

June 28, 2023

Sent via First Class Mail:

Emmy Arnett, Prothonotary
Crawford County Judicial Center
359 E. Center Street
Meadville, PA 16335

RE: Submission of Record in:
Penncrest School District v. Bethany Rogers,
Crawford County Court of Common Pleas No. AD 2023-275

Dear Prothonotary Arnett:

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 2023-0289:

1. The appeal filed by Bethany Rogers (“Requester”) to the Office of Open Records (“OOR”), received February 8, 2023.
2. Official Notice of Appeal dated February 9, 2023, sent to both parties by the OOR, advising them of the docket number and identifying the appeals officer for the matter.
3. Penncrest School District’s (“District”) entry of appearance and submission dated February 21, 2023.
4. Requester’s submission dated February 23, 2023.
5. OOR correspondence dated April 2, 2023, seeking additional time from the Requester to issue the final determination.

6. OOR correspondence dated April 3, 2023, seeking additional information from the District.
7. Requester correspondence dated April 3, 2023, granting the OOR's extension request.
8. OOR correspondence dated April 3, 2023, extending the District's submission deadline.
9. The Final Determination issued by the OOR, dated April 21, 2023.

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 cursive script, appearing to read "Kyle Applegate".

Kyle Applegate
Chief Counsel

Attachments

cc: Bethany Rogers (Requester)
Thomas W. King, III, Esq. (District)

IN THE COURT OF COMMON PLEAS OF CRAWFORD COUNTY, PENNSYLVANIA

PENNCREST SCHOOL DISTRICT,	:	
Petitioner	:	No. AD 2023-275
v.	:	
	:	
BETHANY ROGERS,	:	Statutory Appeal
Respondent	:	
	:	

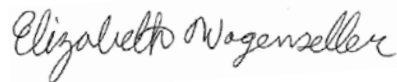
CERTIFICATION OF RECORD

I hereby certify the contents of the record transmitted with this Certification of Record pursuant to Pa.R.A.P. 1952 in *Bethany Rogers and USA Today Network v. Penncrest School District*, OOR Dkt. AP 2023-0289, which is the subject of this appeal.

The record transmitted with this certification is generated entirely from the Office of Open Records database. It is our practice to scan in each and every document submitted in an appeal. Thus, no originals are being transmitted to this Court.

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

Also, my signature on this Certification of Record and on all other correspondence directed to the Court in connection with this matter may be electronic and not original. I hereby certified that this is my true and correct signature and that I have approved the use thereof for these purposes.



Elizabeth Wagenseller, Executive Director
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
Phone: (717) 346-9903
Fax: (717) 425-5343
Email: OpenRecords@pa.gov

Dated: June 28, 2023

IN THE COURT OF COMMON PLEAS OF CRAWFORD COUNTY, PENNSYLVANIA

PENNCREST SCHOOL DISTRICT,

Petitioner

v.

BETHANY ROGERS,

Respondent

:
:
:
:
:
:
:

No. AD 2023-275

Statutory Appeal

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the Certified Record upon the following persons via email only as indicated below:

Bethany Rogers
Gannett/USA TODAY Network
1891 Loucks Road
York, PA 17408
brodgers@gannett.com
(via email only)

Thomas W. King, III., Esq.
DILLON, McCANDLESS, KING,
COULTER & GRAHAM, LLP
128 West Cunningham Street
Butler, PA 16001
tking@dmkcg.com
(via email only)



Faith Henry, Administrative Officer
Office of Open Records
333 Market St. 16th floor
Harrisburg, PA 17101-2234
Phone: (717) 346-9903
Fax: (717) 425-5343
Email: fahenry@pa.gov

Dated: June 28, 2023

IN THE COURT OF COMMON PLEAS OF CRAWFORD COUNTY, PENNSYLVANIA

PENNCREST SCHOOL DISTRICT,

Petitioner

v.

BETHANY ROGERS,

Respondent

:
:
:
:
:
:
:

No. AD 2023-275

Statutory Appeal

CERTIFIED RECORD

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

Dated: June 28, 2023

IN THE COURT OF COMMON PLEAS OF CRAWFORD COUNTY, PENNSYLVANIA

PENNCREST SCHOOL DISTRICT,	:	
Petitioner	:	No. AD 2023-275
v.	:	
	:	
BETHANY ROGERS,	:	Statutory Appeal
Respondent	:	
	:	

**TABLE OF CONTENTS
RECORD**

Bethany Rogers and USA Today Network v. Penncrest School District,
Office of Open Records Docket No. AP 2023-0289:

1. The appeal filed by Bethany Rogers (“Requester”) to the Office of Open Records (“OOR”), received February 8, 2023.
2. Official Notice of Appeal dated February 9, 2023, sent to both parties by the OOR, advising them of the docket number and identifying the appeals officer for the matter.
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9. The Final Determination issued by the OOR, dated April 21, 2023.

OOR Exhibit 1

From: no-reply@openrecordspennsylvania.com
To: brodgers@gannett.com
Subject: [External] PA Office of Open Records - Appeal Confirmation
Date: Wednesday, February 8, 2023 2:12:53 PM
Attachments: [oor_logo_email.png](#)

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.

Name:	Bethany Rodgers
Company:	Gannett
Address 1:	1891 Loucks Rd.
Address 2:	
City:	York
State:	Pennsylvania
Zip:	17408
Phone:	301-821-3026
Email:	brodgers@gannett.com
Email2:	
Agency (list):	Penncrest School District
Agency Address 1:	18741 State Highway 198
Agency Address 2:	Suite 101
Agency City:	Saegertown
Agency State:	Pennsylvania

Agency Zip:	16433
Agency Phone:	814-763-2323
Agency Email:	openrecords@penncrest.org
Records at Issue in this Appeal:	See attached.
Request Submitted to Agency Via:	e-mail
Request Date:	12/27/2022
Response Date:	
Deemed Denied:	Yes
Agency Open Records Officer:	Christine Shields
Attached a copy of my request for records:	Yes
Attached a copy of all responses from the Agency regarding my request:	Yes
Attached any letters or notices extending the Agency's time to respond to my request:	No
Agree to permit the OOR additional time to issue a final determination:	30 Days
Interested in resolving this issue through OOR mediation:	No
Attachments:	<ul style="list-style-type: none"> • Penncrest.appeal.pdf • RTKRequestForm--11-27-18.pdf • DOC012723-01272023132440.pdf • DOC013023-01302023131308(2).pdf • Penncrest correspondence.pdf • Ullery Final Response 2-7-23.docx

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.

