

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA  
CIVIL DIVISION**

**COVER SHEET**

<p>Plaintiff(s) Vs</p> <div style="border: 1px solid black; height: 250px;"></div>	<div style="border: 1px solid black; height: 80px;"></div>
<p>Vs.</p>	<p>Case Number :</p>
<p>Defendant(s)</p> <div style="border: 1px solid black; height: 300px;"></div>	<p>Type of pleading :</p> <div style="border: 1px solid black; height: 80px;"></div>
	<p>Filed on behalf of</p> <div style="border: 1px solid black; height: 80px;"></div> <p>(Name of the filing party)</p>
	<p><input type="checkbox"/> Counsel of Record <input type="checkbox"/> Individual, If Pro Se</p>
	<p>Address, Telephone Number, and Email Address:</p> <div style="border: 1px solid black; height: 120px;"></div>
	<p>Attorney's State ID <div style="border: 1px solid black; width: 150px; height: 30px;"></div></p>
	<p>Attorney's Firm ID <div style="border: 1px solid black; width: 150px; height: 30px;"></div></p>

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA  
CIVIL DIVISION**

ALLEGHENY COUNTY,

Petitioner,

vs.

MATTHEW VAN BIBBER,

Respondent.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

Docket No:

**PETITION FOR REVIEW**

Filed on Behalf of Allegheny County,  
Respondent.

Counsel of Record for This Party:

ROSALYN GUY-McCORKLE  
County Solicitor  
Pa. I.D. # 58827

MAGGIE SHIELS  
Assistant County Solicitor  
Pa. I.D. No. 321614

ALLEGHENY COUNTY LAW  
DEPARTMENT  
Firm No. 057  
300 Fort Pitt Commons Building  
445 Fort Pitt Boulevard  
Pittsburgh, PA 15219  
(412) 350-1120

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA  
CIVIL DIVISION**

ALLEGHENY COUNTY,	)	
	)	
Petitioner,	)	Docket No:
vs.	)	
	)	
MATTHEW VAN BIBBER,	)	
	)	
Respondent.	)	

**PETITION FOR REVIEW**

AND NOW, comes Allegheny County, the Petitioner (“the County”), by and through its attorneys, Rosalyn Guy-McCorkle, Allegheny County Solicitor, and Maggie Shiels, Assistant County Solicitor, and respectfully presents the following Petition for Judicial Review averring as follows:

1. This Honorable Court has jurisdiction over this matter pursuant to the Right to Know Law (“RTKL”). *See* 65 P.S. § 67.1302.
2. The Respondent, Matthew Van Bibber, submitted an RTKL request to the County on July 1, 2024. The request stated: “I would like to review in person, the following official paper ballot documents and paper ballot documents from the 2020 General Election, for the following precincts,” and proceeded to list several precincts. (*See* Exhibit A.)
3. The County’s Department of Administrative Services serves as the County’s Open Records Office and its Director, Jessica Garofolo, serves as the County’s Open Records Officer.
4. On July 1, 2024, Ms. Garofolo sent Mr. Van Bibber a letter stating that his request was denied because the Pennsylvania Election Code, not the RTKL, governs the inspection of documents related to elections. (*See* Exhibit B.)

5. On July 19, 2024, Mr. Van Bibber's attorney, J. Chadwick Schnee, appealed the County's denial of Mr. Van Bibber's RTKL request to the Pennsylvania Office of Open Records ("OOR"). (*See* Exhibit C.)

6. The County submitted a brief to the OOR in support of its position that the records that Mr. Van Bibber requested are exempt from disclosure under the RTKL. The County also submitted an affidavit from David Voye, the Manager of the County Elections Division further explaining that access to the ballot images that Mr. Van Bibber requested is prohibited by the Election Code. (*See* Exhibit D.)

7. On September 4, 2024, an OOR Appeals Officer issued a Final Determination regarding Mr. Van Bibber's appeal. (*See* Exhibit E.)

8. The OOR found that Mr. Van Bibber's request was governed by the access provisions of the Election Code, but it also found that the Election Code designated mail-in and absentee ballots to be public records. Therefore, the OOR ruled that "the County is required to provide access to any responsive mail-in and absentee ballots in a manner consistent with the disclosure conditions set forth in the Election Code." (*Id.* at 14.)

9. The County petitions for review of two issues: first, whether the OOR erred when it assessed the public nature of records that are governed by a superseding law and ordered the County to produce those records, and second, whether the OOR erred when it determined that voted mail-in and absentee ballots are public records.

10. These issues are currently on appeal to our appellate courts. In fact, the same parties currently have a case before the Honorable Judge Regan regarding the mail-in ballot issue. That case, SA-23-120, has been stayed pending the outcome of a Commonwealth Court case, also between these same parties, currently pending at 379 CD 2023 and 380 CD 2023 (consolidated).

11. The undersigned counsel and Mr. Schnee are scheduled to present oral argument to the Commonwealth Court, *en banc*, in the consolidated cases 379 CD 2023 and 380 CD 2023 on October 9, 2024. The cases were already argued before a Commonwealth Court panel on February 6, 2024.

12. On July 31, 2024, the Commonwealth Court held that voted mail-in and absentee ballots were public records. *See Previte v. Erie County Bd. of Elections*, 2024 WL 3587134 (July 31, 2024). But, after that decision was issued the Commonwealth Court requested oral argument *en banc* regarding 379 CD 2023 and 380 CD 2023. It is possible, therefore, that the Commonwealth Court intends to clarify or change its decision in *Previte*.

13. Furthermore, based on the undersigned counsel's information and belief, Erie County filed a Petition for Allowance of Appeal of the *Previte* decision with our Supreme Court on August 29, 2024.

14. Both the *Previte* case and the parties' currently pending Commonwealth Court case focus primarily on the public nature of mailed-in and absentee ballots. It is unclear whether the final opinions in these cases, whenever they arrive, will include a holding regarding the OOR's jurisdiction over records governed by the access provisions of the Election Code.

15. To preserve its appeal period while the higher courts are adjudicating these issues, and because the higher courts may not decide the jurisdiction issue, the County seeks review of the OOR's decision from this Honorable Court.

**WHEREFORE**, for the reasons stated above, the Petitioner, Allegheny County, respectfully requests that this Honorable Court review and reverse the Final Determination of the Pennsylvania Office of Open Records in this matter and provide any other such relief as the Court deems proper and just.

Respectfully submitted,

/s/ Maggie Shiels

Assistant County Solicitor  
Pa. I.D. No. 321614  
Allegheny County Law Department  
Firm No. 057  
300 Fort Pitt Commons Building  
445 Fort Pitt Boulevard  
Pittsburgh, PA 15219  
(412) 350-1120

**CERTIFICATE OF COMPLIANCE**

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.

