


Supreme Court of Pennsylvania

Court of Common Pleas Civil Cover Sheet

Bucks County

For Prothonotary Use Only:

Docket No:



Case #: 2020-03140-0000 12624213
Main (Public)
Code: 830 Judge: 39
Rept: 2020-25-00548 7/14/2020 8:18:07 AM

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

RECEIVED

JUL 14 2020

OFFICE OF OPEN RECORDS

SECTION A

Commencement of Action:

- Complaint Writ of Summons Petition
 Transfer from Another Jurisdiction Declaration of Taking

Lead Plaintiff's Name: County of Bucks

Lead Defendant's Name: Joseph D. Jaafari

Are money damages requested? Yes No

Dollar Amount Requested: within arbitration limits
(check one) outside arbitration limits

Is this a Class Action Suit? Yes No

Is this an MDJ Appeal? Yes No

Name of Plaintiff/Appellant's Attorney: Keith J. Bidlingmaier

Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)

SECTION B

Nature of the Case: Place an "X" to the left of the ONE case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

TORT (do not include Mass Tort)

- Intentional
 Malicious Prosecution
 Motor Vehicle
 Nuisance
 Premises Liability
 Product Liability (does not include mass tort)
 Slander/Libel/ Defamation
 Other: _____

CONTRACT (do not include Judgments)

- Buyer Plaintiff
 Debt Collection: Credit Card
 Debt Collection: Other _____
 Employment Dispute: Discrimination
 Employment Dispute: Other _____
 Other: _____

CIVIL APPEALS

- Administrative Agencies**
 Board of Assessment
 Board of Elections
 Dept. of Transportation
 Statutory Appeal: Other _____
 Zoning Board
 Other: _____

MASS TORT

- Asbestos
 Tobacco
 Toxic Tort - DES
 Toxic Tort - Implant
 Toxic Waste
 Other: _____

REAL PROPERTY

- Ejectment
 Eminent Domain/Condemnation
 Ground Rent
 Landlord/Tenant Dispute
 Mortgage Foreclosure: Residential
 Mortgage Foreclosure: Commercial
 Partition
 Quiet Title
 Other: _____

MISCELLANEOUS

- Common Law/Statutory Arbitration
 Declaratory Judgment
 Mandamus
 Non-Domestic Relations Restraining Order
 Quo Warranto
 Replevin
 Other: Petition for Review

PROFESSIONAL LIABILITY

- Dental
 Legal
 Medical
 Other Professional: _____

NOTICE

YOU HAVE BEEN SUED IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PAGES, YOU MUST TAKE ACTION WITHIN TWENTY (20) DAYS AFTER THIS COMPLAINT AND NOTICE ARE SERVED, BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTION TO THE CLAIMS SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND A JUDGMENT MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR ANY MONEY CLAIMED IN THE COMPLAINT OR FOR ANY OTHER CLAIM OR RELIEF REQUESTED BY THE PLAINTIFF. YOU MAY LOSE MONEY OR OTHER RIGHTS IMPORTANT TO YOU.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

**BUCKS COUNTY BAR ASSOCIATION
135 EAST STATE STREET
DOYLESTOWN, PA. 18901
(215) 348-9413 OR (800)-273-2929**

BUCKS COUNTY LAW DEPARTMENT
By: Keith J. Bidlingmaier, Esquire
Attorney I.D. No. 87776
ADMINISTRATION BUILDING
55 East Court Street, 5th floor
Doylestown, PA 18901
215-348-6464

Attorney for Petitioner,
Bucks County

IN THE COURT OF COMMON PLEAS OF BUCKS COUNTY, PENNSYLVANIA

BUCKS COUNTY, :
Petitioner, :
 : Civil Action – Appeal from State Agency
vs. :
 : Docket No.:

JOSEPH JAAFARI, :
Respondent. :



Case # 2020-03140-0000 12624213
Main (Public)
Code 830 Judge.39
Rcpt 2020-25-00548 7/14/2020 8:18:07 AM

ORDER FOR HEARING

AND NOW, this _____ day of _____, 2020, upon consideration of Bucks County’s Petition for Review of the June 15, 2020 Final Determination of the Pennsylvania Office of Open Records (“OOR”) concerning the March 16, 2020 request for records of Joseph Jaafari, it is hereby ORDERED and DECREED that a hearing shall be held on said petition on _____, 2020, at ____:____.m., in Courtroom ____ of the Bucks County Justice Center, 100 North Main Street, Doylestown, PA 18901.