Bethany Rodgers
USA TODAY Network
1891 Loucks Road
York, PA 17408

Feb. 8, 2023

Dear Appeals Officer:

I am filing an appeal to my Right to Know Law request to the Penncrest School District initially made on Jan. 27, 2023. My request sought electronic copies of emails or records to the district Superintendent and the school board members from the Pennsylvania Family Institute, the Independence Law Center and a list of the two organization's known members.

Later that day, Superintendent Timothy Glasspool said the district would soon officially send a notice that the district was invoking a 30 day extension but would begin reviewing for documents immediately.

On Jan. 30, Penncrest Open Records Officer Christine Shields responded to my request with two documents. One was an email from Board Director David Valesky to Board Director President Luigi DeFrancesco on Jan. 23 and a second email from DeFrancesco to the law center's senior counsel, Jeremy Samek, on Jan. 24.

Valesky's letter said that the Independence Law Center had "forwarded me a lot of info."

It seems clear from this email that the center or Samek had other correspondence with Valesky electronically. It suggested to me that there should have been other documents relevant to my request despite the district saying these documents were the only items they found.

I emailed Shields on Feb. 1 asking for clarification as to why those records were not included and if something in my request limited the scope of what they searched for.

Shields responded that afternoon saying "Everything we had access to was sent to you."

On Feb. 2, I asked Shields if the school board members were asked to search their personal email accounts for records responsive to my request. I noted that DeFrancesco's email was sent from a personal account and not his official board member email address. This suggested that at least one board member is using their personal email to conduct business. If the board president is using their personal email, I do not think it is out of the realm of possibility that others have as well.

Shields sent the following response on Feb. 3: "We have sent you everything that we have pertaining to your original right to know request, if you would like to submit a second right to know request we will do the best we can to obtain any additional information requested."

Open Records Officers have broad latitude in interpreting a request, just as a requestor is given latitude in how they word their requests. While the Right to Know Law requires some specificity in a request, an agency has a responsibility to conduct an exhaustive search based on their interpretation of the Right to Know Law.

Here, the district was not limited by my request to only search the official email addresses of the board members and had one email that suggested the existence of other documents. While the district has not explicitly suggested what the wording of another Right to Know request should include, it is reasonable to assume the district is suggesting to file another request specifically asking that the district ask its board members to search their personal email accounts. This is a step that should have already been taken and one that at least one other school district has taken in another similar request.

The Right to Know request to Penncrest is one of approximately 35 requests I and another reporter, Chris Ullery, have sent to school districts across the state.

West Jefferson School District denied our request for similar records on Feb. 7, but included in its denial that it “conducted a search of email records and inquired with relevant District personnel and board members who confirmed that no emails or text messages responsive to your request exist.”

I do not include this reference to suggest that one school district’s actions set a precedent that another district is required to follow but to assert that it is not unreasonable to expect that the district would request a search of personal emails.

Penncrest’s response did not indicate that board members were asked to search their private emails or if the members were asked to search and refused. More importantly, when asked directly for the answer to that question, the district has refused to say if the search was conducted.

For these reasons, I feel it is necessary for the Office of Open Records to compel the district to conduct a more exhaustive search for these records.

Thanks for your consideration,

Bethany



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: Penncrest School District (Attn: AOR0)

Date of Request: 1/27/23 Submitted via: ☒ Email ☐ U.S. Mail ☐ Fax ☐ In Person

PERSON MAKING REQUEST:

Name: Bethany Rodgers Company (if applicable): USA Today Network

Mailing Address: 1891 Loucks Rd

City: York State: PA Zip: 17408 Email: brodgers@gannett.com

Telephone: 301-821-3026 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.*

I am requesting electronic copies of correspondence (emails or text messages) between Penncrest School District board members or Superintendent Glasspool and representatives of the Pennsylvania Family Institute (email domain @pafamily.org) or the Independence Law Center (email domain @indlawcenter.org), including but not limited to Michael Geer, Thomas Shaheen, Randall Wenger, Cheryl Allen, Jeremy Samek, Janice Martino-Gottshall, Kurt Weaver, Robert Albino, Ruth Wilson, Emily Kreps, Dan Bartkowiak, Alexis Sneller, Allison Rishel, Tina Brumagen and Kenneth Stracuzzi from Aug. 1, 2022, to Jan. 27, 2023.

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) ☐ \$_____.

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

Re: RTK request for correspondence**OpenRecords** <openrecords@penncrest.org>

Fri 2/3/2023 7:45 AM

To: Rodgers, Bethany <Brodgers@gannett.com>**Cc:** Glasspool, Timothy <tglasspool@penncrest.org>

Bethany,

We have sent you everything that we have pertaining to your original right to know request, if you would like to submit a second right to know request we will do the best we can to obtain any additional information requested.

Thank you.

Christine Shields
Open Records Officer
PENNCREST School District

From: "Rodgers, Bethany" <Brodgers@gannett.com>**Date:** Thursday, February 2, 2023 at 2:27 PM**To:** OpenRecords <openrecords@penncrest.org>**Subject:** Re: RTK request for correspondence

CAUTION: This email originated from outside of the organization! Do not click links, open attachments or reply, unless you recognize the sender's email address and know the content is safe!

Can I ask if school board members searched their personal email accounts for correspondence responsive to the request? I noticed that in the second message, the board chair was using a personal email to conduct board business and wondered if that might be the case here, as well.

From: OpenRecords <openrecords@penncrest.org>**Sent:** Wednesday, February 1, 2023 1:00 PM**To:** Rodgers, Bethany <Brodgers@gannett.com>**Subject:** Re: RTK request for correspondence

Hi Bethany,

Everything that we had access to was sent to you.

Thank you,

Christine Shields
Open Records Officer
PENNCREST School District

From: "Rodgers, Bethany" <Brodgers@gannett.com>**Date:** Wednesday, February 1, 2023 at 10:56 AM**To:** OpenRecords <openrecords@penncrest.org>**Subject:** Re: RTK request for correspondence

CAUTION: This email originated from outside of the organization! Do not click links, open attachments or reply, unless you recognize the sender's email address and know the content is safe!

Hi Christine,

One follow-up question: In the first email you gave me, David Valesky mentions that he's spoken to the Independence Law Center and "they forwarded me a lot of info." Why wasn't that correspondence from the Law Center wasn't included in the records you shared? I'm wondering if my request didn't cover that correspondence or if you weren't able to locate it.

Thanks!

From: OpenRecords <openrecords@penncrest.org>**Sent:** Monday, January 30, 2023 2:47 PM**To:** Rodgers, Bethany <Brodgers@gannett.com>**Subject:** Re: RTK request for correspondence

Ok perfect thank you

From: "Rodgers, Bethany" <Brodgers@gannett.com>**Date:** Monday, January 30, 2023 at 2:29 PM**To:** OpenRecords <openrecords@penncrest.org>**Subject:** Re: RTK request for correspondence

CAUTION: This email originated from outside of the organization! Do not click links, open attachments or reply, unless you recognize the sender's email address and know the content is safe!

