. Definitions.
  - a. Confidential Information means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the Commonwealth.
  - b. Consent means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of execution of this agreement.
  - c. Contractor means the individual or entity that has entered into this agreement with the Commonwealth, including directors, officers, partners, managers, key employees, and owners of more than a 5% interest.
  - d. Financial interest means:
    - (1) ownership of more than a 5% interest in any business; or
    - (2) holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.
  - e. Gratuity means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.
2. The contractor shall maintain the highest standards of integrity in the performance of this agreement and shall take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with the Commonwealth.
3. The contractor shall not disclose to others any confidential information gained by virtue of this agreement.
4. The contractor shall not, in connection with this or any other agreement with the Commonwealth, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the Commonwealth.
5. The contractor shall not, in connection with this or any other agreement with the Commonwealth, directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the Commonwealth.
6. Except with the consent of the Commonwealth, neither the contractor nor anyone in privity with him shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under this agreement except as provided therein.
7. Except with the consent of the Commonwealth, the contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project.
8. The contractor, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify the Commonwealth in writing.
9. The contractor, by execution of this agreement and by the submission of any bills or invoices for payment pursuant thereto, certifies and represents that he has not violated any of these provisions.
10. The contractor, upon the inquiry or request of the Inspector General of the Commonwealth or any of that official's agents or representatives, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to the Contractor's integrity or responsibility, as those terms are defined by the Commonwealth's statutes, regulations, or management directives. Such information may include, but shall not be limited to, the contractor's business or financial records, documents or files of any type or form which refer to or concern this agreement. Such information shall be retained by the contractor for a period of three years beyond the termination of the contract unless otherwise provided by law.
11. For violation of any of the above provisions, the Commonwealth may terminate this and any other agreement with the contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another contractor to complete performance hereunder, and debar and suspend the contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

## Exhibit C

### CONTRACTOR RESPONSIBILITY PROVISIONS

For the purpose of these provisions, the term contractor is defined as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee, or subgrantee, who has furnished or seeks to furnish goods, supplies, services, or leased space, or who has performed or seeks to perform construction activity under contract, subcontract, grant, or subgrant with the Commonwealth, or with a person under contract, subcontract, grant, or subgrant with the Commonwealth or its state-affiliated entities, and state-related institutions. The term contractor may include a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other entity of the Commonwealth.

1. The contractor must certify, in writing, for itself and all its subcontractors, that as of the date of its execution of any Commonwealth contract, that neither the contractor, nor any subcontractors, nor any suppliers are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the contractor cannot so certify, then it agrees to submit, along with the bid/proposal, a written explanation of why such certification cannot be made.
2. The contractor must also certify, in writing, that as of the date of its execution, of any Commonwealth contract it has no tax liabilities or other Commonwealth obligations.
3. The contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the contractor shall have an obligation to inform the contracting agency if, at any time during the term of the contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.
4. The failure of the contractor to notify the contracting agency of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the contract with the Commonwealth.
5. The contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the contractor's compliance with the terms of this or any other agreement between the contractor and the Commonwealth, which results in the suspension or debarment of the contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The contractor shall not be responsible for investigative costs for investigations that do not result in the contractor's suspension or debarment.
6. The contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the internet at <http://www.dgs.state.pa.us/debarment.htm> or contacting the:

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

## **Exhibit D**

### **Tax Offset Clause**

The Contractor authorizes the Commonwealth to offset any state and local tax liabilities of the contractor of any of its subsidiaries, as well as, any other amount due to the Commonwealth from the contractor, against any payment due to the contractor under this or any other contract with the Commonwealth.

## **Exhibit E**

### **AMERICANS WITH DISABILITIES ACT**

a. Pursuant to federal regulations promulgated under the authority of The Americans With Disabilities Act, 28 C.F.R. § 35.101 et seq., the Contractor understands and agrees that it shall not cause any individual with a disability to be excluded from participation in this Contractor from activities provided for under this Contract on the basis of the disability. As a condition of accepting this contract, the Contractor agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. § 35.130, and all other regulations promulgated under Title I of The Americans With Disabilities Act which are applicable to all benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.

b. The Contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of the Contractor's failure to comply with the provisions of subparagraph a above.

**From:** [Microsoft Outlook](#)  
**To:** [Jared Akenhead](#); [Becca Bosen](#)  
**Subject:** Relayed: RE: [External] Ancestry  
**Date:** Tuesday, December 20, 2022 2:30:17 PM  
**Attachments:** [RE External Ancestry.msg](#)

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Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

Jared Akenhead ([REDACTED]) <mailto:[REDACTED]>  
Becca Bosen ([REDACTED]) <mailto:[REDACTED]>  
Subject: RE: [External] Ancestry



# OOB Exhibit 18

January 12, 2023

**Via Email Only:**

Alec Ferretti  
242 E 38th St  
Apt 2F  
New York, NY 10016  
al13fe26@gmail.com

**Via Email Only:**

Gerard Leone, Esq.  
300 North St.  
State Museum  
Harrisburg, PA 17120  
geleone@pa.gov

Cynthia Bendroth  
Agency Open Records Officer  
Pennsylvania Historical and Museum  
Commission  
350 North Street  
Harrisburg, PA 17120-0090  
ra-rtkphmc@pa.gov

**RE: Ferretti v. Pennsylvania Historical and Museum Commission OOR Dkt. AP 2022-2106**

Dear Mr. Ferretti:

While I have made progress on my review and analysis of the above-referenced appeal, unfortunately, I have contracted the COVID-19 virus, and I am feeling quite unwell. I am writing to respectfully request a brief one-week extension of time to issue a Final Determination until Jan. 26, 2023. Kindly provide a reply to this request as soon as practicable or by the close of business tomorrow, January 13, 2023. In the absence of an objection, the docket will be amended to reflect the new Final Determination deadline.