BY THE COURT:

J.

BUCKS COUNTY LAW DEPARTMENT
By: Keith J. Bidlingmaier, Esquire
Attorney I.D. No. 87776
ADMINISTRATION BUILDING
55 East Court Street, 5th floor
Doylestown, PA 18901
215-348-6464

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Respondent. :



Case # 2020-03140-0000 12624213
Main (Public)
Code 830 Judge 39
Rcpt 2020-25-00548 7/14/2020 8 18 07 AM

ORDER

AND NOW, this _____ day of _____, 2020, upon consideration of Bucks County’s Petition for Review of the June 15, 2020 final determination of the Pennsylvania Office of Open Records (“OOR”) concerning the March 16, 2020 request for records of Joseph Jaafari, and upon consideration of the arguments of the parties and the evidence of record submitted in support thereof, it is hereby ORDERED and DECREED that the OOR’s June 15, 2020 final determination is REVERSED. The Petitioner Bucks County is not required to take any further action on the March 16, 2020 request for records of Respondent Joseph Jaafari.

BY THE COURT:

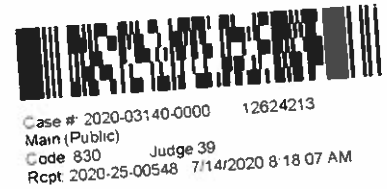
J.

BUCKS COUNTY LAW DEPARTMENT
By: Keith J. Bidlingmaier, Esquire
Attorney I.D. No. 87776
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55 East Court Street, 5th floor
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215-348-6464

Attorney for Petitioner,
Bucks County

IN THE COURT OF COMMON PLEAS OF BUCKS COUNTY, PENNSYLVANIA

BUCKS COUNTY, :
Petitioner, :
vs. : Civil Action – Appeal from State Agency
JOSEPH JAAFARI, :
Respondent. : Docket No.:



**PETITION FOR REVIEW OF THE
JUNE 15, 2020 FINAL DETERMINATION OF
THE PENNSYLVANIA OFFICE OF OPEN RECORDS**

The Petitioner Bucks County (“County”), through its undersigned counsel, hereby submits this Petition for Review of the June 15, 2020 final determination of the Pennsylvania Office of Open Records (“OOR”) concerning the March 16, 2020 request of the Respondent Joseph Jaafari (“Jaafari”) for the production of records pursuant to the Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101 – 67.3104 (“RTKL”). In support of this Petition for Review, the County avers as follows:

THE REQUEST AND RESPONSE AT ISSUE

1. On March 16, 2020, Jaafari submitted a right-to-know request seeking “the most recent pandemic or emergency preparedness plans or policy for jail.” A true and correct copy is

attached hereto as Exhibit 1.

2. More specifically, Jaafari sought the following:

“Please provide the most recent pandemic or emergency preparedness plans or policy for the jail. This policy could either be published by the county, the jail or by its third-party health provider.”

Exhibit 1

3. On March 20, 2020, the County sent a timely response to Jaafari’s request. A true and correct copy of Janet Simon, Open Records Officer’s response letter is attached hereto as Exhibit 2.

4. In her response, Ms. Simon specifically states:

The Office of Open Records response is as follows: Your request is denied. Section 708 (b)(2) and (3) of the Right to Know Law states, in pertinent part:

Exceptions for public records.