Submitted by: /s/ Maggie Shiels

Attorney No.: 321614

**VERIFICATION**

I hereby verify that the statements of fact contained in this Petition for Review are true and correct to the best of my knowledge, information and belief. I understand that false statements herein made are subject to the penalties of 18 Pa. C.S. 4904 relating to unsworn falsification to authorities.

10/2/2024  
Date

By:   
Jessica Garofolo  
Director, Allegheny County Department of  
Administrative Services

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA**  
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ALLEGHENY COUNTY,	)	
	)	
Petitioner,	)	Docket No:
vs.	)	
	)	
MATTHEW VAN BIBBER,	)	
	)	
Respondent.	)	

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this Petition for Review was served upon the persons and in the manner set forth below:

J. Chadwick Schnee  
Attorney for Matthew Van Bibber  
Service by electronic mail to: [chadwick@schneelegal.com](mailto:chadwick@schneelegal.com)

Pennsylvania Office of Open Records  
Service by electronic mail to: [openrecords@pa.gov](mailto:openrecords@pa.gov)

Date: October 2, 2022

*/s/ Maggie Shields*  
Assistant County Solicitor



## Standard Right-to-Know Law Request Form

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

**SUBMITTED TO AGENCY NAME:** Allegheny County (Attn: AORO)

Date of Request: 6/27/2024 Submitted via:  Email  U.S. Mail  Fax  In Person

### PERSON MAKING REQUEST:

Name: Matthew A. Van Bibber Company (if applicable): \_\_\_\_\_

Mailing Address: 710 Wyngold Dr.

City: Pittsburgh State: PA Zip: 15237 Email: matt.vanbibber@lairpower.com

Telephone: 412-480-1305 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. 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. Use additional pages if necessary.*

The official digital ballot images, digital ballot images, Official digital CVR files and digital CVR files for the 2020 General Election were provided by the county for review through an RTK.

After review of the digital files, it was found that ballots were duplicated and counted more than one time and should not have been.

These images and CVR files also appear to show outcomes were changed for candidates during the 2020 General Election, because of some of the duplicated ballots.

We have submitted two reports by Speckin Forensics, LLC and my report to the Allegheny County Board of Elections, attached to email in the zip file. The reports point out issues with scanned ballots some of which are listed below in detail. I would like to inspect these paper documents to see if the originals reflect the scanned images.

Allegheny Elections Duplicate Ballots May 2 2023 v1.0.pdf (by Matthew Van Bibber)

Allegheny report.pdf (by Speckin Forensics, LLC)

Allegheny supplemental report.pdf (by Speckin Forensics, LLC)

I also found there were hundreds of more duplicates not listed in this document that may need to be reviewed after these have been reviewed. These documents need reviewed to determine why they were duplicated and counted more than once in the official count for the 2020 General Election.

I would like to review in person, the following official paper ballot documents and paper ballot documents from the 2020 General Election, for the following precincts.

Below the "/" indicates a separation for information on records.

These records still exist for the 2020 General Election.

*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 Feb. 3, 2020



Precincts for 2020 General Election:

SHALER WARD 1 DIST 3  
PITTSBURGH WARD 20 DIST 16  
ROSS WARD 5 DIST 3  
WHITEHALL DIST 15  
WHITE OAK DIST 4  
HARRISON WARD 1 DIST 1  
WEST MIFFLIN DIST 20  
SHALER WARD 5 DIST 2  
ROBINSON DIST 6  
WHITEHALL DIST 2  
PLEASANT HL DIST 2  
FRANKLIN PK WARD 3 DIST 1  
HAMPTON DIST 12

Some of the hard copies of ballot paper I would like to review in person are:

SHALER WARD 1 DIST 3  
Cast Vote Record/Tabulator CVR/Machine Serial  
680,709/0465001534/Central Count - 8520060465  
680,710/0465001535/Central Count - 8520060465

PITTSBURGH WARD 20 DIST 16  
Cast Vote Record/Tabulator CVR/Machine Serial  
594,726/0436023749/Central Count - 8519110436  
594,986/0436024039/Central Count - 8519110436

ROSS WARD 5 DIST 3  
Cast Vote Record/Tabulator CVR/Machine Serial  
519,286/0436015092/Central Count - 8519110436  
519,294/0436015103/Central Count - 8519110436

WHITEHALL DIST 15  
Cast Vote Record/Tabulator CVR/Machine Serial  
680,670/0465001494/Central Count - 8520060465  
680,749/0465001574/Central Count - 8520060465

WHITE OAK DIST 4  
Cast Vote Record/Tabulator CVR/Machine Serial  
475,100/0435005574/Central Count - 8519110435  
475,126/0435005605/Central Count - 8519110435  
415,896/0434001811/Central Count - 8519110434  
415,970/0434001866/Central Count - 8519110434  
415,892/0434001809/Central Count - 8519110434  
415,973/0434001868/Central Count - 8519110434

HARRISON WARD 1 DIST 1  
Cast Vote Record/Tabulator CVR/Machine Serial

*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>*



680,212/0465000977/Central Count - 8520060465  
686,357/0434003533/Central Count - 8519110434

WEST MIFFLIN DIST 20

Cast Vote Record/Tabulator CVR/Machine Serial  
660,320/0455021942/Central Count - 8520050455  
662,681/0455023121/Central Count - 8520050455

SHALER WARD 5 DIST 2

Cast Vote Record/Tabulator CVR/Machine Serial  
421,074/0451003093/Central Count - 8520050451  
421,179/0451003219/Central Count - 8520050451

ROBINSON DIST 6

Cast Vote Record/Tabulator CVR/Machine Serial  
680,246/0465001039/Central Count - 8520060465  
686,333/0434003509/Central Count - 8519110434

WHITEHALL DIST 2

Cast Vote Record/Tabulator CVR/Machine Serial  
421,075/0451003095/Central Count - 8520050451  
421,181/0451003220/Central Count - 8520050451  
421,065/0451003079/Central Count - 8520050451  
421,161/0451003210/Central Count - 8520050451

PLEASANT HL DIST 2

Cast Vote Record/Tabulator CVR/Machine Serial  
680,700/0465001524/Central Count - 8520060465  
680,719/0465001544/Central Count - 8520060465

FRANKLIN PK WARD 3 DIST 1

Cast Vote Record/Tabulator CVR/Machine Serial  
660,315/0455021937/Central Count - 8520050455  
662,686/0455023126/Central Count - 8520050455  
660,316/0455021938/Central Count - 8520050455  
662,685/0455023125/Central Count - 8520050455