I thank you in advance for your understanding and cooperation in this request.

Regards,  
Kelly Isenberg

# OOB Exhibit 19

Please take the extension for the FD and I hope you feel better soon.

# 00R Exhibit 20



# pennsylvania

OFFICE OF OPEN RECORDS

## FINAL DETERMINATION

**IN THE MATTER OF**

**ALEC FERRETTI,  
Requester**

**v.**

**PENNSYLVANIA HISTORICAL AND  
MUSEUM COMMISSION,  
Respondent**

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**Docket No: AP 2022-2106**

### **FACTUAL BACKGROUND**

On September 1, 2022, Alec Ferretti ("Requester") submitted a request ("Request") to the Pennsylvania Historical and Museum Commission ("PHMC") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq.*, seeking:

All documents scanned (and subsequent indexes and metadata created) pursuant to the contract signed in 2008 between PHMC and The Generations Network, along with all documents scanned (and subsequent indexes and metadata created) pursuant to any addenda to that contract, including but not limited to all birth and death records and metadata for birth and death records.

On September 9, 2022, the PHMC denied the Request, arguing that no responsive records exist within its possession, custody or control and that it is not required to create a record, 65 P.S. § 67.705.

On September 9, 2022, the Requester appealed to the Office of Open Records ("OOR"), challenging the denial and stating grounds for disclosure.<sup>1</sup> The OOR invited both parties to supplement the record and directed the PHMC to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On September 30, 2022, the PHMC submitted a position statement reiterating its grounds for denial. The PHMC explains that when it learned from The Generations Network/Ancestry ("TGN" or "Ancestry") that the data scanned by Ancestry, on behalf of the PHMC, comprised approximately 45 terabytes and would have required approximately \$300,000 per year to maintain, the PHMC chose to have Ancestry maintain the scanned records for the Commonwealth. The PHMC further argues that the Request is insufficiently specific, 65 P.S. § 67.703. In support of its position, the PHMC submitted the affidavit of Cynthia Bendroth, the PHMC Open Records Officer.

On October 19, 2022, the undersigned was reassigned the appeal.

On October 25, 2022, the Requester submitted a position statement, along with a request that the OOR accept the submission after the record closing date. The Requester asserts that the requested records are in the legal custody possession of the PHMC and, therefore, the PHMC is still obligated to provide responsive records under the RTKL. The Requester further asserts that it is possible to transfer the data by way of USB hard drives copied by Ancestry, such that the large amount of data is not a basis for denial of the Request. Finally, the Requester argues that the Request is sufficiently specific, in that the PHMC was able to ascertain what records to search for and that the "potentially responsive materials ... are discrete deliverables from clearly itemized

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<sup>1</sup> The Requester granted the OOR additional time to issue a final determination. See 65 P.S. § 67.1101(b)(1) ("Unless the requester agrees otherwise, the appeals officer shall make a final determination which shall be mailed to the requester and the agency within 30 days of receipt of the appeal filed under subsection (a).").



agreements.” The Requester attached a copy of the service contract between the PHMC and Ancestry, dated December 15, 2008, along with executed Addenda for various years through July 12, 2021.

On November 14, 2022, the PHMC submitted a reply to the Requester’s submission, reasserting the argument that the Request is “so vague that it cannot be fulfilled.” Also, for the first time, the PHMC claims that the entirety of the Request is exempt from disclosure under Section 708(b)(24) of the RTKL because the records are “archived materials” of the Commonwealth that are *already available to the public*. (Emphasis in original). The PHMC explains that the records “are maintained by Ancestry.com and made available for no charge through the State Archives” and, “[a]s such, they are statutorily excluded from being provided according to the Request at issue.” Finally, the PHMC asserts that ability of providing a copy of the data maintained by Ancestry.com is not as simple as portrayed by the Requester.

On December 6, 2022, the PHMC provided a third supplemental submission in response to the OOR’s November 29, 2022, request for further clarification. The OOR’s inquiry included a request for clarification regarding how an individual can access the State Archive records electronically and whether a person will be charged a fee for access. The OOR’s inquiry also sought an explanation about why the requested records could not be downloaded by TGN/Ancestry, subject to the payment of a fee for the necessary equipment, as suggested by the Requester. Finally, the OOR’s inquiry asked if the metadata would be included in records accessed through the PHMC’s link to the Ancestry website and, also, requested that the PHMC further clarify its position that all of the records are fully exempt under Section 708(b)(24).

In PHMC’s December 6, 2022 submission, it explained how records may be accessed via the Pennsylvania State Archives Ancestry page at <https://www.phmc.pa.gov/Archives/Research->

[Online/Pages/Ancestry-PA.aspx](#) and physically in the State Archives Reading Room during business hours. The PHMC also explained that the metadata of the requested records is not available to the public via the Ancestry portal and, also, that the metadata is exempt from public access. The PHMC argues that because the records sought “are stored according to statute in the Pennsylvania State Archives, they are archived, and therefore exempt by § 708(b)(24).” Finally, the PHMC asserts that copying the records and the metadata would cause a breach of its contract with TGN/Ancestry and, further, the cost would consist of more than the cost of copying and downloading the records, as it would also be comprised of “the market value of the requested extensive dataset.” In support of the cost argument the PHMC relies on 65 P.S. § 67.1307(b)(4).