(b)(2) A record maintained by an agency in connection with the military, homeland security, national defense, law enforcement or other public safety activity that if disclosed would be reasonably likely to jeopardize or threaten public safety or preparedness or public protection activity...
[emphasis added]

(3) A record, the disclosure of which creates a reasonable likelihood of endangering the safety of the physical security of a building...

The response is attached hereto as Exhibit 2

PROCEDURAL HISTORY IN THE OFFICE OF OPEN RECORDS

5. Jaafari, filed an appeal with the OOR on April 7, 2020, challenging the County’s assertion that the records being requested were exempt. A true and correct copy of Jaafari’s appeal submission to the OOR is attached hereto as Exhibit 3.

6. On May 27, 2020, the County submitted to the OOR the affidavits of David L. Kratz, Deputy Director of the Bucks County Department of Corrections and Scott T. Forster, Director of Bucks County Emergency Services, attesting, *inter alia*:

1. With regard to the records being sought, such records, if disclosed, would be reasonably likely to jeopardize or threaten public safety or preparedness or public activity and would likely endanger the safety of the physical security of the Bucks

County Correctional Facility and therefore exempt from disclosure under Section 708 (b)(2) and (3) of the Right to Know Law.

2. If such records were to be disclosed, the Bucks County Correctional Facility would have no way to control how these plans are safe guarded and how the information would be protected, thereby jeopardizing the safety and security of the Bucks County Correctional Facility and, by extension, the citizens of Bucks County.

The affidavits are attached hereto as Exhibit 4

7. The OOR did not hold any hearing on the appeal, but instead rendered a decision on the basis of the documentation submitted by the parties. While professing that “[u]nder the RTKL, a sworn affidavit or an attestation made under the penalty of perjury may serve as sufficient evidentiary support,” the OOR went on to say that “...conclusory statements are not sufficient for an agency to meet its burden of proof.” The OOR went on to say that “The affidavits provided by the County do not demonstrate how disclosure of the records would be reasonably likely to threaten public safety or the physical security of the jail”.

8. The OOR granted the appeal on June 15, 2020. A true and correct copy of the OOR’s Final Determination is attached hereto as Exhibit 5.

THE COUNTY’S APPEAL TO THIS COURT

14. The OOR has erred in finding that the County’s affidavit was insufficient to establish that disclosure of the records sought would be reasonably likely to threaten public safety or the physical security of the jail.

15. The representations made in the Affidavits of David L. Kratz, Deputy Director of the Bucks County Department of Corrections and Scott. T. Forster, Director of Bucks County Emergency Services are based on over 30 years of collective experience. *See Adams v. Pa. State Police, 51 A.3d 322 (Cmmw Ct. 2012)* which found that in determining whether or not an affidavit is sufficient to support the denial of certain records, the Court in this case of found that

the “*the affidavit was the result of this experience, not mere speculation or conjecture.*” The Court went on to say that “*Although the Court is permitted to make its own finding of fact, this Court here makes a legal determination that Captain Ashsmar’s affidavit was sufficient to establish that the records were exempt from the Law under the public safety exemption.*”

16. The County is resolute in its position that disclosing the Emergency Preparedness Plan at issue in the Jaafari appeal would jeopardize or threaten public safety of the Bucks County Correctional Facility and, by extension, the citizens of Bucks County *See* Section 708 (b)(2) and (3) of the Right to Know Law.

17. Of particular concern, although not an exhaustive list, includes perimeter security, contingency plans, lock down plans, command team communication, personal cell, home and office phone numbers, and resident movement.

18. Further, once out of the hands of the County, there would be no way to control how these plans are safe guarded, further threatening public safety.

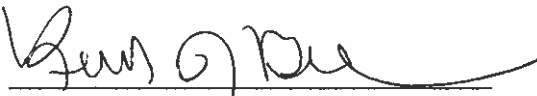
19. In adjudicating this RTKL appeal, this Court functions as a trial court and exercises a standard of review akin to *de novo* review. “[A] reviewing court, in its appellate jurisdiction, independently reviews the OOR’s orders and may substitute its own findings of fact for that of the agency.” *Bowling v. Office of Open Records*, 990 A.2d 813, 818 (Pa. Cmwlth. 2010) (*en banc*).