Yes, it came through! Thank you!

From: OpenRecords <openrecords@penncrest.org>
Sent: Monday, January 30, 2023 1:54 PM
To: Rodgers, Bethany <Brodgers@gannett.com>
Subject: Re: RTK request for correspondence

I'm honestly not sure it says it was there but I'll resend it. Let me know if it works this time.

Thank you,

Christine Shields

From: "Rodgers, Bethany" <Brodgers@gannett.com>
Date: Monday, January 30, 2023 at 1:17 PM
To: OpenRecords <openrecords@penncrest.org>
Subject: Re: RTK request for correspondence

CAUTION: This email originated from outside of the organization! Do not click links, open attachments or reply, unless you recognize the sender's email address and know the content is safe!

Hi Christine,

Sorry, but I'm not seeing your attachment on the email! Did you accidentally leave it off, or is the problem on my end?

Thanks so much!

Bethany

From: OpenRecords <openrecords@penncrest.org>
Sent: Monday, January 30, 2023 1:15 PM
To: Rodgers, Bethany <Brodgers@gannett.com>
Cc: Glasspool, Timothy <tglasspool@penncrest.org>
Subject: Re: RTK request for correspondence

Bethany,

I am attaching the documents that we were able to find. Please let me know if you have any further questions.

Thank you,

Christine Shields
Open Records Officer
PENNCREST School District

From: "Rodgers, Bethany" <Brodgers@gannett.com>
Date: Friday, January 27, 2023 at 1:35 PM
To: "Glasspool, Timothy" <tglasspool@penncrest.org>
Cc: OpenRecords <openrecords@penncrest.org>
Subject: Re: RTK request for correspondence

CAUTION: This email originated from outside of the organization! Do not click links, open attachments or reply, unless you recognize the sender's email address and know the content is safe!

Thank you!

From: Glasspool, Timothy <tglasspool@penncrest.org>
Sent: Friday, January 27, 2023 12:43 PM
To: Rodgers, Bethany <Brodgers@gannett.com>
Cc: OpenRecords <openrecords@penncrest.org>
Subject: Re: RTK request for correspondence

We will send the official 30 day request, but will begin the search immediately. I may have to get the Board members to sign affidavits for their text messages.

Dr. Timothy S. Glasspool
Superintendent
PENNCREST School District
p: (814) 337-1600
f: (814) 350-2973
a: 18741 State Highway 198, Saegertown, PA 16433-0808
w: penncrest.org
e: tglasspool@penncrest.org

On Jan 27, 2023, at 12:39 PM, Rodgers, Bethany <Brodgers@gannett.com> wrote:

CAUTION: This email originated from outside of the organization! Do not click links, open attachments or reply, unless you recognize the sender's email address and know the content is safe!

Hi there,

I've revised my request based on my conversation with Dr. Glasspool. Please let me know if you have any other questions. Again, copying the body of the request below for your convenience.

I am requesting electronic copies of correspondence (emails or text messages) between Penncrest School District board members or Superintendent Glasspool and representatives of the Pennsylvania Family Institute (email domain @pafamily.org) or the Independence Law Center (email domain @indlawcenter.org), including but not limited to Michael Geer, Thomas Shaheen, Randall Wenger, Cheryl Allen, Jeremy Samek, Janice Martino-Gottshall, Kurt Weaver, Robert Albino, Ruth Wilson, Emily Kreps, Dan Bartkowiak, Alexis Sneller, Allison Rishel, Tina Brumagen and Kenneth Stracuzzi from Aug. 1, 2022, to Jan. 27, 2023.

Best,

Bethany

From: Rodgers, Bethany <Brodgers@gannett.com>
Sent: Friday, January 27, 2023 11:52 AM
To: OpenRecords <openrecords@penncrest.org>
Cc: Glasspool, Timothy <tglasspool@penncrest.org>
Subject: Re: RTK request for correspondence

Thanks very much for your quick response. Are you able to speak by phone today about this request? I'm open to making adjustments and resubmitting but first would like to understand why you categorized this as overly broad.

From: OpenRecords <openrecords@penncrest.org>
Sent: Friday, January 27, 2023 11:41 AM
To: Rodgers, Bethany <Brodgers@gannett.com>
Cc: Glasspool, Timothy <tglasspool@penncrest.org>
Subject: Re: RTK request for correspondence

Ms. Rodgers,

Please see the attached document. Please let me know if you have any other questions or concerns.

Thank you,

Christine Shields
PENNCREST School District
Open Records Officer

From: "Rodgers, Bethany" <Brodgers@gannett.com>
Date: Thursday, January 26, 2023 at 11:50 AM
To: OpenRecords <openrecords@penncrest.org>
Cc: "Ullery, Christopher" <cullery@couriertimes.com>
Subject: RTK request for correspondence

CAUTION: This email originated from outside of the organization! Do not click links, open attachments or reply, unless you recognize the sender's email address and know the content is safe!

Good morning,

I'm writing to request correspondence records under the Right to Know Law. I've attached the completed form to this email.

I'm also copying the body of the request below, since the lines on the form make it a little difficult to read.


Pursuant to the Pennsylvania Right to Know Law, I am requesting copies of the following public records: Correspondence (emails, text messages or letters) between Penncrest School District staff or school board members and representatives of the Pennsylvania Family Institute or the Independence Law Center, including but not limited to Michael Geer, Thomas Shaheen, Randall Wenger, Cheryl Allen, Jeremy Samek, Janice Martino-Gottshall, Kurt Weaver, Robert Albino, Ruth Wilson, Emily Kreps, Dan Bartkowiak, Alexis Sneller, Allison Rishel, Tina Brumagen and Kenneth Stracuzzi from Aug. 1, 2022, to Jan. 25, 2023.

Please let me know if you have any questions. Thanks!