On December 8, 2022, the Requester submitted a reply to the PHMC’s third supplemental submission. The Requester argues that because he is not a legal Pennsylvania resident, he is unable to access the records sought by using the Pennsylvania Archives webpage on Ancestry.com and, therefore, he would be required to pay a fee for an Ancestry subscription to access the records. The Requester further asserts that downloading all of the records implicated by the Request would likely violate his user agreement with Ancestry.com, if he had a subscription. The Requester disputes the PHMC’s argument that it is not the owner of the metadata associated with the records and he also disputes the assertion that the PHMC is not required to obtain the records from Ancestry to respond to the Request. The Requester argues that Section 708(b)(24) does not apply to the records sought and he also disputes that a fee to provide the records would require a determination of the reasonable market value of a “complex and extensive” dataset, under 65 P.S. § 67.1307(b)(4).<sup>2</sup>

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<sup>2</sup> Because the arguments were probative and served to further develop the record, the Requester’s reply to the PHMC’s third supplemental submission was admitted. *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”).

On December 16, 2022, the OOR requested clarification regarding whether the PHMC had notified TGN/Ancestry of the pendency of the appeal. On December 19, 2022, counsel for the PHMC provided the OOR with a copy of an email of the same date that notified TGN/Ancestry of the appeal. On December 20, 2022, Jared Akenhead, Senior Manager – Content Acquisition for TGN/Ancestry emailed the undersigned, requesting a meeting to discuss issues related to TGN/Ancestry's possible participation in the appeal. The OOR directed Mr. Akenhead to the OOR website for forms and additional information on how to submit a Request to Participate before the OOR and, also, referred him to PHMC counsel for any additional information regarding the appeal. To date, the OOR has not received any additional information from Mr. Akenhead or another representative of TGN/Ancestry related to the instant appeal.

#### **LEGAL ANALYSIS**

The PHMC is a Commonwealth agency subject to the RTKL. 65 P.S. § 67.301. Records in the possession of a Commonwealth 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 PHMC 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)).

##### **1. The Request is sufficiently specific**

The PHMC argues that, even if it were able to provide the requested records maintained by TGN/Ancestry, because the Request failed to identify the records sought with sufficient specificity

to allow PHMC to conduct a search. The PHMC asserts that the Request “identifies a universe of records that comprises terabytes of data” and that the Requester “may ask for birth and death records possessed by Ancestry,” but, a Requester is not entitled to receive all or entire categories of the entire Archives of the Commonwealth, and yet that is what the Requester has effectively asked for.”

Section 703 of the RTKL provides, in pertinent part, “[a] written request should identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested ....” 65 P.S. § 67.703. When interpreting a RTKL request, agencies should rely on the common meaning of words and phrases, as the RTKL is remedial legislation that must be interpreted to maximize access. *See Gingrich v. Pa. Game Comm’n*, No. 1254 C.D. 2011, 2012 Pa. Commw. Unpub. LEXIS 38 at \*16 (Pa. Commw. Ct. 2012) (citing *Bowling*, 990 A.2d at 824). In determining whether a particular request is sufficiently specific, the OOR uses the three-part balancing test employed by the Commonwealth Court in *Pa. Dep’t of Educ. v. Pittsburgh Post-Gazette*, 119 A.3d 1121 (Pa. Commw. Ct. 2015), and *Carey v. Pa. Dep’t of Corr.*, 61 A.3d 367, 372 (Pa. Commw. Ct. 2013). First, “[t]he subject matter of the request must identify the ‘transaction or activity’ of the agency for which the record is sought.” *Pa. Dep’t of Educ.*, 119 A.3d at 1125. Second, the scope of the request must identify a discrete group of documents (e.g., type or recipient). *See Id.* at 1125. Third, “[t]he timeframe of the request should identify a finite period of time for which the records are sought.” *Id.* at 1126. This factor is the most fluid and is dependent upon the request’s subject matter and scope. *Id.* Failure to identify a finite timeframe will not automatically render a sufficiently specific request overbroad; likewise, a short timeframe will not transform an overly broad request into a specific one. *Id.*

The Bendroth affidavit provides information on the contract between PHMC and TGN/Ancestry for scanning and indexing services, which began in 2009. The Bendroth affidavit states, “[i]n 2016, the volume of data received by PHMC from TGN was near 45 Terabytes of data ....”<sup>3</sup> However, requester is not prohibited from requesting a large amount of records. *See* 65 P.S. § 67.1308(1). Here, the Request states a finite timeframe, albeit a long timeframe, of the date in 2008 when the PHMC entered into the agreement for scanning and indexing with TGN/Ancestry until the date of the Request – approximately 14 years. In addition, the Request specifically seeks electronic copies of documents scanned, indexes created and the underlying metadata pursuant to the 2008 agreement and any subsequent addendum to the contract. Therefore, a scope is sufficiently identified and outlined in the contract. The Request does not state a specific subject matter, however, the lack of an identified subject matter is not fatal to a request. In *Carey*, the Commonwealth Court found a request for unspecified records (“all documents/communications”) related to a specific agency project (“the transfer of Pennsylvania inmates to Michigan”) that included a limiting timeframe to be sufficiently specific “to apprise [the agency] of the records sought.” 61 A.3d 367. In the instant matter, it is reasonable to infer that the PHMC is well familiar with the TGN/Ancestry scanning project and what records are implicated. In so far as the “activities” of the PHMC, the Pennsylvania History Code, 37 Pa.C.S. §§ 101 – 906, created the PHMC and sets forth its powers and duties. *See* 37 Pa.C.S. §§ 301-302. Finally, based on a review of the contract executed between the PHMC and TGN/Ancestry in 2008, that the Requester included with the appeal, Appendix A to the agreement lists the “Collections considered the Records for purposes of [the] A[greement],” as well as the approximate number of images, years