20. Here, the County asks that this Court hold a hearing on this matter and reverse the OOR’s June 15, 2020 decision ordering the County to comply with Jaafari’s March 16, 2020 request.

WHEREFORE, the Petitioner Bucks County requests that the Court, in the exercise of its discretion, hold a hearing on this matter and thereafter enter an Order:

- A. reversing the OOR's final determination of June 15, 2020;
- B. declaring that Petitioner Bucks County is not required to take any further action on the March 16, 2020 request for records of Respondent Joseph Jaafari.

Respectfully submitted,
BUCKS COUNTY LAW DEPARTMENT

By: 

Keith J. Bidlingmaier, Esquire
Assistant Solicitor
Attorney ID No. 87776
Administration Building
55 E. Court Street, 5th floor
Doylestown, PA 18901
Attorney for Petitioner,
Bucks County

Dated: 7-14-20



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: County jail/public health (Attn: AORO)

Date of Request: 03/16/2020 Submitted via: [X] Email [] U.S. Mail [] Fax [] In Person

PERSON MAKING REQUEST:

Name: Joseph Darius Jaafari Company (if applicable): PA Post

Mailing Address: 4801 Lindle Road

City: Harrisburg, State: PA Zip: 17111 Email: jjaafari@papost.org

Telephone: 717-565-0229 Fax:

How do you prefer to be contacted if the agency has questions? [X] Telephone [X] 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.

Please provide the most recent pandemic or emergency preparedness plans or policy for the jail. This policy could either be published by the county, the jail or by its third-party health provider.

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

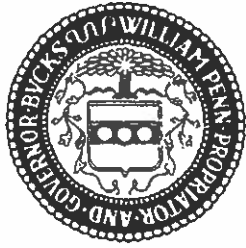
Tracking: 2851 Date Received: 3-16-20 Response Due (5 bus. days): 3-23-20

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



County of Bucks

OFFICE OF OPEN RECORDS
55 East Court Street, Doylestown, PA 18901
Phone: 215-348-6464 Fax: 267-885-1656
EMAIL: openrecordsofficer@buckscounty.org
www.buckscounty.org

March 20, 2020

Joseph Darius Jaafari
4801 Lindle Road
Harrisburg, PA 17111
jjaafari@papost.org

Re: Open Records Request #2851 – pandemic or emergency preparedness plans or policy for the jail

Dear Mr. Jaafari;

Your request for the most recent pandemic or emergency preparedness plans or policy for the jail, pursuant to the Pennsylvania Right-To-Know Law, was received by the Bucks County Office of Open Records on March 16, 2020

The Office of Open Records response is as follows: Your request is denied. Section 708 (b)(2) and (3) of the Right to Know Law states, in pertinent part:

Exceptions for public records.

(b)(2) *A record maintained by an agency in connection with the military, homeland security, national defense, law enforcement or other public safety activity that if disclosed would be reasonably likely to jeopardize or threaten public safety or preparedness or public protection activity...* [emphasis added]

(3) *A record, the disclosure of which creates a reasonable likelihood of endangering the safety of the physical security of a building...*

You have the right to appeal the denial of information in writing to the Pennsylvania Office of Open Records, 333 Market Street, 16th Floor, Harrisburg, PA 17101-2234. If you choose to do so, it must be done within 15 business days of the mailing date of this response and your appeal must include a copy of this letter and your request.

If you have questions, please contact me at openrecordsofficer@buckscounty.org. Otherwise, please be advised that this correspondence will serve to close this file with our office as permitted by law.