HAMPTON DIST 12

Cast Vote Record/Tabulator CVR/Machine Serial  
499,498/0436038583/Central Count - 8519110436  
499,526/0436038603/Central Count - 8519110436

FOX CHAPEL DIST 2

Cast Vote Record/Tabulator CVR/Machine Serial  
451,891/0452006658/Central Count - 8520050452

MCKEES ROCKS WARD 1 DIST 2

Cast Vote Record/Tabulator CVR/Machine Serial  
444,064/0452003810/Central Count - 8520050452

*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>*



OHIO DIST 1  
 Cast Vote Record/Tabulator CVR/Machine Serial  
 448,587/0452009890/Central Count - 8520050452

BETHEL PARK WARD 4 DIST 1  
 Cast Vote Record/Tabulator CVR/Machine Serial  
 460,779/0452016078/Central Count - 8520050452

FOX CHAPEL DIST 2  
 Cast Vote Record/Tabulator CVR/Machine Serial  
 458,116/0452015720/Central Count - 8520050452

Duplicate ballots with same WriteIns given to BOE to show duplicate issue.

ROSS WARD 1 DIST 1  
 Cast Vote Record/Tabulator CVR/Machine Serial  
 507,021/0435073975/Central Count - 8519110435  
 507,032/0435073996/Central Count - 8519110435

Please see the attached VanBibber6-27-2024rtkreq.zip file of the reports and the county provided digital copies of the official digital ballot images, digital ballot images, Official digital CVR files and digital CVR files for the 2020 General Election, for review through a past RTK.

I would like to review in person the paper of requested above and if determined that I need a copy of any, I would like to get certified copies of the paper. I marked below both in-person inspect and printed copy with a X.

**DO YOU WANT COPIES?**  Yes, printed copies (*default if none are checked*)

Yes, electronic copies preferred if available

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.

COUNTY OF



ALLEGHENY

July 1, 2024

Matthew Van Bibber  
710 Wyngold Drive  
Pittsburgh, PA 15237

Re: RTKL Request – Final Response #18318

Dear Mr. Van Bibber:

This is in response to your attached request for records made pursuant the Pennsylvania Right-to-Know Law (RTKL), which this Office received on July 1, 2024.

Your request must be respectfully denied.

The records you requested are not subject to the Right-to-Know Law (RTKL). Access to these records is governed by Section 2648 of the Pennsylvania Election Code, not the RTKL.

Section 3101.1 of the RTKL states that if the provisions of the RTKL regarding access to records conflict with any other federal or state law, the provisions of the RTKL shall not apply. In this case, the Pennsylvania Election Code controls access to, and the right to inspect, records related to elections.

You should submit a request to the Allegheny County Elections Division at the address below. Please do not reference this as a RTKL request.

David Voyer, Manager  
Allegheny County Elections Division  
542 Forbes Avenue - Suite 312  
Pittsburgh, PA 15219  
412-350-4500  
[electionsinfo@alleghenycounty.us](mailto:electionsinfo@alleghenycounty.us)

Pursuant to Section 1101 of the RTKL, a party denied access to a requested record may file a written appeal of the denial with the Pennsylvania Office of Open Records (“OOR”) within fifteen (15) business days of the mailing date of the local agency’s response. The OOR’s address is:

Pennsylvania Office of Open Records  
333 Market Street - 16th Floor  
Harrisburg, PA 17126-0333

July 1, 2024  
Page Two

Sincerely,

A handwritten signature in black ink that reads "Jessica Garofolo". The signature is written in a cursive style with a large, prominent initial "J".

Jessica Garofolo, Director  
County of Allegheny Open Records Officer

**From:** [no-reply@openrecordspennsylvania.com](mailto:no-reply@openrecordspennsylvania.com)  
**To:** [chadwick@schneelegal.com](mailto:chadwick@schneelegal.com)  
**Subject:** [External] PA Office of Open Records - Appeal Confirmation  
**Date:** Friday, July 19, 2024 4:06:31 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>	J. Chadwick Schnee, Esq.
<b>Company:</b>	Schnee Legal Services, LLC
<b>Address 1:</b>	74 E. Main Street
<b>Address 2:</b>	No. 648
<b>City:</b>	Lititz
<b>State:</b>	Pennsylvania
<b>Zip:</b>	17543
<b>Phone:</b>	717-400-5955
<b>Email:</b>	chadwick@schneelegal.com
<b>Email2:</b>	
<b>Agency (list):</b>	Allegheny County
<b>Agency Address 1:</b>	
<b>Agency Address 2:</b>	
<b>Agency City:</b>	
<b>Agency State:</b>	Pennsylvania

<b>Agency Zip:</b>	
<b>Agency Phone:</b>	
<b>Agency Email:</b>	
<b>Records at Issue in this Appeal:</b>	See attached.
<b>Request Submitted to Agency Via:</b>	e-mail
<b>Request Date:</b>	07/01/2024
<b>Response Date:</b>	07/01/2024
<b>Deemed Denied:</b>	No
<b>Agency Open Records Officer:</b>	
<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 notices extending the Agency's time to respond to my request:</b>	No
<b>Agree to permit the OOR additional time to issue a final determination:</b>	No
<b>Interested in resolving this issue through OOR mediation:</b>	No
<b>Attachments:</b>	<ul style="list-style-type: none"> <li>● 24.07.19 Appeal.pdf</li> <li>● FINAL RESPONSE VAN BIBBER18318.pdf</li> <li>● RTKL VAN BIBBER 18318.pdf</li> </ul>

**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.**



Schnee Legal Services, LLC  
74 E Main Street #648  
Lititz, PA 17543  
(717) 400-5955  
chadwick@schneelegal.com  
<http://www.schneelegal.com>

July 19, 2024

Via E-File Portal

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

RE: Appeal of Right-to-Know Law denial on behalf of Matthew Van Bibber,  
*Van Bibber v. Allegheny County*, OOR Dkt. AP 2024-\_\_\_\_\_

Dear Executive Director:

Please kindly accept this correspondence of an appeal from a July 1, 2024 denial issued by Allegheny County ("County") concerning a July 1, 2024 Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq.* request ("Request") filed by my client, Mr. Matthew Van Bibber ("Requester"). The Requester asserts that the requested records are public records and that access is governed by the RTKL, rather than the Election Code. The Requester asks that the Office of Open Records ("OOR") issue a final order granting access to the requested records.

On July 1, 2024, the Requester submitted the Request seeking to review

in person, the following official paper ballot documents and paper ballot documents from the 2020 General Election, for the following precincts.

Below the "/" indicates a separation for information on records.

These records still exist for the 2020 General Election.