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<sup>3</sup> Under the RTKL, a sworn affidavit or statement made under the penalty of perjury may serve as sufficient evidentiary support. *See Sherry*, 20 A.3d at 520-21; *Moore*, 992 at 909.



covered, format and exclusivity timeframe. Such information is also included in the subsequent addenda to the contract. Accordingly, we determine that the Request is sufficiently specific.

**2. The PHMC has not proven that the Request seeks records exempt under Section 708(b)(24) of the RTKL**

The PHMC argues that the Request seeks records exempt in its entirety under Section 708(b)(24), because the requested records are archived materials “that are *already available to the public*.” (Emphasis in the original). Section 708(b)(24) states, “[l]ibrary archived and museum materials, or valuable or rare book collections or documents contributed by gift, grant, bequest or devise, to the extent of any limitations imposed by the donor as a condition of the contribution.” 65 P.S. § 67.708(b)(24). In response to the OOR’s request for further clarification regarding the PHMC’s claim of exemption, the PHMC further asserts, the records are “stored according to statute in the Pennsylvania State Archives, they are archived, and therefore exempt by § 708(b)(24).” The PHMC references the Merriam-Webster definition of “archived”<sup>4</sup> and 35 P.S. § 450.801, in support of its position. The PHMC further states, “[w]hen PHMC describes these records as ‘already available’ to the public, it does so to point to the attribute shared between all the elements in the list of ‘library archived and museum materials’: the Commonwealth already makes all of the collections of the state libraries, museums, and archives available to the public for its education and pleasure.<sup>1</sup> As the General Assembly did not seek to make libraries or state museums needlessly copy or expose their collections to which the public already had access, so, too, archived materials like those requested records are exempt from the RTKL.”

The PHMC references 35 P.S. § 450.801, to support its position that the requested records are archived materials. Section 801 of the Vital Statistics Law of 1953, provides:

§ 450.801. Records: Disclosure in general

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<sup>4</sup> See <https://www.merriam-webster.com/dictionary/archived> (last accessed December 12, 2022).

The vital statistics records of the department and of local registrars shall not be open to public inspection except as authorized by the provisions of this act and the regulations of the Advisory Health Board. Neither the department nor local registrars shall issue copies of or disclose any vital statistics record or part thereof created under the provisions of this or prior acts except in compliance with the provisions of this act and the regulations of the Advisory Health Board. When one hundred five (105) years have elapsed after the date of birth or fifty (50) years have elapsed after the date of death, *the records shall become public records*. To ensure the proper safekeeping of original birth records after one hundred five (105) years and death records after fifty (50) years the records *shall be maintained by the State Archives*.

It is unclear how Section 801 applies to the PHMC's claim of exemption in this matter, as the statute applies to the Department of Health<sup>5</sup> and its disclosure of records and, further, regarding the transfer of birth and death records to the State Archives after a stated length of time, Section 801 expressly states that they become public records. The PHMC's website indicates that its powers and duties are found in the History Code, 37 Pa.C.S. §§ 101-906. Section 102(2) of the Code - "Declaration of Policy" states, "The conservation of Pennsylvania's historic and natural heritage and the preservation of *public records*, historic documents and objects of historic interest, and the identification, restoration and preservation of architecturally and historically significant sites and structures are duties vested primarily in the Pennsylvania Historical and Museum Commission." (Emphasis added). In addition, the general powers of the PHMC include, the following:

- (1) Serve as the official agency of the Commonwealth for the conservation of Pennsylvania's cultural heritage.
- (2) *Preserve public records*, historical documents and objects of historical interest, possession and control of which have been transferred to the commission....

37 Pa.C.S. § 301(1)-(2) (emphasis added). It is clear that the PHMC's authorizing statute mandates that it maintains public records. However, the PHMC is simultaneously arguing that the requested

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<sup>5</sup> See 35 P.S. § 450.105.

records are already available to the public either through TGN/Ancestry or in person and that it has granted access to the same, but also argues that the same records are not accessible under the RTKL. Further, while an affidavit may serve as sufficient evidence in support of an exemption from public access, *Sherry, v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010), unsworn statements may not be relied upon as competent evidence to withhold records under the RTKL. *See Hous. Auth. of the City of Pittsburgh v. Van Osdol*, 40 A.3d 209 (Pa. Commw. Ct. 2012) (holding that statements of counsel are not competent evidence); *City of Phila. v. Juzang*, July Term 2010, No. 2048 (Phila. Com. Pl. June 28, 2011) (“Because the letter written by City’s counsel is a legal brief, it cannot be ... evidence at all”). Accordingly, the PHMC has not proven that the Request is exempt in its entirety under Section 708(b)(24) of the RTKL.