Sincerely,

Janet Simon
Open Records Officer

EXHIBIT 2

NOTICE RELATED TO THE CORONAVIRUS (COVID-19) EMERGENCY

Pennsylvania is currently under a declared state of emergency related to the coronavirus (COVID-19). As a result, many agencies and requesters will not be able to meaningfully participate in Right-to-Know Law appeals at this time. Accordingly, and to ensure due process, the OOR is taking the following temporary steps.

This RTKL appeal has been stayed indefinitely by the OOR.

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.

Ideally, agencies will be able to continue responding to Right-to-Know Law requests and appeals during the current coronavirus emergency, particularly when those requests involve information related to the emergency. (To the extent possible, agencies are encouraged to proactively release such information on their websites, as, for example, the Pennsylvania Department of Health is doing.)

If the agency and requester involved in this appeal are able to meaningfully participate, the OOR will continue to process the appeal and work toward a resolution.

We recognize that not every agency and requester will be able to participate. In such cases, the indefinite stay discussed above 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.

Please note that every staff member of the OOR is working remotely. As a result, we are currently unable to receive postal mail. Accordingly, we urge agencies and requesters to use email for all communication with the OOR at this time. Any RTKL appeal filed by postal mail will not be docketed until the OOR returns to normal operations. Similarly, any RTKL appeal involving a situation where one or more of the parties must be contacted by postal mail is subject to the indefinite extension discussed above.

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

April 7, 2020

Via Email Only:

Joseph Jaafari
PA Post
4801 Lindle Road
Harrisburg, PA 17110
jjaafari@papost.org

Via Email Only:

Karen L. Fanelli
Agency Open Records Officer
Bucks County
55 East Court Street
5th Floor
Doylestown, PA 18901
OpenRecordsOfficer@buckscounty.org

RE: OFFICIAL NOTICE OF APPEAL – **DOCKET #AP 2020-0674**

Dear Parties:

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

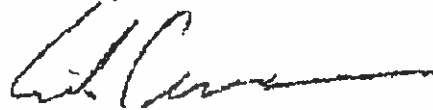
The Office of Open Records (“OOR”) received this appeal under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101, *et seq.* on April 6, 2020. A binding Final Determination (“FD”) will be issued pursuant to the timeline required by the RTKL, **subject to the enclosed information regarding the coronavirus (COVID-19)**.

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

- Please contact the Appeals Officer assigned to this case as soon as possible.
- The Appeals Officer will contact you regarding all deadlines to submit evidence, legal argument and general information to support your position.
- 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 any questions about the appeal process, please contact the assigned Appeals Officer (contact information is enclosed) – and be sure to provide a copy of any correspondence to all other parties involved in this appeal.

Sincerely,



Erik Arneson
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 enclosed information regarding the coronavirus (COVID-19). 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. The Appeals Officer will contact you regarding all deadlines in this case.

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)).

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 assigned to this case (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.

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.



pennsylvania

OFFICE OF OPEN RECORDS

APPEALS OFFICER:

Kyle Applegate, Esq.

CONTACT INFORMATION:

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

FACSIMILE:

(717) 425-5343

EMAIL:

kyapplegat@pa.gov

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

EMAIL

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

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

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

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



pennsylvania

OFFICE OF OPEN RECORDS

MEDIATION NOTICE

Appeals before the Office of Open Records (OOR) are stayed for seven business days pending the parties' decision to participate in the OOR's Informal Mediation Program.

The Parties may agree to mediation. To participate in mediation, the Parties must submit a completed copy of the attached Mediation Agreement. If both Parties agree to mediation, the appeal will be further stayed, and the Parties will be contacted by an OOR Mediator to begin the mediation process.

The Parties may decline mediation. If either Party declines to participate in mediation or fails to submit a signed Mediation Agreement within seven business days:

- The record will remain open for seven additional business days for the parties to submit evidence and argument in support of their positions; and
- The OOR will decide the appeal and issue a Final Determination by the date set forth in the attached Official Notice of Appeal.