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WHITE OAK DIST 4  
HARRISON WARD 1 DIST 1

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SHALER WARD 5 DIST 2  
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WHITEHALL DIST 2  
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Cast Vote Record/Tabulator CVR/Machine Serial  
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421,179/0451003219/Central Count - 8520050451

ROBINSON DIST 6

Cast Vote Record/Tabulator CVR/Machine Serial  
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686,333/0434003509/Central Count - 8519110434

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Duplicate ballots with same WriteIns given to BOE to show duplicate issue.

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507,021/0435073975/Central Count - 8519110435  
507,032/0435073996/Central Count – 8519110435

....

I would like to review in person the paper of requested above and if determined that I need a copy of any, I would like to get certified copies of the paper. I marked below both in-person inspect and printed copy with a X.

On July 1, 2024, the County denied the Request, stating that “The records you requested are not subject to the Right-to-Know Law (RTKL). Access to these records is governed by Section 2648 of Pennsylvania Election Code, not the RTKL.”

Thank you.

Regards,



J. Chadwick Schnee, Esq.

**IN THE PENNSYLVANIA OFFICE OF OPEN RECORDS**

**IN THE MATTER OF:**

J. CHADWICK SCHNEE,

Docket No.: 2024-1897

Complainant,

vs.

ALLEGHENY COUNTY,

Respondent.

**RESPONDENT’S STATEMENT OF INFORMATION AND LEGAL ARGUMENT**

AND NOW comes the Respondent, Allegheny County (“County”), by and through its undersigned attorney, and files this Statement of Information and Legal Argument in compliance with the Pennsylvania Office of Open Records’ Official Notice of Appeal in the above-referenced matters, setting forth the following:

**I. FACTUAL BACKGROUND.**

On June 27, 2024, Matthew Van Bibber submitted a Right to Know Law request to Allegheny County. The request was given internal number 18318. The request stated, “I would like to review in person, the following official paper ballot documents and paper ballot documents from the 2020 General Election, for the following precincts,” and it listed several precincts. (*See Exhibit A.*)

The County Department of Administrative Services serves as the County’s Open Records Office, and its director, Jessica Garofolo, serves as its Open Records Officer. On July 1, 2024, the County sent Mr. Van Bibber a letter informing him that his request was denied because the Pennsylvania Election Code, not the RTKL, governs the inspection of documents related to

elections. (See Exhibit B.) The letter directed Mr. Van Bibber to submit his request directly to the County Elections Division and included contact information.

On July 19, 2023, the Complainant, J. Chadwick Schnee, an attorney, submitted an appeal on behalf of Mr. Van Bibber.

## II. ARGUMENT

The RTKL is not the proper venue for Mr. Van Bibber to obtain records related to elections in Allegheny County. RTKL Section 3101.1 states: “If the provisions of this act regarding access to records conflict with any other Federal or State law, the provisions of this act shall not apply.” 65 P.S. 67.3101.1. In this case, there is a State law that directly controls public access to records related to Elections – Section 2648 of the Election Code. Furthermore, The Election Code clearly provides that images of ballots are not open to public inspection.

The Election Code states:

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

25 P.S. §2648 (emphasis added). Therefore, this request should not have been directed the County’s Open Records Office.

In support of its position that Mr. Van Bibber's request is covered by the Election Code, not the RTKL, the County submits the Affidavit of David Voye, the Manager of the County Elections Division. (*See* Exhibit C.) Mr. Voye explains the relationship between the Elections Division and the Board of Elections, including the role that the Elections Division plays in responding to voters who want to access records about elections. (*See id.* at ¶3-7.) Mr. Voye addresses Mr. Van Bibber's request in paragraphs 8-13 of his Affidavit. He explains that the records Mr. Van Bibber requested are "other documents and records in [the custody of the Board of Elections]," and are therefore covered by the Election Code, and that, to the best of his knowledge, Mr. Van Bibber is a qualified elector of Allegheny County. (*See id.* at ¶10-11.) Mr. Voye further avers that, on July 1, 2024, Mr. Van Bibber did contact him directly with the same request to review ballots from the specified precincts, but that Mr. Voye denied that request as well. (*See id.* at ¶13.) Mr. Voye explains that Mr. Van Bibber can not access the ballots that he seeks because the Election Code specifies that "contents of ballot boxes" are not available for public inspection. (*See id.*)

This appeal only concerns the actions of the Open Records Office, not Mr. Voye's subsequent decision to deny Mr. Van Bibber access to the ballots under the Election Code. But it is clear that Mr. Van Bibber is not entitled to access the records that he is seeking under any provision of Pennsylvania law. Mr. Van Bibber seeks "official paper ballot documents and paper ballot documents from the 2020 General Election." These are "the contents of ballot boxes," and therefore not accessible to the public. *See Honey v. Lycoming County Offices of Voter Services*, 312 A.3d 942 (Pa. Cmwlth. 2024).

These issues have been extensively litigated before the OOR, including in past appeals by Mr. Van Bibber. The OOR has consistently held that the Election Code governs access to records

related to elections that are in the control of a county's Board of Elections, *and* that ballots are not publicly accessible. *See, e.g., Reid v. Lehigh County*, OOR Dkt. No. 2024-1656; *Weaver v. Allegheny County*, OOR Dkt. No. 2022-2550; *Van Bibber v. Allegheny County*, OOR Dkt. No. 2022-2549; *Mancini v. Delaware County*, OOR Dkt. No. 2022-2667; *Giancola, et. al., v. City of Philadelphia Law Dept.*, OOR Dkt. No. 2022-1179.

Recently, the OOR began ruling that requesters can use the RTKL to request records that are covered by the access provisions of the Election Code. *See, e.g., Hoopes v. Delaware County*, OOR Dkt. No: AP 2024-1191. The County asserts that these decisions are misguided. In any event, in this case, Mr. Van Bibber is not entitled to the records he seeks under any circumstances.

### III. CONCLUSION

The OOR does not have jurisdiction over these requests because the RTKL is superseded by the Election Code. Furthermore, Section 2648 of the Election Code provides that the records Mr. Van Bibber seeks are not accessible to the public. Therefore, Mr. Van Bibber's appeal should be dismissed.

Respectfully submitted:

*/s/ Maggie Shiels*

Assistant County Solicitor  
Pa Bar ID: 321614

**IN THE PENNSYLVANIA OFFICE OF OPEN RECORDS**

**IN THE MATTER OF:**

J. CHADWICK SCHNEE,

Docket No.: 2024-1897

Complainant,

vs.

ALLEGHENY COUNTY,

Respondent.