**3. The PHMC has not demonstrated that the requested records do not exist within its custody, possession or control**

The PHMC argues that the requested records do not exist within its possession or control because PHMC “currently relies on [TGN/Ancestry] to provide storage and public access to the records for Pennsylvania residents.” The PHMC explains that it entered into a contract with TGN/Ancestry to scan records and create digital copies, but, in 2016, when the PHMC received a copy of the data comprising the scanned documents, a determination was made that Ancestry would maintain the scanned records for the Commonwealth. The PHMC further argues that, while it does not possess the requested records, “it could not even imagine to accommodate the request working with Ancestry because the [R]equest is so immense that to fulfill it would be a gross misapplication of the RTKL.” The PHMC also asserts that “the RTKL is intended to facilitate transparency and not such a wholesale transfer of valuable Commonwealth property.” In support of the PHMC’s argument, the Bendroth affidavit provides, the following:



4. With regard to the contract referred to by [the Requester] [in the Request]: PHMC had signed an agreement effective February 2009 with ... 'TGN', now known as Ancestry. According to the contract, TGN would have access to and be permitted to copy PHMC's microfilm records including, census, tax, pension, birth, death, and marriage records. In exchange for scanning those records, PHMC would receive a digital copy of those records.

5. In 2016, it became clear to the Archives and the PHMC leadership that the volume of data created by TGN through the scanning and indexing process would be immense. In 2016, the volume of the data received by PHMC from TGN was near 45 Terabytes of data, which would cost between \$297,000 and \$321,000 to maintain per year.

6. Because of the immense cost, PHMC signed a new agreement with TGN to maintain data on their servers. In exchange, the staff, patrons, and researchers in the State Archives may access this data for free, and TGN's customers continue to access it for a fee.

7. Since 2016, that volume of data and the cost of its maintenance has only grown.

In response to the OOR's request for clarification, the PHMC explains that an individual is not required to be physically present in the State Archives building in order to access the records at issue. The PHMC further explains, "Pennsylvania residents can access all of the Pennsylvania records housed on the Ancestry website free of charge at any time, from any computer, by going to the Pennsylvania State Archives Ancestry page (<http://www.phmc.pa.gov/Archives/Research-Online/Pages/Ancestry-PA.aspx>)" and enter a zip code, which, once it is verified by the system, the individual is taken to the Ancestry site and given a free account to access Pennsylvania records. In addition, "[a]ll users, including non-Pennsylvanians, may access the entire Ancestry website (including the Pennsylvania records) free of charge in the State Archives Reading Room during the Archives' normal business hours."

The Requester argues that, although the requested records are "maintained" by TGN/Ancestry, the PHMC is still the legal custodian of the records/data. The Requester further argues that the PHMC is not permitted to contract away its obligations under the RTKL and, also,

notes that that he is not a Pennsylvania resident and to access the records through Ancestry.com requires a paid subscription. The Requester asserts that, even if he were to subscribe to Ancestry.com, if he were to download every single responsive records, it would likely be a violation of Ancestry's user terms and conditions.

Under the RTKL, two groups of records are accessible to requesters: records in an agency's actual or constructive possession reached directly under Section 901 of the RTKL, and records in the possession of third parties that are indirectly accessible through Section 506(d) of the RTKL. 65 P.S. § 67.506(d); *see also Dental Benefit Providers, Inc. v. Eiseman*, 86 A.3d 932, 938-39 (Pa. Commw. Ct. 2014), *aff'd* 124 A.3d 1214. Section 506(d)(1) of the RTKL states that:

A public record that is not in the possession of an agency but is in the possession of a party with whom the agency has contracted to perform a governmental function on behalf of the agency, and which directly relates to the governmental function and is not exempt under this action, shall be considered a public record of the agency for purposes of this act.

65 P.S. § 67.506(d)(1). In *Allegheny County Dep't of Admin. Servs. v. A Second Chance, Inc.*, the Commonwealth Court explained that records "in the possession of a party with whom an agency has contracted to perform a governmental function on behalf of the agency" are presumptively public records subject to public access, "so long as the record (a) directly relates to the governmental function and (b) is not exempt under the RTKL." 13 A.3d 1025, 1039 (Pa. Commw. Ct. 2011); *see also* 65 P.S. § 67.305(a). "[T]o satisfy the 'directly relates' prong, the records must relate to the performance of the governmental function." *Eiseman*, 86 A.3d at 940. This must include the "delegation of some substantial facet of the agency's role and responsibilities, as opposed to entry into routine service agreements with independent contractors." *Wintermantel*, 45 A.3d at 1043. In determining whether records directly relate to a third party's performance of its governmental function, the Commonwealth Court has consistently looked to whether the records

are relevant to the third party's performance of its governmental function. *See Buehl v. Office of Open Records*, 6 A.3d 27 (Pa. Commw. Ct. 2010); *Giurintano v. Pa. Dep't of Gen. Servs.*, 20 A.3d 613, 615 (Pa. Commw. Ct. 2011).