Even if mediation is declined at this time, the Parties may agree to mediate the dispute at any time prior to a Final Determination being issued, and the appeal will be stayed pending mediation.

Questions. If the Parties have questions about mediation or what to expect during the mediation process, please email the assigned Appeals Officer or visit the OOR's website at <https://www.openrecords.pa.gov/Appeals/Mediation.cfm>.



pennsylvania

OFFICE OF OPEN RECORDS

OOR MEDIATION AGREEMENT

OOR Dkt. No. _____ - _____

Requester Name: _____

Agency Name: _____

The Requester and Agency (collectively, the "Parties") agree to participate in the OOR's Informal Mediation Program to resolve the matters at issue in this appeal.

The Parties agree to participate in the mediation process in good faith. If the Parties agree, there may be more than one session if the Mediator determines that the appeal could be resolved. The Parties acknowledge that mediation sessions are not open to the public and the content of discussions during mediation is confidential and not admissible as evidence in this appeal.

The Parties agree to extend the Final Determination deadline in this appeal for 30 calendar days beyond the conclusion of the mediation process or, if the Requester agreed to grant the OOR a 30-day extension on the appeal form initiating this appeal, the Final Determination deadline will include that extension. If the Requester does not withdraw the appeal, the Mediator will indicate the conclusion of the mediation process in writing if further mediation sessions are not likely to result in a resolution of the dispute. The Parties acknowledge that this Mediation Agreement, the Requester's withdrawal, and the OOR's withdrawal acknowledgement will be included in the OOR's administrative appeal file and subject to public access.

Upon receipt of this completed Mediation Agreement, a Mediator will contact the Parties to establish a mutually convenient date, time and location to conduct a joint mediation session.

Requester Signature: _____ Date: _____

Agency Representative Signature: _____ Date: _____

REQUEST TO PARTICIPATE BEFORE THE OOR

Please accept this as a Request to Participate in a currently pending appeal before the Office of Open Records. The statements made herein and in any attachments are true and correct to the best of my knowledge, information and belief. I understand this statement is made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities.

NOTE: The requester filing the appeal with the OOR is a named party in the proceeding and is NOT required to complete this form.

OOR Docket No: _____

Today's date: _____

Name: _____

PUBLIC RECORD NOTICE: ALL FILINGS WITH THE OOR WILL BE PUBLIC RECORDS AND SUBJECT TO PUBLIC ACCESS WITH LIMITED EXCEPTION. IF YOU DO NOT WANT TO INCLUDE PERSONAL CONTACT INFORMATION IN A PUBLICLY ACCESSIBLE RECORD, PLEASE PROVIDE ALTERNATE CONTACT INFORMATION IN ORDER TO RECEIVE FUTURE CORRESPONDENCE RELATED TO THIS APPEAL.

Address/City/State/Zip _____

E-mail _____

Fax Number: _____

Name of Requester: _____

Address/City/State/Zip _____

Telephone/Fax Number: _____ / _____

E-mail _____

Name of Agency: _____

Address/City/State/Zip _____

Telephone/Fax Number: _____ / _____

E-mail _____

Record at issue: _____

I have a direct interest in the record(s) at issue as (check all that apply):

- An employee of the agency
- The owner of a record containing confidential or proprietary information or trademarked records
- A contractor or vendor
- Other: (attach additional pages if necessary) _____

I have attached a copy of all evidence and arguments I wish to submit in support of my position.

Respectfully submitted, _____ (must be signed)

Please submit this form to the Appeals Officer assigned to the appeal. Remember to copy all parties on this correspondence. The Office of Open Records will not consider direct interest filings submitted after a Final Determination has been issued in the appeal.

From: no-reply@openrecords.pa.gov
To: jjafari@papost.org
Subject: PA Office of Open Records - Appeal Confirmation
Date: Monday, April 6, 2020 12:11:00 PM
Attachments: [oor_logo_email.png](#)

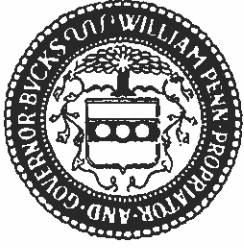


You have filed an appeal of an agency's response to a request for records under the Right-to-Know Law.