**PROOF OF SERVICE**

I hereby certify that a true and correct copy of the Statement of Information and Legal Argument was served upon the persons and in the manner set forth below:

**Service via OOR Appeals E-File Portal As Follows:**

Appeals Officer Angela Edris, Esq.  
Commonwealth of Pennsylvania  
Office of Open Records

J. Chadwick Schnee  
Schnee Legal Services LLC

Date: August 2, 2024

/s/ Maggie Shiels  
Assistant County Solicitor

IN THE PENNSYLVANIA OFFICE OF OPEN RECORDS

IN THE MATTER OF:

J. CHADWICK SCHNEE,

Docket Nos.: 2024-1897

Complainant,

vs.

ALLEGHENY COUNTY,

Respondent.

**AFFIDAVIT of DAVID VOYE**

I, David Voyer, hereby declare under the penalty of perjury, pursuant to 18 Pa. C. S. A. § 4904, that the following statements are true and correct based upon my personal knowledge, information, and belief:

1. My name is David Voyer. I am the Manager of the Allegheny County Elections Division. I have held this position since January 2019. I have been employed by the Elections Division, formerly known as the Department of Elections, since 1988.

2. I am responsible for overseeing the administration of Allegheny County's elections. I am responsible for managing and maintaining a voter population of approximately 910,000 registered voters and managing and maintaining 1,327 polling places, requiring approximately 6,600 poll workers.

3. The Allegheny County Board of Elections consists of the County Executive and two At-Large County Council members. The Board of Elections performs the duties required by the Elections Code and the Allegheny County Home Rule Charter. It has no staff and performs no administrative duties.

4. The Elections Division handles the administrative functions of the Board of Elections, including reviewing and addressing Right to Know law ("RTKL") requests that are submitted to the Board of Elections.

5. The Elections Division also responds to requests from individuals who seek to inspect records related to elections as set forth in the Pennsylvania Elections Code.

6. Section 2548 of The Pennsylvania Election Code states:

The records of each county board of elections, general and duplicate returns, tally papers, affidavits of voters and others, nomination petitions, certificates and papers, other petitions, appeals, witness lists, accounts, contracts, reports and other documents and records in its custody, except the contents of ballot boxes and voting machines and records of assisted voters, shall be open to public inspection, except as herein provided,

and may be inspected and copied by any qualified elector of the county during ordinary business hours, at any time when they are not necessarily being used by the board, or its employees having duties to perform thereto: Provided, however, That such public inspection thereof shall only be in the presence of a member or authorized employee of the county board, and shall be subject to proper regulation for safekeeping of the records and documents, and subject to the further provisions of this act: And provided further, that general and duplicate returns, tally papers, affidavits of voters and others, and all other papers required to be returned by the election officers to the county board sealed, shall be open to public inspection only after the county board shall, in the course of the computation and canvassing of the returns, have broken such seals and finished, for the time, their use of said papers in connection with such computation and canvassing.

7. If a voter wishes to inspect any of the items provided for in Section 2648 of the Election Code, staff from the Elections Division would assist them. My staff handles such requests on behalf of the Board of Elections.

8. On June 27, 2024, Allegheny County received a RTKL request from Matthew Van Bibber. The request was given internal number 18318. The County's Open Records Office referred it to me.

9. The request stated: "I would like to review in person, the following official paper ballot documents and paper ballot documents from the 2020 General Election, for the following precincts." A list of several precincts followed.

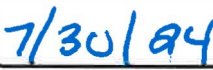
10. To the best of my knowledge, Mr. Van Bibber is a qualified elector of Allegheny County.

11. The items sought in Mr. Van Bibber's request – "official paper ballot documents" are "other documents and records in [the custody of the Board of Elections]" and public access to them is covered by Section 2648 of the Election Code. However, ballots are "the contents of ballot boxes," and are not subject to public inspection.

12. Our general practice in Allegheny County is to deny RTKL requests for records that are subject to Section 2648 and to refer requesters to contact me directly. That is what the Open Records Office did in this case.

13. On July 1, 2024, Mr. Van Bibber forwarded me via email the same request that he sent to the Open Records Office. On July 16, 2024, I sent him a letter explaining that he could not view the records he requested because they are "contents of ballot boxes," which are not open to public inspection under the Election Code.

  
 \_\_\_\_\_  
 David Voye

  
 \_\_\_\_\_  
 Date



# pennsylvania

OFFICE OF OPEN RECORDS

## FINAL DETERMINATION

**IN THE MATTER OF**

**MATTHEW VAN BIBBER,  
Requester**

**v.**

**ALLEGHENY COUNTY,  
Respondent**

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**Docket No: AP 2024-1897**

### **FACTUAL BACKGROUND**

On July 1, 2024, Matthew Van Bibber (“Requester”) submitted a request (“Request”) to Allegheny County (“County”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, stating the following:

The official digital ballot images, digital ballot images, Official digital CVR files and digital CVR files for the 2020 General Election were provided by the [C]ounty for review through an RTK. After review of the digital files, it was found that ballots were duplicated and counted more than one time and should not have been.

These images and CVR files also appear to show outcomes were changed for candidates during the 2020 General Election, because of some of the duplicated ballots.

We have submitted two reports by Speckin Forensics, LLC and my report to the Allegheny County Board of Elections, attached to email in the zip file. The reports point out issues with scanned ballots some of which are listed below in detail. I would like to inspect these paper documents to see if the originals reflect the scanned images.

Allegheny Elections Duplicate Ballots May 2,2023 v1.0.pdf (by Matthew Van Bibber)

Allegheny report.pdf (by Speckin Forensics, LLC)

Allegheny supplemental report.pdf (by Speckin Forensics, LLC)

I also found there were hundreds of more duplicates not listed in this document that may need to be reviewed after these have been reviewed. These documents need reviewed to determine why they were duplicated and counted more than once in the official count for the 2020 General Election.

I would like to review in person, the following official paper ballot documents and paper ballot documents from the 2020 General Election, for the following precincts.

Below the “/” indicates a separation for information on records. These records still exist for the 2020 General Election.