Bethany

Bethany Rodgers

Pennsylvania state government reporter
301-821-3026 (c)
brodgers@gannett.com

 Image removed by sender. Gannett Co., Inc.
<RTKRequestForm--11-27-18.pdf>



PENNCREST

EMPOWERING LIFE-LONG LEARNERS

January 27, 2023

Bethany Rodgers
1891 Loucks Road
York, PA. 17408

RE: Right-to-Know Law Request

Dear Bethany Rodgers:

Thank you for writing to PENNCREST School District with your request for information pursuant to the Pennsylvania Right-to-Know Law ("RTKL"), 65 P.S. 67.101, *et. seq.* On January 27, 2023 you requested electronic copies of correspondence (emails or text messages) between Penncrest School District board members or Superintendent Glasspool and representatives of the Pennsylvania Family Institute (email domain @pafamily.org) or the Independence Law Center (email domain @indlawcenter.org), including but not limited to Michael Geer, Thomas Shaheen, Randall Wenger, Cheryl Allen, Jeremy Samek, Janice Martino-Gottshall, Kurt Weaver, Robert Albino, Ruth Wilson, Emily Kreps, Dan Bartkowiak, Alexis Sneller, Allison Rishel, Tina Brumagen and Kenneth Stracuzzi from Aug. 1, 2022, to Jan. 27, 2023.

Pursuant to Section 902(a) of the Right to Know Law, the OOR requires an additional 30 days to respond because (check all that apply):

- ☐ The request for access requires redaction of a record in accordance with Section 706 of the RTKL;
- ☐ The request for access requires the retrieval of a record stored in a remote location;
- ☐ A timely response to the request for access cannot be accomplished due to bona fide and specific staffing limitations;
- ☐ A legal review is necessary to determine whether the record is a record subject to access under the RTKL;
- ☐ The requester has not complied with the Agency's policies regarding access to records;
- ☐ The requester refuses to pay applicable fees authorized by the RTKL;
- ☒ The extent or nature of the request precludes a response within the required time period.

The Agency expects to respond to your request on or before February 27, 2023

Sincerely,

Christine Shields

Open Records Officer
PENNCREST School District

From

Valesky, David <DValesky@penncrest.org>

To

DeFrancesco, Luigi <defrancescol@penncrest.org>

Subject

Court Ruling

Send Date (UTC)

1/23/2023 2:25:04 PM

[Download Original Item](#)

Court Ruling

Good morning Luigi. Here is a court ruling on a similar policy to ours.

I spoke to Independence Law Center and they forwarded me a lot of info. They are willing to help with future policy development.
Jeremy Samck - jsamck@indlawcenter.org

David Valesky

[Get Outlook for iOS](#)



Source

From ldefrank@zoominternet.net
To jsamek@indlawcenter.org
CC 'Glasspool, Timothy' <tglasspool@penncrest.org>
Subject Law case
Send Date (UTC) 1/24/2023 1:03:07 PM
Download Original Item

CAUTION: This email originated from outside of the organization. Do not click links, open attachments or reply, unless you recognize the sender's email address and know the content is safe!

I am the current Board president of the PENNCREST School District. David Valesky gave me your email. He told me that your foundation might help us if needed. After the Board passed policies 123 and 109.2 the following occurred: A Board director resigned and our solicitor also resigned. At this time, we have no legal backup. The original complaint filed by Thomas Cagle was about asking documents from the District about conversation between Valesky and DeFrancesco. The district does not have any documents nor Valesky and DeFrancesco. Mr. Cagle tried to convince the court that Valesky's post on Facebook was part of an official discussion of the Board. The district appealed the lower court decision at the Commonwealth Court. Now Mr. Cagle, somehow, he tries to connect the passing of policy 109.2 to the original appeal. In my humble opinion the latest filing should be squashed but, at this time, we have no one to do it. I am aware that time is of the essence.

If you can possibly help us please let me know. My cell phone is 814- 573-0768 the district's superintendent cell is 814-795-1581

Sincerely,

Luigi DeFrancesco P.E.
Board President



ADMINISTRATION BUILDING
830 OLD CLAIRTON ROAD
JEFFERSON HILLS, PA 15025
PHONE: 412-655-8450
FAX: 412-655-9544
www.wjhsd.net

WEST ELIZABETH - JEFFERSON HILLS - PLEASANT HILLS

DR. JANET M. SARDON
Superintendent
DR. MATTHEW J. PATTERSON
Assistant Superintendent-Elementary Education

TRACY A. HARRIS
Director of Finance/Board Secretary

February 7, 2023

VIA EMAIL: cullery@couriertimes.com

Chris Ullery
Extremism and Social Justice Reporter
USA Today Network of Pennsylvania

RE: WEST JEFFERSON HILLS SCHOOL DISTRICT RIGHT-TO-KNOW REQUEST

Dear Mr. Ullery:

Please be advised that I received a Right-to-Know request from you on February 1, 2023, a copy of which is attached. This letter constitutes the final response to your request under the Right-to-Know Law ("RTKL"). 65 P.S. § 67.901.

Your request for, "electronic copies of emails or text messages between current and former West Jefferson Hills School District Board members or the Superintendent and representatives of the Pennsylvania Family Institute (email domain @pafamily.org) or the Independence Law Center (email domain @indlawcenter.org). Representatives of these groups include but are not limited to Michael Geer, Thomas Shaheen, Randall Wenger, Cheryl Allen, Jeremy Samek, Janice Martino-Gottshall, Kurt Weaver, Robert Albino, Ruth Wilson, Emily Kreps, Dan Bartkowiak, Alexis Sneller, Allison Rishel, Tina Brumagen, Kimberly Kern and Kenneth Stracuzzi. My request covers the period from Jan. 1, 2021, to Jan. 31, 2023" has been denied because the records do not exist. 65 P.S. § 67.705. The School District conducted a search of email records and inquired with relevant District personnel and board members who confirmed that no emails or text messages responsive to your request exist.

You have a right to appeal any denial of information in writing to Liz Wagenseller, Executive Director, Office of Open Records, Commonwealth Keystone Building, 400 North Street, 4th Floor, Harrisburg, PA 17120. If you choose to file an appeal you must do so within fifteen (15) business days of the date the final response was due to you, as outlined in Section 1101. Please note that a copy of your original Right-to-Know request and the School District's complete response must be included when filing an appeal. The law requires that you state the reasons why the record is a public record and address the reasons the School District denied your request.

Sincerely,

Tracy A. Harris
Director of Finance/Open Records Officer
West Jefferson Hills School District
830 Old Clairton Road
Jefferson Hills, PA 15025
412-655-8450
tharris@wjhsd.net

OOR Exhibit 2

NOTICE OF DEADLINES

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

The Final Determination is currently due on **April 10, 2023**.

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

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

Submissions in this case are currently due on **February 21, 2023**.