The Bendroth affidavit establishes that the PHMC entered an agreement with TGN/Ancestry to perform scanning and indexing services for records preserved in its archives and, then, the electronic files would be provided to the PHMC. The Bendroth affidavit also establishes that the PHMC subsequently decided to have TGN/Ancestry maintain the resulting electronic records, instead of taking possession of them. The Bendroth further establishes that the PHMC "signed a new agreement with TGN to maintain data on their servers. In exchange, the staff, patrons, and researchers in the State Archives may access this data for free, and TGN's customers continue to access it for a fee."

The 2008 License Agreement ("Agreement") referenced in the Request, which was also attached to the appeal, states, in pertinent part, "...PHMC owns or has the rights to historical records, including the records covered in Appendix A (the 'records'), as may be supplemented from time to time by mutual agreement...." In addition, the Agreement states, "[t]he term 'Records' shall mean those PHMC Collections as described in Appendix A" and "[t]he term 'Licensed Materials' shall mean those digital images and indexes that TGN creates as a result of digitizing and indexing the records." Further, Sections 2.2 and 2.4 of the Agreement provide, in pertinent part, the following:

2.2 By TGN. TGN grants PHMC a non-exclusive, non-transferable right and license to use the Licensed Materials for the benefit of its patrons. ... The Licensed Materials may not be distributed or resold by PHMC to a company or institution for any purpose, and is solely for the use individual patrons ....

2.4 The PHMC reserves all rights pertaining to the use of the original records, as described in Appendix A, provided to TGN. (Emphasis added).

Finally, although PHMC states in the third supplemental position statement that it does not possess the requested metadata, the PHMC also states, “Ancestry is contracted with the State Archives to scan those vital records that *are preserved in the State Archives* so that more easily accessible electronic records may be made available to the *public*.” (Emphasis added).

A third party performs a governmental function on behalf of an agency where it performs “a function generally performed by that agency and is not ancillary to the agency’s functions” *Eiseman*, 86 A.3d at 939 (citing *SWB Yankees L.L.C. v. Wintermantel*, 45 A.3d 1027, 1044 (Pa. 2012)). This must include the “delegation of some substantial facet of the agency’s role and responsibilities, as opposed to entry into routine service agreements with independent contractors.” *Wintermantel*, 45 A.3d at 1043. The governmental function of maintaining the State Archives records of the Commonwealth rests with the PHMC. Based on a review of the evidence and the record as a whole, we find that TGN/Ancestry has been contracted to perform the PHMC’s governmental function under its statutory mandate to “[p]reserve public records, historical documents and objects of historical interest, possession and control of which have been transferred to the commission....” 37 Pa.C.S. § 301(2). Accordingly, the requested records are accessible pursuant to Section 506(d)(1) of the RTKL, 65 P.S. § 67.506(d)(1), by obtaining them from the contractor providing the governmental function, TGN/Ancestry.

Regarding the requested metadata, the PHMC explains that the “metadata is not available to the public via the Ancestry portal.” The PHMC argues that, nevertheless, the metadata would not be accessible under RTKL because “the metadata of each scanned record is a record in possession of a private party” and such records are records in the possession of a private party and, therefore, exempt under Section 506(d)(2) of the RTKL. 65 P.S. § 67.506(d)(2). As set forth above, Section 506(d) provides:

A public record that is not in the possession of an agency but is in the possession of a party with whom the agency has contracted to perform a governmental function on behalf of the agency, and which directly relates to the governmental function and is not exempt under this action, shall be considered a public record of the agency for purposes of this act.

65 P.S. § 67.506(d)(1). However, Section 506, further provides, “[n]othing in this act shall be construed to require access to any other record of the party in possession of the public record.” 65 P.S. § 67.506(d)(2). The PHMC asserts that Ancestry created the scanned records and the associated metadata and, “assuming for the sake of argument that the scanned images of archival records” are public under Section 506(d)(1), the “metadata that Ancestry created when making the scan would [be] a record possessed by a contractor according to [506](d)(2).”

The issue to be determined with respect to the requested metadata is whether the metadata created when Ancestry performed the document scanning/digitizing pursuant to contract with the PHMC, is directly related to the government function performed by Ancestry under the contract, as set forth in our analysis of the records defined in the contract. *See Eiseman*, 86 A.3d at 939. The PHMC website provides a link to the “State Records Management Manual (M210.7)” and the Manual Glossary defines “Metadata” as, “[d]ata about data. Metadata describes how, when and by whom a particular set of data was collected, and how the data is formatted.”<sup>6</sup> The contract with TGN/Ancestry states, “[t]he term ‘Licensed Materials’ shall mean those digital images and indexes that TGN creates as a result of digitizing and indexing the records.” Furthermore, the PHMC publishes “Records Management Technical Leaflets” on its website including, a leaflet that is titled, “What Metadata Should I Collect.”<sup>7</sup> The Leaflet, also identified as Archives Advice Number 04, states, in part, the following:

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<sup>6</sup> See [https://www.phmc.pa.gov/Archives/Records-Management/Pages/Policies-Laws.aspx;https://www.oa.pa.gov/Policies/Documents/m210\\_7.pdf](https://www.phmc.pa.gov/Archives/Records-Management/Pages/Policies-Laws.aspx;https://www.oa.pa.gov/Policies/Documents/m210_7.pdf) (last accessed January 13, 2023).

<sup>7</sup> See [https://www.phmc.pa.gov/Archives/Records-Management/Documents/04\\_Metadata%20and%20Scanning.pdf](https://www.phmc.pa.gov/Archives/Records-Management/Documents/04_Metadata%20and%20Scanning.pdf) (last accessed January 13, 2023).