Precincts for 2020 General Election:

SHALER WARD 1 DIST 3  
PITTSBURGH WARD 20 DIST 16  
ROSS WARD 5 DIST 3  
WHITEHALL DIST 15  
WHITE OAK DIST 4  
HARRISON WARD 1 DIST 1  
WEST MIFFLIN DIST 20  
SHALER WARD 5 DIST 2  
ROBINSON DIST 6  
WHITEHALL DIST 2  
PLEASANT HL DIST 2  
FRANKLIN PK WARD 3 DIST 1  
HAMPTON DIST 12

Some of the hard copies of ballot paper I would like to review in person are:

SHALER WARD 1 DIST 3  
Cast Vote Record/Tabulator CVR/Machine Serial  
680,709/0465001534/Central Count - 8520060465  
680,710/0465001535/Central Count - 8520060465

PITTSBURGH WARD 20 DIST 16  
Cast Vote Record/Tabulator CVR/Machine Serial  
594,726/0436023749/Central Count - 8519110436  
594,986/0436024039/Central Count - 8519110436

ROSS WARD 5 DIST 3  
Cast Vote Record/Tabulator CVR/Machine Serial

519,286/0436015092/Central Count - 8519110436  
519,294/0436015103/Central Count - 8519110436

WHITEHALL DIST 15

Cast Vote Record/Tabulator CVR/Machine Serial  
680,670/0465001494/Central Count - 8520060465  
680,749/0465001574/Central Count - 8520060465

WHITE OAK DIST 4

Cast Vote Record/Tabulator CVR/Machine Serial  
475,100/0435005574/Central Count - 8519110435  
475,126/0435005605/Central Count - 8519110435  
415,896/0434001811/Central Count - 8519110434  
415,970/0434001866/Central Count - 8519110434  
415,892/0434001809/Central Count - 8519110434  
415,973/0434001868/Central Count - 8519110434

HARRISON WARD 1 DIST 1

Cast Vote Record/Tabulator CVR/Machine Serial  
680,212/0465000977/Central Count - 8520060465  
686,357/0434003533/Central Count - 8519110434

WEST MIFFLIN DIST 20

Cast Vote Record/Tabulator CVR/Machine Serial  
660,320/0455021942/Central Count - 8520050455  
662,681/0455023121/Central Count - 8520050455

SHALER WARD 5 DIST 2

Cast Vote Record/Tabulator CVR/Machine Serial  
421,074/0451003093/Central Count - 8520050451  
421,179/0451003219/Central Count - 8520050451

ROBINSON DIST 6

Cast Vote Record/Tabulator CVR/Machine Serial  
680,246/0465001039/Central Count - 8520060465  
686,333/0434003509/Central Count - 8519110434

WHITEHALL DIST 2

Cast Vote Record/Tabulator CVR/Machine Serial  
421,075/0451003095/Central Count - 8520050451  
421,181/0451003220/Central Count - 8520050451  
421,065/0451003079/Central Count - 8520050451  
421,161/0451003210/Central Count - 8520050451

PLEASANT HL DIST 2

Cast Vote Record/Tabulator CVR/Machine Serial

680,700/0465001524/Central Count - 8520060465  
680,719/0465001544/Central Count - 8520060465

FRANKLIN PK WARD 3 DIST 1

Cast Vote Record/Tabulator CVR/Machine Serial  
660,315/0455021937/Central Count - 8520050455  
662,686/0455023126/Central Count - 8520050455  
660,316/0455021938/Central Count - 8520050455  
662,685/0455023125/Central Count - 8520050455

HAMPTON DIST 12

Cast Vote Record/Tabulator CVR/Machine Serial  
499,498/0436038583/Central Count - 8519110436  
499,526/0436038603/Central Count - 8519110436

FOX CHAPEL DIST 2

Cast Vote Record/Tabulator CVR/Machine Serial  
451,891/0452006658/Central Count - 8520050452

MCKEES ROCKS WARD 1 DIST 2

Cast Vote Record/Tabulator CVR/Machine Serial  
444,064/0452003810/Central Count – 8520050452

OHIO DIST 1

Cast Vote Record/Tabulator CVR/Machine Serial  
448,587/0452009890/Central Count - 8520050452

BETHEL PARK WARD 4 DIST 1

Cast Vote Record/Tabulator CVR/Machine Serial  
460,779/0452016078/Central Count - 8520050452

FOX CHAPEL DIST 2

Cast Vote Record/Tabulator CVR/Machine Serial  
458,116/0452015720/Central Count - 8520050452  
Duplicate ballots with same WriteIns given to BOE to show duplicate issue.

ROSS WARD 1 DIST 1

Cast Vote Record/Tabulator CVR/Machine Serial  
507,021/0435073975/Central Count - 8519110435  
507,032/0435073996/Central Count - 8519110435

Please see the attached VanBibber6-27-2024rtkreq.zip file of the reports and the [C]ounty provided digital copies of the official digital ballot images, digital ballot images, Official digital CVR files and digital CVR files for the 2020 General Election, for review through a past RTK.

I would like to review in person the paper of requested above and if determined that I need a copy of any, I would like to get certified copies of the paper. I marked below both in-person inspect and printed copy with a X.

On July 1, 2024, the County denied the Request, asserting that the records requested are not subject to the RTKL and that access to the records requested is governed by the Pennsylvania's Election Code, 25 P.S. § 2648.

On July 19, 2024, Chadwick Schnee, Esq., the Requester's legal counsel, filed an appeal on behalf of the Requester to the Office of Open Records ("OOR"),<sup>1</sup> challenging the denial and stating grounds for disclosure. The OOR invited both parties to supplement the record and directed the County to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

After obtaining an extension of time to file its submission, the County, on August 2, 2024, submitted a position statement, arguing that the records requested are not accessible under the RTKL and that access to the requested records is governed by the Election Code; the County asserts that the OOR does not have jurisdiction to hear this matter. In addition, the County maintains that public access to the records requested is barred by Section 2648 of the Election Code, 25 P.S. §2648. In support of its position, the County provided an attestation, made pursuant to 18 Pa. C.S.A. § 4904, from David Voye, Manager of the County's Elections Division.

The OOR subsequently asked the Requester if he would agree to extend the OOR's deadline to issue a Final Determination; on August 14, 2024, the Requester agreed to extend the deadline to September 4, 2024. On August 16, 2024, given the County's argument that the OOR lacks jurisdiction over this appeal, the OOR requested that the parties address the recent

<sup>1</sup> The appeal caption in this matter as originally docketed utilized Attorney Schnee's name as the Requester; however, since Mr. Van Bibber filed the Request and the appeal was filed on his behalf, the appeal caption has been corrected to reflect Mr. Van Bibber as the appellant.

Commonwealth Court decision in *Previte v. Erie Cnty. Bd. of Elections*, No. 814 C.D. 2023, 2024 Pa. Commw. LEXIS 178 (Pa. Commw. Ct. 2024). Neither party responded to the OOR's request by the established August 23, 2024 deadline. However, subsequently, on August 29, 2024, the Requester suggested that the OOR accept briefs prepared by the parties concerning the *Previte* case which were filed in another matter currently pending before the Commonwealth Court.