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

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

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

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

February 9, 2023

Via Email Only:

Bethany Rodgers
Gannett
1891 Loucks Rd.
York, PA 17408
brodgers@gannett.com

Via Email Only:

Christine Shields
Agency Open Records Officer
Penncrest School District
PO Box 808
Saegertown, PA 16433
openrecords@penncrest.org

RE: OFFICIAL NOTICE OF APPEAL - Rodgers and Gannett v. Penncrest School District OOR Dkt. AP 2023-0289

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 February 8, 2023. A binding Final Determination (“FD”) will be issued pursuant to the timeline required by the RTKL, **please see the attached information for more information about deadlines.**

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

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

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

Sincerely,



Elizabeth Wagenseller
Executive Director

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

The Right-to-Know Law Appeal Process

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

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

Submissions to the OOR

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

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

Include the docket number on all submissions.

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

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

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

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

Agency Must Notify Third Parties

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

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

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

A third party's failure to participate in a RTKL appeal before the OOR

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

NOTE TO AGENCIES: If you have questions about this requirement, please contact the Appeals Officer immediately.

Statements of Fact & Burden of Proof

Statements of fact **must** be supported by an affidavit or attestation made under penalty of perjury by a person with actual knowledge. Statements of fact or allegations submitted without an affidavit may not be considered.

Under the RTKL, the agency has the burden of proving that records are exempt from public access (see 65 P.S. § 67.708(a)(1)). **To meet this burden, the agency must provide evidence to the OOR.**

The law requires the agency position to be supported by sufficient facts and citation to all relevant sections of the RTKL, case law, and OOR Final Determinations.

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

Sample affidavits are on the OOR website, openrecords.pa.gov.

Any evidence or legal arguments not submitted or made to the OOR may be waived.

Preserving Responsive Records

The agency must preserve all potentially responsive records during the RTKL appeal process, including all proceedings before the OOR and any subsequent appeals to court.

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

See *Lockwood v. City of Scranton*, 2019-CV-3668 (Lackawanna County Court of Common Pleas), holding that an agency had “a mandatory duty” to preserve records after receiving a RTKL request. Also see generally *Uniontown Newspapers, Inc. v. Pa. Dep't of Corr.*, 185 A.3d 1161 (Pa. Commw. Ct. 2018), holding that “a fee award holds an agency accountable for its conduct during the RTKL process...”

Mediation

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

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

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

Either party can end mediation at any time.

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

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



IN THE MATTER OF

**BETHANY RODGERS,
Requester**

v.

**PENNCREST SCHOOL DISTRICT,
Respondent**

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Docket No.: AP 2023-0289

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 April 10, 2023.



APPEALS OFFICER:

Kathleen Higgins, Esq.

CONTACT INFORMATION:

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

FACSIMILE:

(717) 425-5343

EMAIL:

kahiggins@pa.gov

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

EMAIL

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

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

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

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

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



IN THE MATTER OF

_____,
Requester

v.

_____,
Agency

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OOOR 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.

OOR Exhibit 3



IN THE MATTER OF

**BETHANY RODGERS,
Requester**

v.

**PENNCREST SCHOOL DISTRICT,
Respondent**

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Docket No.: AP 2023-0289

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

Attorney: Thomas King
Firm: Dillon McCandless King Coulter & Graham, LLP
Address: 128 W. Cunningham St.
Butler, PA 16001
Email: tking@dmkcg.com
Phone #: 724-283-2200



IN THE MATTER OF

Rodgers and Gannett,

Requester

v.

PENNCREST School District,

Agency

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OOB Dkt. AP 2023-0289

Please accept my appearance for the PENNCREST School District 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: Thomas W. King, III, Esq.

Firm: Dillon McCandless King Coulter & Graham, LLC

Address: 128 W. Cunningham Street

Butler, PA 16001

Email: tking@dmkcg.com

Phone #: (724) 283-2200

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.

DILLON MCCANDLESS KING COULTER & GRAHAM L.L.P.

ATTORNEYS AT LAW

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JAMES P. COULTER
DONALD P. GRAHAM
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BRIAN P. McLAUGHLIN

THOMAS J. MAY, Of Counsel
MARY JO DILLON, Of Counsel
STEPHENIE G.A. SCIALABBA, Of Counsel

February 21, 2023

VIA E-MAIL

Kathleen Higgins, Esq., Appeals Officer
Commonwealth of Pennsylvania
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
kahiggins@pa.gov

RE: *Rodgers v. Penncrest School District*
OOR Dkt. AP 2023-0289

Dear Ms. Higgins,

Please consider the within as the Penncrest School District's (hereinafter "Penncrest") submission in the above referenced appeal of the Right to Know Request of Bethany Rodgers (hereinafter "Requester," or "Ms. Rodgers") dated February 8, 2023. On January 27, 2023, Requester Bethany Rodgers submitted a Right to Know Request to the Penncrest School District's Open Records Officer Christine Shields.

Ms. Rodgers's Request sought, "electronic copies of correspondence (emails or text messages) between Penncrest School District board members or Superintendent Glasspool and representatives of the Pennsylvania Family Institute (email domain@pafamily.org) or the Independence Law Center (email domain@indlawcenter.org), including but not limited to Michael Geer, Thomas Shaheen, Randall Wenger, Cheryl Allen, Jeremy Samek, Janice Martino Gottshall, Kurt Weaver, Robert Albino, Ruth Wilson, Emily Kreps, Dan Bartkowiak, Alexis Sneller, Allison Rishel, Tina Brumagen and Kenneth Stracuzzi from Aug. 1 2022, to Jan. 27, 2023."

On January 30, 2023, Ms. Shields provided to Requester two (2) emails that were in the possession of the Penncrest School District: (1) an email dated January 23, 2023 between David Valesky and Luigi DeFrancisco relating to the Independence Law Center; and (2) an email from

DILLON MCCANDLESS KING COULTER & GRAHAM L.L.P.

Kathleen Higgins, Esq., Appeals Officer

February 21, 2023

Page 2

Luigi DeFrancesco to Jeremy Samek, copying Penncrest's Superintendent, Timothy Glasspool, relating to the Independence Law Center.

In response to the documents provided by Ms. Shields, Requester inquired why the correspondence referenced in the email dated January 23, 2023 between David Valesky and Luigi DeFrancesco was not provided in Penncrest's response, and further inquired as to whether the Penncrest Board of School Directors were directed to search their personal email accounts for information responsive to Ms. Rodgers's Request. Ms. Shields responded that, "[Penncrest] [has] sent you everything that we have pertaining to your original right to know request, if you would like to submit a second right to know request we will do the best we can to obtain any additional information requested."

Requester subsequently filed the within appeal to the Office of Open Records. Requester claims that "Penncrest's response did not indicate that board members were asked to search their private emails or if the members were asked to search and refused. More importantly, when asked directly for the answer to that question, the district has refused to say if the search was conducted." Ms. Rodgers further requests that the Office of Open Records, "compel the district to conduct a more exhaustive search for these records."