Name:	Joseph Jaafari
Company:	PA Post
Address 1:	4801 Lindle Road
Address 2:	
City:	Harrisburg
State:	Pennsylvania
Zip:	17110
Phone:	717-565-0229
Email:	jjafari@papost.org
Agency (typed):	County jail
Agency Address 1:	55 East Court Street
Agency Address 2:	5th Floor
Agency City:	Doylestown
Agency State:	Pennsylvania
Agency Zip:	18901
Agency Phone:	215-348-6464
Agency Email:	openrecordsofficer@buckscounty.org
Records at Issue in this Appeal:	Pandemic policy plans or emergency

	preparedness plans in place.
Request Submitted to Agency Via:	e-mail
Request Date:	03/16/2020
Response Date:	03/20/2020
Deemed Denied:	No
Agency Open Records Officer:	Janet Simon
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:	Yes
Agree to permit the OOR an additional 30 days to issue a final order:	Yes
Interested in resolving this issue through OOR mediation:	Yes
Attachments:	<ul style="list-style-type: none"> • Denial_Bucks_Pandemic.pdf • RTK_COUNTYJAIL_PandemicPolicy.pdf

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



County of Bucks

OFFICE OF OPEN RECORDS
55 East Court Street, Doylestown, PA 18901
Phone: 215-348-6464 Fax: 267-885-1656
EMAIL: openrecordsofficer@buckscounty.org
www.buckscounty.org

March 20, 2020

Joseph Darius Jaafari
4801 Lindle Road
Harrisburg, PA 17111
jjaaafari@papost.org

Re: **Open Records Request #2851 – pandemic or emergency preparedness plans or policy for the jail**

Dear Mr. Jaafari;

Your request for the most recent pandemic or emergency preparedness plans or policy for the jail, pursuant to the Pennsylvania Right-To-Know Law, was received by the Bucks County Office of Open Records on March 16, 2020

The Office of Open Records response is as follows: Your request is denied. Section 708 (b)(2) and (3) of the Right to Know Law states, in pertinent part:

Exceptions for public records.

(b)(2) *A record maintained by an agency in connection with the military, homeland security, national defense, law enforcement or other public safety activity that if disclosed would be reasonably likely to jeopardize or threaten public safety or preparedness or public protection activity...* [emphasis added]

(3) *A record, the disclosure of which creates a reasonable likelihood of endangering the safety of the physical security of a building...*

You have the right to appeal the denial of information in writing to the Pennsylvania Office of Open Records, 333 Market Street, 16th Floor, Harrisburg, PA 17101-2234. If you choose to do so, it must be done within 15 business days of the mailing date of this response and your appeal must include a copy of this letter and your request.

If you have questions, please contact me at openrecordsofficer@buckscounty.org. Otherwise, please be advised that this correspondence will serve to close this file with our office as permitted by law.

Sincerely,

Janet Simon
Open Records Officer



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: County jail/public health (Attn: AORO)

Date of Request: 03/16/2020 Submitted via: Email U.S. Mail Fax In Person

PERSON MAKING REQUEST:

Name: Joseph Darius Jaafari Company (if applicable): PA Post

Mailing Address: 4801 Lindle Road

City: Harrisburg, State: PA Zip: 17111 Email: jjaafari@papost.org

Telephone: 717-565-0229 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.*

Please provide the most recent pandemic or emergency preparedness plans or policy for the jail. This policy could either be published by the county, the jail or by its third-party health provider.