On that same date, the County filed correspondence, indicating that the briefs to which the Requester referred did not address the OOR's specific inquiry regarding jurisdiction in the instant matter. The County filed a separate submission, arguing that the *Previte* case did not change the County's position that the RTKL does not govern requests for records that are available under the Pennsylvania Election Code. The County argues that there is a procedural distinction between the instant case and *Previte* because, unlike *Previte*, where the agency's Open Records Officer denied a request for records using the Election Code as a basis, the County's Open Records Office in the instant matter informed the Requester that he must address the Request to the County's Elections Division, in accordance with the Election Code. The County maintains that the access provisions in Section 2648 of the Election Code conflict with the access provisions of the RTKL and that therefore the RTKL cannot govern a Request for records controlled under the Election Code. The County also disputes the *Previte* Court's conclusion that voted mail-in ballots are public records.

On August 30, 2024, Attorney Schnee filed a copy of the Memorandum of Law filed on the Requester's behalf in the pending Commonwealth Court case of *Allegheny County v. Van Bibber*, Nos. 379 C.D. 2023 (Pa. Commw. Ct. 2023). Although the Memorandum does not specifically address the jurisdictional issue raised in this case, the Requester maintains in his Memorandum that the digital mail-in ballots, which were sought in that case, are public records under the Election Code and can be accessed through the RTKL.

## LEGAL ANALYSIS

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

### **1. The OOR has jurisdiction over this appeal.**

The County argues that the records requested are not subject to access under the RTKL and can only be accessed through the Election Code. As such, the County contends that the OOR does not have jurisdiction over this appeal.

Section 3101.1 of the RTKL provides that “[i]f the provisions of this act regarding access to records conflict with any other federal or state law, the provisions of this act shall not apply.” 65 P.S. § 67.3101.1. In addition, Section 306 of the RTKL states that “[n]othing in [the RTKL] shall supersede or modify the public or nonpublic nature of a record or document established in Federal or State law, regulation or judicial order or decree.” 65 P.S. § 67.306.

Here, the Election Code, specifically Section 2648, establishes that the records of boards of elections “shall be open to public inspection,” but significantly, does not proscribe a specific means of requesting access. 25 P.S. § 2648. The OOR has the ability to determine what records may or may not be public under other laws. *Dep’t of Labor & Indus. v. Heltzel*, 90 A.3d at 833

(Pa. Commw. Ct. 2014); *see also Advancement Project v. Pa. Dep't of Transp.*, 60 A.3d 891, 898 (Pa. Commw. Ct. 2013) (recognizing the difference between determining public nature and holding a requester and an agency to standards for disclosure set by another law).

The County suggests Section 2648 of the Election Code contains access provisions and that because those provisions conflict with access provisions in the RTKL, the Code applies and requests for records to which the Election Code applies must be made under the Code and not the RTKL. However, the provisions referenced by the County determine the public nature of certain records and place certain restrictions on the disclosure of records declared to be public; those provisions do not otherwise provide for the exclusive means of accessing records subject to the Election Code. Because the Election Code does not set forth a specific framework for accessing records it pertains to, the use of the RTKL to request such records is permissible and the RTKL does not conflict with the Code. Our appellate decisions support such a conclusion.

In *Honey v. Lycoming County Offices of Voter Services*, 312 A.3d 942, 950 (Pa. Commw. Ct. 2024) (en banc), the Commonwealth Court determined that Section 2648 of the Election Code creates a statutory exemption wherein “the contents of ballot boxes and voting machines” are exempt from disclosure when requested under the RTKL. The OOR interpreted *Honey* to imply that records subject to the Election Code can be accessed through the RTKL. *See Driscoll v. Pa. Dep't of State*, OOR Dkt. AP 2024-0158, 2024 PA O.O.R.D. LEXIS 717 (explaining in detail the OOR’s jurisdictional analysis); *Kocher v. Delaware County*, OOR Dkt. AP 2024-1226, 2024 PA O.O.R.D. LEXIS 1550; *Mezzacappa v. Northampton County*, OOR Dkt. AP 2024-0291 2024 PA O.O.R.D. LEXIS 777; *see also Stroehmann v. Lycoming Cnty. Offices of Voter Servs.*, 2024 Pa. Unpub. LEXIS 363 (Pa. Commw. Ct. 2024). Lest there is any remaining doubt as to whether records subject to the Election Code can be accessed through a RTKL request, that question has

been answered by the Commonwealth Court's more recent decision in *Previte v. Erie Cnty. Bd. of Elections*, No. 814 C.D. 2023, 2024 Pa. Commw. LEXIS 178 (Pa. Commw. Ct. 2024). In *Previte*, the Commonwealth Court determined that the requested records in that case, absentee and mail-in ballots, which are also governed by the Election Code, could "be obtained through a[] RTKL request as long as they follow the Election Code's rules of disclosure..." *Id.* At \*15.

For all of the foregoing reasons, the OOR has jurisdiction to decide the instant appeal.

**2. With the exception of mail-in and absentee ballots, the requested records are exempt from public access under the Election Code.**

Next, the County argues that the records requested are exempt from public access under Section 2648 of the Election Code. Section 2648 provides:

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

25 P.S. § 2648 (emphasis added). As mentioned above, in *Honey, supra.*, the Commonwealth Court determined that Section 2648 of the Election Code creates a statutory exemption wherein "the contents of ballot boxes and voting machines" are exempt from disclosure when requested under the RTKL. *Honey* at 950. This is because that Section lists various records open to public access, "except the contents of ballot boxes and voting machines and records of assisted voters."

Pursuant to *Honey*, the only records sought via a RTKL request that are deemed exempt under Section 2648 are those records.

In support of the County's position that Section 2648 precludes access to the records requested by the Requester, Mr. Voye attests as follows:

1. My name is David Voye. I am the Manager of the [County's] Elections Division. I have held this position since January 2019. I have been employed by the Elections Division, formerly known as the Department of Elections, since 1988.
  2. I am [responsible] for overseeing the administration of [the County's] elections. I am responsible for managing and maintaining a voter population of approximately 910,000 registered voters and managing and maintaining 1,327 polling places, requiring approximately 6,600 poll workers.
  3. The [County] Board of Elections consists of the County Executive and two At large County Council members. The Board of Elections performs the duties required by the Elections Code and the [County] Home Rule Charter. It has no staff and performs no administrative duties.
  4. The Elections Division handles the administrative functions of the Board of Elections, including reviewing and addressing [RTKL] requests that are submitted to the Board of Elections.
  5. The Elections Division also responds to requests from individuals who seek to inspect records related to elections as set forth in the Pennsylvania Elections Code.
- \*\*\*\*\*
7. If a voter wishes to inspect any of the items provided for in Section 2648 of the Election Code, staff from the Elections Division would assist them. My staff handles such requests on behalf of the Board of Elections.
  8. On June 27, 2024, [the County] received [the Request].... The County's Open Records Office referred it to me.
  9. The [Request] stated: "I would like to review in person, the following official paper ballot documents and paper ballot documents from the 2020 General Election, for the following precincts." A list of several precincts followed.
  10. To the best of my knowledge, [the Requester] is a qualified elector of [the County].