As an initial matter, Ms. Shields as the Open Records Officer for Penncrest, conducted a search of materials in Penncrest's possession for documents responsive to Ms. Rodgers's Request. The documents provided to Requester were the only documents in Penncrest's possession responsive to the request. To the extent that Ms. Rodgers seeks to compel Penncrest to force its Board members to provide documents maintained in personal accounts, which accounts are not maintained by Penncrest School District, such request is legally improper as documents maintained in personal accounts are not "public records," as defined in Pennsylvania's Right to Know Law, 65 P.S. § 67.101, *et seq.*

The issue of access to documents contained in personal accounts of an agency member has been addressed by the Pennsylvania Commonwealth Court in the case of *In re Silberstein*, 11 A.3d 629 (Pa. Commw. 2011). *In re Silberstein* concerned a Right to Know Request filed with York Township requesting electronic communications between individual Commissioners and the citizens of York Township as well as electronic communications between individual Commissioners and legal counsel for the Township. *Id.* at 630. York Township responded to the Request by producing documents/emails that were on computers under the possession and control of the township but did not produce any documents/emails that were specifically on personal computers that were solely maintained by the individual Commissioners, as York Township did not consider electronic communications between one individual Commissioner and a citizen or citizens of York Township public records as defined under the RTKL. *Id.*

After the *In re Silberstein* Requester's appeal was granted by the Office of Open Records, an individual Commissioner of York Township filed an appeal to the York County Court of

DILLON MCCANDLESS KING COULTER & GRAHAM L.L.P.

Kathleen Higgins, Esq., Appeals Officer

February 21, 2023

Page 3

Common Pleas, *Id.* at 631. The York County Court of Common Pleas reversed the decision of the Office of Open Records, holding as follows:

the OOR erred in finding that the records maintained on Silberstein's personal computer were public records because they were records of a public officer and therefore within the control of the agency. ***The trial court pointed out that the plain language of the RTKL does not support such a finding because Silberstein is not a governmental entity.*** The trial court determined that Silberstein has no authority to act alone on behalf of York Township, nor does he have any obligation to keep records of, let alone disclose to the public, every conversation, note, email, or telephone call in which he discusses matters pertaining to York Township.

In re Silberstein, 11 A.3d at 631.

Requester subsequently appealed to the Commonwealth Court of Pennsylvania, which Court affirmed the decision of the York County Court of Common Pleas and held that, "the trial court correctly held that the emails or documents requested by MacNeal that are contained on Commissioner Silberstein's personal computer are not public records subject to disclosure." *Id.* at 634.

In affirming the York County Court of Common Pleas, the Commonwealth Court stated,

As pointed out by the trial court, Commissioner Silberstein is not a governmental entity. He is an individual public official with no authority to act alone on behalf of the Township.

Consequently, emails and documents found on Commissioner Silberstein's personal computer would not fall within the definition of record as any record personally and individually created by Commissioner Silberstein would not be a documentation of a transaction or activity of York Township, as the local agency, nor would the record have been created, received or retained pursuant to law or in connection with a transaction, business or activity of York Township. In other words, ***unless the emails and other documents in Commissioner Silberstein's possession were produced with the authority of York Township, as a local agency, or were later ratified, adopted or confirmed by York Township, said requested records cannot be deemed "public records" within the meaning of the RTKL as the same are not "of the local agency".***

In re Silberstein, 11 A.3d at 633.

The *Silberstein* case is directly applicable to Ms. Rodgers's request at issue in the present appeal. Penncrest's response to Ms. Rodgers's request provided every document responsive to the

DILLON McCANDLESS KING COULTER & GRAHAM L.L.P.

Kathleen Higgins, Esq., Appeals Officer

February 21, 2023

Page 4

request that was in the possession and control of Penncrest School District. As stated by the Commonwealth Court of Pennsylvania, "emails and documents found on . . . personal computer[s] would not fall within the definition of record as any record personally and individually created. . . would not be a documentation of a transaction or activity of . . . the local agency." *Id.* at 633.

As Penncrest has provided all documents in its possession responsive to Ms. Rodgers's request, and as the additional information sought by Ms. Rodgers in the present appeal is contained in the personal email accounts of the individual board members, as thus are not "records," under Pennsylvania's Right to Know Law, Penncrest respectfully requests that a final determination be entered denying Requester's appeal.

Very truly yours,

DILLON McCANDLESS KING COULTER & GRAHAM, LLP



Thomas W. King, III, Esq.

cc: Requester, Bethany Rodgers
Christine Shields, Open Records Officer for Penncrest School District

OOR Exhibit 4

Bethany Rodgers
USA TODAY Network
1891 Loucks Road
York, PA 17408

Feb. 23, 2023

Dear Appeals Officer:

The school district submitted its response to the appeal on the final day for submissions, effectively barring me from submitting a response. I respectfully request the OOR to accept this response in the interests of justice and to form a complete record, both for the appeal officer review and for any subsequent legal challenge. No party is prejudiced by this submission, and I have already granted the OOR additional time in which to decide this appeal.

As to the substance of the district's response, it relies exclusively on the holding in *In re Silberstein*, 11 A.3d 629 (Pa. Cmwlth. 2011) while ignoring the subsequently developed case law governing both the requirements for a good faith search where records exist on private servers and the application of the RTKL to emails sent or received using non-governmental email addresses.

The courts have been clear that public officials cannot circumvent the requirements of the RTKL by using non-governmental communication accounts to discuss public business. Emails sent from private email accounts or located on private devices are agency records if they document a transaction or activity of the agency. *See Easton Area Sch. Dist. v. Baxter*, 35 A.3d 1259, 1264 (Pa. Commw. Ct. 2012) ("While an individual school board member lacks the authority to take final action on behalf of the entire board, that individual acting in his or her official capacity, nonetheless, constitutes agency activity when discussing agency business."); *Barkeyville Borough v. Stearns*, 35 A.3d 91, 95 (Pa. Commw. Ct. 2011) (finding that emails sent from or to private accounts can constitute records of an agency); *see also Pa. Office of Att'y Gen. v. The Phila. Inquirer*, 127 A.3d 57 (Pa. Commw. Ct. 2015) (finding that the location of emails is not determinative of whether they are records of an agency).

Moreover, the law requires agencies to conduct a good faith search for responsive records, and to meet that requirement, agencies must, at a minimum, contact agency personnel who may be in possession of responsive records, including records stored in private email accounts. The courts have held:

“As part of a good faith search, the open records officer has a duty to advise all custodians of potentially responsive records about the request, and to obtain all potentially responsive records from those in possession...”

