



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

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**SCOTT THOMAS,
Requester**

v.

: Docket No: AP 2026-1805

**DELAWARE COUNTY,
Respondent**

On April 20, 2026, Scott Thomas (“Requester”), submitted a request (“Request”) to Delaware County (“County”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

1. Electronic copy of all scanned images of the Mail in Ballots that were scanned and tabulated during the May Primary 2026 Logic and Accuracy testing event that occurred on April 14[,] 2026 at the Union Power Plant.
2. Cast Vote Record (CVR) of all Mail in Ballots that were scanned and tabulated during the May Primary 2026 Logic and Accuracy testing event that occurred on April 14[,] 2026 at the Union Power Plant.¹

On April 27, 2026, the County denied the Request, arguing that responsive records are not public records pursuant to Section 2648 of Pennsylvania’s Election Code (“Election Code”), 25 P.S. §§ 2600 *et seq.*, and *Honey v. Lycoming County*, 312 A. 3d 942 (Pa. Commw. 2023).

¹ While the Requester did not provide an original copy of the Request, the language of the Request was included in the County’s final response and appeal submission. Thus, the record is complete in order to comply with 65 P.S. § 1303(b).

On May 5, 2026, the Requester filed an appeal with the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure. The OOR invited both parties to supplement the record and directed the County to notify the OOR if any third parties have a direct interest in this appeal. 65 P.S. § 67.1101(c).

On May 13, 2026, the Requester submitted a position statement, asserting that the responsive records are public records.

On May 27, 2026, the County submitted a position statement, asserting that disclosure of the responsive records is governed by the Election Code. Further, the County argues that based upon *Previte v. Erie City Council*, OOR Dkt. AP 2022-1708, 2026 PA. O.O.R.D. LEXIS 1528, the OOR lacks jurisdiction to direct disclosure of the responsive records.² In support of its position, the County submitted an attestation made subject to the penalties under 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities, authored by Robert W. Scott, Esq. (“Scott Attestation”), the County’s Solicitor.

On April 28, 2026, the Pennsylvania Supreme Court issued its opinion in *Honey v. Lycoming County Offices of Voter Services*, No. 79 MAP 2024.³ In *Honey*, the Supreme Court found that “requesters **must follow the procedure for review as laid out in the Election Code** – they simply cannot obtain review via the RTKL, as the Election Code governs the disclosure of these records.” pp. 31-32 (emphasis in original); *see also* 65 P.S. § 67.3101.1. While *Honey* specifically concerned CVR records and did not specifically address mail-in ballots – the disclosure of which is addressed in a 2019 amendment to the Election Code⁴ – the opinion appears

² The County submitted a copy of the correspondence emailed to the Requester that directed the Requester to make arrangements to inspect the responsive records through the County Board of Elections, which will allow inspection of the records in accordance with the Election Code.

³ <https://www.pacourts.us/assets/opinions/Supreme/out/J-45-2025mo%20-%20106765691356512270.pdf?cb=1> (last accessed by the OOR on June 3, 2026).

⁴ 25 P.S. § 3150.17(a).

to treat all Election Code records as being subject to the Election Code's general rule of disclosure found at 25 P.S. § 2648. *See* p. 30 (noting "neither Section 308 nor any other Election Code provision defines 'reports,' 'documents,' and 'records'"); p.31 ("Here, there is a conflict between the RTKL and the Election Code with respect to the process by which an individual may access public records").

The Request seeks copies of mail-in ballots and CVRs associated with the May 2026 Primary Election. The County argues that access to this information is subject to Section 2648 of the Election Code, which 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...

25 P.S. § 2648. The above section of the Election Code outlines what is expressly public, which would include the records sought by the Requester, whether the actual mail-in ballots or the information related thereto, as Section 2648 clearly includes "tally papers...reports and other documents and records...."

Thus, as the release of the records associated with this Request are governed by the Election Code, and a requester may not use the RTKL to obtain copies of the records, this appeal must be **dismissed**. The dismissal of this appeal shall not prejudice the ability of the Requester to obtain the requested records under the Election code.

This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal or petition for review to the Delaware County Court of Common Pleas. 65 P.S. § 67.1302(a). All parties must be served with notice of the

appeal. The OOR also shall be served notice and have an opportunity to respond according to court rules as per Section 1303 of the RTKL; however, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.⁵ 65 P.S. § 67.1303. All documents or communications following the issuance of this Final Determination shall be sent to oor-postfd@pa.gov. This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: June 11, 2026

/s/ Bandy L. Jarosz

BANDY L. JAROSZ, ESQ.
APPEALS OFFICER

Sent via portal only to: Scott Thomas.; Robert Scott, Esq.; Leah Lewis

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