Metadata is descriptive data that helps you quickly retrieve a scan when you need it. *The process of collecting metadata is often called Indexing.*

How you index your scanned documents will determine how easily you are able to search for and find them later. *Indexing makes use of metadata*, a set of data that describes or gives information about other data. The metadata you collect depends on the type of document you scanned and the ways you want to be able to retrieve it. For example, you might collect the following metadata for a birth record: name of newborn, date of birth, names of parents, and such.

You, or your scanning vendor, can collect as many different types of metadata as you would like, though the more metadata you collect, the more labor-intensive indexing you'll be doing. (Emphasis added).<sup>8</sup>

Further, the license agreement executed between TGN/Ancestry, in 2008, states, in part:

1. Records Access

1.1 By PHMC. PHMC shall: a) deliver to TGN a copy of the Records on microfilm, and b) provide TGN with copies of digital records, as specified in Appendix A.

1.2 By TGN. TGN agrees to digitize and create a basic index of the Records, and, prior to or simultaneously to posting such records on the TGN Network, provide PHMC with a digital copy of the images and *indexes*, in a digital format approved by PHMC, subject to the use restrictions stated below....

In *Allegheny County Dep't of Admin. Servs. v. Parsons*, a requester sought information from a third-party contractor about its employees; specifically, names, dates of birth, and hire dates. 61 A.3d 336, 342 (Pa. Commw. Ct. 2013). The Commonwealth Court found that these records did not directly relate to the third party's governmental function, noting that the contract did not require the third party to provide the requested information to the agency and that the requested information was not essential to the performance of the contract. The Commonwealth Court held:

After careful consideration, we reach the same conclusion as the trial court: "[t]he 'directly relates' test, as applied to cases such as the instant case, focuses on what services are performed and how they are performed, not who performs them." ...

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<sup>8</sup> *Id.*

The information requested does not concern accountability or fitness and is not directly related, or even relevant to [the third party's] performance of a governmental function.

*Id.* at 347. In determining whether records directly relate to a third party's governmental function, the Commonwealth Court has consistently looked to whether the records are relevant to the third party's performance of its governmental function. *C.f. Buehl*, 6 A.3d 27 (Pa. Commw. Ct. 2010) (“[W]hat [a third-party contractor] paid for the items is beyond the parameters of its contract with the Department -- it does not directly relate to performing or carrying out this governmental function”).

The evidence presented by the PHMC demonstrates that the original agreement between TGN/Ancestry contemplated that the digitized records would be returned to the PHMC, in order for the agency to continue carrying out its statutory duties. Nothing in the evidence or the contract establishes that possession or ownership of the records provided to TGN/Ancestry to be scanned, digitized and index would be transferred away from PHMC. The services provided by TGN/Ancestry include indexing and the indexes would be provided to the PHMC, when the services were complete. The internal policy and/or financial decision by the PHMC to have TGN/Ancestry continue to maintain the digitized records and the metadata that resulted from the digitization does not change the fact that the services provided directly related to the governmental function of “[p]reserve public records, historical documents and objects of historical interest, possession and control of which have been transferred to the commission....” 37 Pa.C.S. § 301(2). Based on the services contemplated in the contract, which included indexing, and the guidance published on the PHMC's website, it is a reasonable conclusion that the metadata created from the scanning/digitizing services provision of the service by TGN/Ancestry and, now, the data maintenance services, directly relate to the PHMC's governmental functions. Accordingly, we

determine that the requested metadata does not consist of a private record in the possession of a party in possession of a public record under Section 506(d)(2).

#### **4. The Request is not satisfied by accessing the Ancestry.com website**

The PHMC explains, “Pennsylvania residents can access all of the Pennsylvania records housed on the Ancestry website free of charge at any time, from any computer, by going to the Pennsylvania State Archives Ancestry page (<http://www.phmc.pa.gov/Archives/Research-Online/Pages/Ancestry-PA.aspx>)....” Section 704 of the RTKL provides that an agency may make its records available through any publicly accessible electronic means,” 65 P.S. § 67.704(a), and that “an agency may respond to a request by notifying the requester that the record is available through publicly accessible electronic means or that the agency will provide access to inspect the record electronically.” 65 P.S. § 67.704(b)(1). However, here, there is no dispute that the Requester is not a Pennsylvania resident and when a non-Pennsylvania zip code is entered on the PHMC’s website the following statement appears, “This is not a Pennsylvania zip code. Pennsylvania State Archives records at Ancestry.com are only available to Pennsylvania residents.”<sup>9</sup> Therefore, the Requester would not be able access the records by way of the Ancestry Pennsylvania page free of charge. While free access is available to non-Pennsylvanians in person at the State Archives building, the Request seeks electronic copies of the records, not inspection of them. In addition, the PHMC has clarified that the metadata associated with the records is not available to the public via the Ancestry website.