Uniontown Newspapers, Inc. v. Pa. Dep't of Corr. 185 A.3d 1161, 1171-72 (Pa. Commw. Ct. 2018) (citations omitted); *aff'd*, 243 A.3d 19 (Pa. 2020); see also *Mollick v. Twp. of Worcester*, 32 A.3d 859, 875 (Pa. Commw. Ct. 2011) (requiring open records officer to contact agency personnel); *In Re Silberstein*, 11 A.3d 629, 634 (Pa. Commw. Ct. 2011) (requiring open records officer to contact agency personnel to ascertain whether responsive emails exist on private email accounts or servers).

According to emails shared by the district, Board Member David Valesky told Board President Luigi DeFrancesco that the Independence Law Center had forwarded him “a lot of info” on school district policies and was “willing to help with future policy development.” One day later, the Board President emailed the Independence Law Center requesting assistance for the school district. Consequently, the emails requested in this case between Board Member Valesky and the Independence Law Center clearly deal with discussion of agency business by elected officials. As such, the school district is required to locate and facilitate access to responsive emails from board members using government-issued email accounts as well as any private email accounts wherein board members discuss official business.

In light of the clear requirements of the law, the school district’s position in this case is unreasonable and raises issues of bad faith. I respectfully request the OOR to grant access to the requested records.

Sincerely,

Bethany

OOR Exhibit 5



April 2, 2023

Via Email Only:

Bethany Rodgers
Gannett
1891 Loucks Rd.
York, PA 17408
brodgers@gannett.com

Via Email Only:

Thomas King
128 W. Cunningham St.
Butler, PA 16001
tking@dmkcg.com

Christine Shields
Agency Open Records Officer
Penncrest School District
PO Box 808
Saegertown, PA 16433
openrecords@penncrest.org

RE: Request to Extend Final Determination Deadline - Rodgers and Gannett v. Penncrest School District OOR Dkt. AP 2023-0289

Dear Ms. Rodgers:

I write to request additional time to render a final determination in the above appeal you filed with the Office of Open Records ("OOR") under the Right-to-Know Law, 65 P.S. §§ 67.101, etseq. ("RTKL").

Pursuant to the RTKL, the Requester is the party from whom permission is needed to extend the timeframe for the issuance of a final determination beyond the thirty day statutory period. In order to further develop the record in this matter, we request an additional two weeks for the OOR to reach a decision in this matter.

Would you agree to extend the due date such that a Final Determination will be issued on or before April 24, 2023?

Please let me know if you agree to this extension as soon as possible so we can amend our docket accordingly.

Thank you for your attention to this matter.

Sincerely,

/s/ Kathleen Higgins

Kathleen Higgins

OOR Exhibit 6

April 3, 2023

Via Email Only:

Thomas King
128 W. Cunningham St.
Butler, PA 16001
tking@dmkcg.com

Christine Shields
Agency Open Records Officer
Penncrest School District
PO Box 808
Saegertown, PA 16433
openrecords@penncrest.org

RE: Rodgers and Gannett v. Penncrest School District OOR Dkt. AP 2023-0289:

I am writing to seek additional information related to the District's February 21, 2023 position statement. The District relies on *In re Silberstein* to support its position. At this time, I would ask that the District also address *Barkeyville Borough v. Stearns*, 35 A.3d 91 (Pa. Commw. Ct. 2012) as it relates to this appeal.

Additionally, please note that the OOR is obligated to require that all factual statements be supported by a testimonial affidavit. Therefore, if submitting any factual information regarding the District's search for records, such information must be supported by an affidavit.

In order to further develop the record in this appeal, we request that the District supplement the record by **April 5, 2023**. Should the Requester provide additional time for the OOR to issue its Final Determination in this matter, the District may have additional time to make its submission.

Thank you for your cooperation in this process.

Sincerely,

/s/ Kathleen Higgins

Kathleen Higgins

OOR Exhibit 7

Bethany Rodgers
USA TODAY Network
1891 Loucks Road
York, PA 17408

April 3, 2023

Dear Attorney Higgins:

I agree to your request to extend the deadline for Final Determination to April 24, 2023.

Best regards,

Bethany

OOR Exhibit 8



April 3, 2023

Via Email Only:

Bethany Rodgers
Gannett
1891 Loucks Rd.
York, PA 17408
brodgers@gannett.com

Via Email Only:

Thomas King
128 W. Cunningham St.
Butler, PA 16001
tking@dmkcg.com

Christine Shields
Agency Open Records Officer
Penncrest School District
PO Box 808
Saegertown, PA 16433
openrecords@penncrest.org

RE: Rodgers and Gannett v. Penncrest School District OOR Dkt. AP 2023-0289

Dear Parties:

As the Requester kindly provided the OOR with additional time to issue its Final Determination in order to further develop the record in this matter, I will extend the record closing date in this matter until Tuesday, April 11, 2023 in order for the District to address *Barkeyville* as previously requested by the OOR in correspondence dated April 3, 2023.

Sincerely,

/s/ Kathleen Higgins

Kathleen Higgins

OOR Exhibit 9



FINAL DETERMINATION

IN THE MATTER OF

**BETHANY RODGERS AND
USA TODAY NETWORK,
Requester**

v.

**PENNCREST SCHOOL DISTRICT,
Respondent**

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Docket No.: AP 2023-0289

FACTUAL BACKGROUND

On January 27, 2023, Bethany Rodgers and USA Today Network (collectively “Requester”) submitted a request (“Request”) to the Penncrest School District (“District”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

[E]lectronic copies of correspondence (emails or text messages) between Penncrest School District board members or Superintendent Glasspool and representatives of the Pennsylvania Family Institute (email domain @pafamily.org) or the Independence Law Center (email domain @indlawcenter.org), including but not limited to Michael Geer, Thomas Shaheen, Randall Wenger, Cheryl Allen, Jeremy Samek, Janice Martino-Gottshall, Kurt Weaver, Robert Albino, Ruth Wilson, Emily Kreps, Dan Bartkowiak, Alexis Sneller, Allison Rishel, Tina Brumagen, and Kenneth Stracuzzi from Aug. 1, 2022, to Jan. 27, 2023

On January 30, 2023, the District granted the Request, and provided the Requester with two responsive emails. On February 2, 2023, the Requester inquired with the District regarding whether additional responsive records exist and whether the personal email accounts of board

members were searched for responsive emails, and the District responded that all responsive records were provided.