11. The items sought in [the Request] – “official paper ballot documents” are “other documents and records in [the custody of the Board of Elections]” and public access to them is covered by Section 2648 of the Election Code. However, ballots are “the contents of ballot boxes,” and are not subject to public inspection.

12. Our general practice in [the County] is to deny RTKL requests for records that are subject to Section 2648 and to refer requesters to contact me directly. That is what the Open Records Office did in this case.

Voye Att. at ¶¶1-5 and 7-12.

Initially, we note that there is no dispute that the Requester is a qualified elector of the County and would be entitled to records that are accessible under Section 2648 Election Code. 25 P.S. § 2648. Next, in its evidence, the County indicates that it interpreted the Request as seeking “official paper ballot documents.” Ballots, the County asserts are “the contents of ballot boxes” which are exempt from disclosure under Section 2648 of the Election Code. On appeal, other than contending that the requested records are public records subject to access under the RTKL, the Requester has not specifically contested the County’s interpretation of the Request as seeking “ballots.”

An agency may interpret the meaning of a request for records, but that interpretation must be reasonable. *See Rothermel v. Central Dauphin School Dist.*, OOR Dkt. AP 2022-2756, 2023 PA O.O.R.D. LEXIS 258. 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 v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), *aff’d* 75 A.3d 453 (Pa. 2013)). The OOR determines the reasonableness of the agency’s interpretation from the text and context of the request alone, as neither the OOR nor the Requester are permitted to expand the request on appeal. *See Pa. State Police v. Office of Open Records*, 995 A.2d 515 (Pa. Commw. Ct. 2010); *McKelvey v. Office of*

*Attorney General*, 172 A.3d 122 (Pa. Commw. Ct. 2017) (“Once a RTKL request is submitted, a requester is not permitted to expand or modify the request on appeal.”)

Based on the OOR’s review of the language of the Request, we conclude that the County’s interpretation of the Request as seeking “ballots” is reasonable. The Request provides little explanation of what “official paper ballot documents” could otherwise mean. Although the County does not discuss the Request’s listed precinct information and mention of “Cast Vote Record/Tabulator CVR/Machine Serial...,” for each precinct entry, we are unable to definitively conclude whether such language has any bearing upon or is otherwise contrary to the County’s overall interpretation of the Request.<sup>2</sup> Unless an agency’s interpretation of a Request is clearly unreasonable, the OOR will not substitute its judgement for that of the agency. Other than “official paper ballot documents and paper ballot documents from the 2020 General Election,” the Request is ambiguous as to exactly what documents are sought.

Hence, with two exceptions noted below, we conclude that the County’s interpretation of the Request, *i.e.* that the Request sought “ballots,” was reasonable and that such records constitute the “contents of ballot boxes,” which are exempt from disclosure under Section 2648 of the Election Code. *See Stroehmann, supra.* at \*16 (concluding that Section 2648 of the Election Code “shields ballots that are cast in person (and digital images thereof) against RTKL requests, regardless of whether those ballots are still held in a ballot box or were only kept therein at some point in the past; simply put, there are no temporal limits to this protection.”).

Notwithstanding the forgoing, the Commonwealth Court, in *Previte, supra*, found that there are at least two exceptions to the ballot protections afforded under Section 2648 of the

<sup>2</sup> It is noted that, in *Honey, supra.*, the Commonwealth Court essentially found that that a CVR is the digital equivalent to the contents of a ballot box and voting machine, and that the CVR is exempt from public disclosure under the Election Code. 312 A.3d 942, 954 (Pa. Commw. Ct. 2024).

Election Code. Specifically, Sections 3146.9(a)<sup>3</sup> and 3150.17(a)<sup>4</sup> “establish that that completed absentee and mail-in ballots are to be treated as public records once those ballots have been removed from the ballot box or voting machine, and that those ballots can be obtained through a RTKL request as long as they follow the Election Code’s rules of disclosure and do not include any information that identifies (or is reasonably likely to facilitate the identification of) the individuals who cast those ballots.” *Previte* at \*15-\*16; *see* 25 P.S. § 3146.9(a) and § 3150.17(a). Here, the Request does not distinguish between the types of “official paper ballot documents” sought, and as noted above, the County indicates that it interprets the Request as seeking “ballots.” Because absentee ballots and mail-in ballots are “ballots” that are excepted from the protections of Section 2648 and are subject to public access under the Election Code, the County erred in not providing such records in a manner consistent with the conditions of disclosure set forth in the Election Code. As such, this appeal will be granted with regard to any absentee or mail-in ballots that exist and are responsive to the Request. Pursuant to *Previte*, the County may redact any information that identifies or is reasonably likely to identify the individuals who cast such ballots.

<sup>3</sup> Section 3146.9(a) of the Election Code provides as follows:

- (a) All official absentee ballots, files, applications for such ballots and envelopes on which the executed declarations appear, and all information and lists are hereby designated and declared to be public records and shall be safely kept for a period of two years, except that no proof of identification shall be made public, nor shall information concerning a military elector be made public which is expressly forbidden by the Department of Defense because of military security.

25 P.S. § 3146.9(a)

<sup>4</sup> Section 3150.17(a) of the Election Code provides as follows:

- (a) General rule. All official mail-in ballots, files, applications for ballots and envelopes on which the executed declarations appear, and all information and lists are designated and declared to be public records and shall be safely kept for a period of two years, except that no proof of identification shall be made public, nor shall information concerning a military elector be made public which is expressly forbidden by the Department of Defense because of military security.

25 P.S. § 3150.17(a).

While the County may not agree with the *Previte* decision and its interpretation of the Election Code, it is nonetheless the current binding precedent to which the OOR and the County must abide.

### CONCLUSION

For the foregoing reasons, the appeal is **granted in part** and **denied in part**, and the County is required to provide access to any responsive mail-in and absentee ballots in a manner consistent with the disclosure conditions set forth in the Election Code. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to the Allegheny 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 65 P.S. § 67.1303, but 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>5</sup> All documents or communications following the issuance of this Final Determination shall be sent to [oor-postfd@pa.gov](mailto:oor-postfd@pa.gov). This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: September 4, 2024**

*/s/ Angela Edris*

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ANGELA EDRIS  
APPEALS OFFICER

Sent via the OOR Appeals Portal to: Chadwick Schnee, Esq.;  
Maggie Shiels, Esq.;  
Jessica Garofolo, AORO

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