#### **5. The PHMC has not demonstrated that it is not required to download the requested data**

The Requester asserts that the PHMC should be able to respond to the Request by having TGN/Ancestry electronically transfer the records in some manner such as, by downloading them

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<sup>9</sup> <https://www.phmc.pa.gov/Archives/Research-Online/Pages/Ancestry-PA.aspx> (last accessed December 15, 2022).



to hard drives that can be provided to the Requester upon the payment of any necessary fees under Section 1307 of the RTKL.<sup>10</sup> Relying on section 2.2 of the agreement, the PHMC argues that providing the Requester with a download of the scanned images and the metadata would violate the contract with TGN/Ancestry. The section 2.2 language quoted by the PHMC states, “[t]he Licensed Materials may not be distributed or resold by PHMC to a company or institution for any purpose, and is solely for the use individual patrons....” The PHMC argues that “if [it] were to distribute these records to the Requester, Ancestry would be within its contractual rights to claim a breach of its license and withdraw the infrastructure that provides these records to the public free of charge. As such, PHMC cannot violate its contractual obligation to Ancestry and imperil the relationship through which it vastly expanded the public’s access to vital records.”<sup>11</sup> Based on a plain reading of section 2.2, it is unclear how the Requester is a “company or institution” and not a patron of the PHMC, such that the distribution of the records would violate the agreement with TGN/Ancestry.

In addition, regarding the fees for downloading the records, the PHMC argues that the “cost of the transfer itself is *not the cost of the total [R]equest* under the RTKL. Instead, under the RTKL the cost to be reckoned would be the market value of the requested extensive dataset.” (Emphasis in original). The PHMC asserts that the “relevant estimate that PHMC and Ancestry would have to be instructed by OOR to prepare would be an estimate of the market value of the

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<sup>10</sup> The Requester states, regarding the 45 terabytes of information the PHMC indicates comprises the records, that “[t]hree hard drives on Amazon can fit the entirety of the data, at a cost of less than \$600 (presumably to be paid by the requester).<sup>11</sup> Assuming the data was being transferred from and to 1 standard USB 3.0 hard drives, at standard USB 3.0 speeds, the entire transfer would take less than 5 days.<sup>11</sup> At the technology’s upper bound transfer rate, the transfer would take less than a 2 single day.” The Requester cites the following internet sources for the assertions: [https://smile.amazon.com/dp/B08KTRKB6S/ref=twister\\_B0BGM428M4?\\_encoding=UTF8&th=1](https://smile.amazon.com/dp/B08KTRKB6S/ref=twister_B0BGM428M4?_encoding=UTF8&th=1); <https://www.macworld.com/article/221042/how-fast-is-usb-3-0-really.html>.

<sup>11</sup> We note that the PHMC submitted a copy of the notice provided to TGN/Ancestry of the pending appeal that included information on how to file a request to participate as a direct interested party in this appeal. However, the OOR did not receive a request to participate from TGN/Ancestry.

[R]equest and not the cost of its download or transfer in and of itself.” Section 1307(b)(4)(i) of the RTKL provides that fees for copying “complex and extensive data sets, including geographic information systems or integrated property assessment lists ... may be based on the reasonable market value of the same or closely related data sets.” 65 P.S. § 67.1307(b)(4)(i).

In *Noto and Zillow Group v. Luzerne Cnty.*, the OOR considered the sole issue of “whether the County was permitted to levy a fee of \$8,400 for the requested property records,” there were comprised of an electronic copy of the 2021 Tax Assessment Files for all parcels in Luzerne County, under Section 1307(b)(4)(ii). OOR Dkt. AP 2021-1359, 2021 PA O.O.R.D. LEXIS 1561, \*5. In *Noto*, the County submitted the attestation of the Director of Assessment in support of its position that the fee assessed to process and respond to the request, who attested to the details of the amount of responsive data and expenses incurred in maintaining the data per parcel. The County’s evidence also included Director of Assessment’s attestation regarding the charges imposed by other counties for similar records. *Noto* at \*6-7. The OOR considered the requester’s attestation disputing the County’s evidence and concluded that, based on the evidence as a whole, the fee being assessed by Luzerne County constituted a reasonable fair market value of the dataset under Section 1307(b)(4)(ii). *Id.* at \*9; see also *Ingalls v. Westmoreland Cnty.*, OOR Dkt. AP 2017-2222, 2018 PA O.O.R.D. LEXIS 193 (concluding that geographic and assessment records of land parcels are extensive datasets and the county proved that the fee assessed fell within in the reasonable market range).

In this matter, unlike *Noto*, the PHMC has not submitted any such supporting evidence to establish that the responsive records are a “complex and extensive dataset” and what the reasonable fair market value would be for producing the dataset. Instead, the PHMC relies on the position statement submitted by counsel. As stated above, unsworn statements are not competent evidence

to sustain the agency's burden of proof. *Van Osdol*, 40 A.3d 209; *Juzang*, July Term 2010, No. 2048 (Phila. Com. Pl. June 28, 2011); *see also Highmark Inc. v. Voltz*, 163 A.3d 485, 491 (Pa. Commw. Ct. 2017) (*en banc*) (stating that "it is not incumbent upon OOR to request additional evidence when developing the record. Rather, it is the parties' burden to submit sufficient evidence to establish material facts."). Accordingly, the PHMC has not proven that it is unable to provide the responsive records by downloading the electronic files from TGN/Ancestry.

### CONCLUSION

For the foregoing reasons, the appeal is **granted**, and the PHMC is required to provide all responsive records within thirty days. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to the Commonwealth Court. 65 P.S. § 67.1301(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>12</sup> This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: January 26, 2023**

*/s/ Kelly C. Isenberg*

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SENIOR APPEALS OFFICER  
KELLY C. ISENBERG

Sent via E-file Portal to: Alec Ferretti; Gerard Leone, Esq.; Cynthia Bendroth

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<sup>12</sup> *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).