On February 8, 2023, the Requester appealed to the Office of Open Records (“OOR”), challenging the District’s search for emails, asserting that additional records may exist, and arguing that the District failed to address whether it inquired with board members who use personal email addresses to conduct business if they possessed any records responsive to the Request.¹ The OOR invited both parties to supplement the record and directed the District to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On February 21, 2023, the District submitted an unsworn position statement, arguing that all responsive records in the District’s possession have been provided to the Requester, and that any records contained within the personal email accounts of board members are not records of the District pursuant to the RTKL. The District relies on *In re Siberstein*, 11 A.3d 629 (Pa. Commw. Ct. 2011), to support of its argument. On February 23, 2023, the Requester submitted a position, citing various case law to support her argument that the District is required to conduct a good faith search of its records which includes contacting District personnel to ascertain whether responsive records exist on private email accounts. In her submission, the Requester also asserts that the District’s position “is unreasonable and raises issues of bad faith.”

On April 3, 2023, the OOR sought additional information from the District, specifically asking the District to address *Barkeyville Borough v. Stearns*, 35 A.3d 91 (Pa. Commw. Ct. 2012) as it relates to the instant appeal. The OOR also reminded the District that any factual statements

¹ The Requester granted the OOR an extension 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).”).

must be supported by a testimonial affidavit. The OOR set a record closing date of April 11, 2023; however, the District failed to make an additional submission to the OOR as requested.

LEGAL ANALYSIS

The District is a local agency subject to the RTKL. 65 P.S. § 67.302. Records in the possession of a local agency are presumed to be public, unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. As an agency subject to the RTKL, the District 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)).

The District argues that it conducted a search and provided the Requester with the only responsive records that is possessed, and that any documents maintained in personal accounts would not be records of the District under the RTKL. In support of its position, the District cites to *In re Silberstein*, where the Commonwealth Court found that emails located on an individual township commissioner’s personal computer were not records of the agency. 11 A.3d 629, 633 (Pa. Commw. Ct. 2011). The Court held that since the township commissioner was an individual public official with no authority to act alone on behalf of the agency, his emails, contained on his personal computer, were not records of the agency, as they were not “produced with the authority of [the agency] ... or ... later ratified, adopted or confirmed by ... [the] township.” *Id.*

The Requester, on the other hand, argues that the emails that were provided in response to the Request indicated that a board member stated that the Independence Law Center had “forwarded [him] a lot of info.” The Requester provided a copy of the email with her appeal to

the OOR. The Requester further asserts that this statement suggests that there should be more records responsive to the Request than what was provided, and that because the records provided indicated that the School Board President was using a personal email account rather than an official District address, it is not out of the realm of possibility that other board members are also using personal email addresses.² In support of her position, the Requester cites to *Easton Area Sch. Dist. v. Baxter*, 35 A.3d 1259 (Pa. Commw. Ct. 2012), where the Commonwealth Court discussed its decision in *Silberstein*. The Commonwealth Court found that “applying the rationale of *Silberstein* to the present case and holding that an individual school member can only create a ‘record’ when he or she acts in tandem with the other school board members essentially defeats the purpose of the RTKL.” *Id.* at 1262. The Court further found that “[w]hile emails located on an agency-owned computer are not presumptively records of the agency simply by virtue of their location, emails that document the agency’s transactions or activities are records.” *Id.* at 1264.

Section 102 of the RTKL, 65 P.S. § 67.102, defines a record as “information...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.” As discussed in *Baxter*, “[w]hile an individual school board member lacks the authority to take final action on behalf of the entire board, that individual acting in his or her official capacity, nonetheless, constitutes agency activity when discussing agency business.” *Baxter*, 35 A.3d at 1264 (citing *Barkeyville*, *supra*).

In *Barkeyville*, the Commonwealth Court distinguished the holding in *Silberstein*, stating that “*Silberstein* involved email correspondence between the township commissioner and

² The OOR’s review of the emails provided indicates that while the Board President used a Penncrest.org email address for one of the emails, he used a zoominternet.net email address for another email where he corresponded with the Independence Law Center.

members of the public. The case before us, on the other hand, involves emails between Council members concerning Borough business. This distinction is one recognized by the trial court as well as this Court in [*Mollick v. Twp. of Worcester*, 32 A.3d 859, 872-73].” *Barkeyville*, 35 A.3d at 97. The Court further found that the emails at issue in *Barkeyville*, consisted of “Council members ... acting in their official capacity as elected officials of the Borough while exchanging the emails in question.” *Id.*

Here, the District did not submit evidence regarding its search for records, but rather, relies on its argument that *Silberstein* does not require the District to inquire with school board members regarding whether they have used personal email accounts for District business and whether those personal email accounts contain records responsive to the Request. *See* 65 P.S. § 67.901 (in response to a request for records, “an agency shall make a good faith effort to determine if ... the agency has possession, custody or control of the record”). However, the emails provided by the District to the Requester in response to her Request clearly indicate that, like in *Barkeyville*, the School Board President used a personal email account to correspond with the Independence Law Center. The individual identified himself as the District’s School Board President and within the email referred to District policies and events that occurred after the passing of such policies with regard to school board business (a board member and the solicitor resigning, a complaint being filed and subsequent court proceedings). The record in this matter indicates that the School Board President conducted District business using a personal email address, but there is no evidence that the District asked the School Board President or any other individual identified in the Request if they possessed responsive records.³ *See Pa. Office of Attorney General v. The Philadelphia Inquirer*, 127 A.3d 57 (Pa. Commw. Ct. 2015) (“What makes an email a ‘public

³ Another School Board member’s District address was copied on the email, which is presumably why the District was able to locate such record.

record,’ then, is whether the information sought documents an agency transaction or activity, and the fact whether the information is sent to, stored on or received by a public or personal computer is irrelevant in determining whether the email is a ‘public record.’”); *see also Baxter, supra; Barkeyville, supra*. Additionally, the District did not submit evidence regarding its search for records, and the Requester provided an email from one school board member indicating that he was forwarded “a lot of info” from the Independence Law Center. Therefore, the District has not proven that it has provided all responsive records within its possession, custody or control.⁴ *See Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

CONCLUSION

For the foregoing reasons, the appeal is **granted**, and the District is required to conduct a good faith search of its records, including inquiring with the District employees and officials identified in the Request as to whether they possess responsive emails, including in their personal email accounts, and provide all responsive records to the Requester 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 or petition for review to the Crawford County Court of Common Pleas. 65 P.S. § 67.1302(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond according to court rules as per Section 1303 of the RTKL. 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.⁵ This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

⁴ While the Requester asserts that the District’s position raises an issue of bad faith, based on the record before the OOR, the record does not support a finding of bad faith.

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

FINAL DETERMINATION ISSUED AND MAILED: April 21, 2023

/s/ Kathleen A. Higgins

KATHLEEN A. HIGGINS
DEPUTY CHIEF COUNSEL

Sent via portal to: Bethany Rodgers; Christine Shields; Thomas King, Esq.