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 Bucks

OFFICE OF OPEN RECORDS
55 East Court Street, Doylestown, PA 18901
Phone: 215-348-6464 Fax: 267-885-1656
EMAIL: openrecordsofficer@buckscounty.org

AFFIDAVIT OF DAVID L. KRATZ, DEPUTY DIRECTOR, BUCKS COUNTY DEPARTMENT OF CORRECTIONS

Requester: Jaafari v Bucks County #AP 2020-0674

Records Requested:

Please provide the most recent pandemic or emergency preparedness plans or policy for the jail. This policy could either be published by the county, the jail or by its third-party health provider.

I, David L. Kratz, the undersigned Deputy Director of the Bucks County Department of Corrections, have personal knowledge of the above request for records, and verify that I am competent to make this certification:

1. In my capacity as the Deputy Director of the Bucks County Department of Corrections, I am familiar with the records possessed and maintained by Bucks County Department of Corrections.
2. With regard to the records being sought, such records, if disclosed, would be reasonably likely to jeopardize or threaten public safety or preparedness or public activity and would likely endanger the safety of the physical security of the Bucks County Department of Corrections and therefore exempt from disclosure under Section 708 (b)(2) and (3) of the Right to Know Law.

I verify that I am competent to make this affidavit, and that the above statements are made subject to the penalties of 18 Pa.C.S.A. §4904, relating to unsworn falsification to authorities.



David L. Kratz
Deputy Director
Bucks County Department of Corrections

Sworn to and subscribed before me on the day of 5-26, 2020.



Notary Public
My Commission Expires, Commonwealth of Pennsylvania

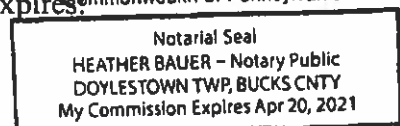


EXHIBIT 4

County of Bucks

OFFICE OF OPEN RECORDS
55 East Court Street, Doylestown, PA 18901
Phone: 215-348-6464 Fax: 267-885-1656
EMAIL: openrecordsofficer@buckscounty.org

AFFIDAVIT OF SCOTT T. FORSTER, DIRECTOR, BUCKS COUNTY EMERGENCY SERVICES

Requester: Jaafari v Bucks County #AP 2020-0674

Records Requested:

Please provide the most recent pandemic or emergency preparedness plans or policy for the jail. This policy could either be published by the county, the jail or by its third-party health provider.

I, Scott T. Forster, the undersigned Director, Bucks County Emergency Services, have personal knowledge of the above request for records, and verify that I am competent to make this certification:

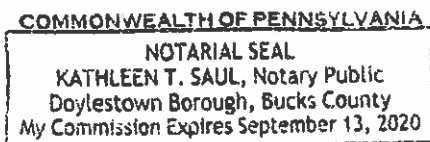
1. With regard to the records being sought, such records, if disclosed, would be reasonably likely to jeopardize or threaten public safety or preparedness or public activity and would likely endanger the safety of the physical security of the Bucks County Correctional Facility and therefore exempt from disclosure under Section 708 (b)(2) and (3) of the Right to Know Law.
2. If such records were to be disclosed, the Bucks County Correctional Facility would have no way to control how these plans are safe guarded and how the information would be protected, thereby jeopardizing the safety and security of the Bucks County Correctional Facility and, by extension, the citizens of Bucks County.

I verify that I am competent to make this affidavit, and that the above statements are made subject to the penalties of 18 Pa.C.S.A. §4904, relating to unsworn falsification to authorities.



Scott T. Forster
Director
Bucks County Emergency Services

Sworn to and subscribed before me on the 20th day of May, 2020.



Notary Public
My Commission Expires:



FINAL DETERMINATION

IN THE MATTER OF :
 :
JOSEPH JAAFARI AND PA POST, :
Requester :
 :
v. : **Docket No.: AP 2020-0674**
 :
BUCKS COUNTY, :
Respondent :

INTRODUCTION

Joseph Jaafari and PA Post (“Requester”) submitted a request (“Request”) to Bucks County (“County”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking pandemic or emergency preparedness plans for the County jail. The County denied the Request, arguing that disclosure of the records would threaten public safety and the physical security of the jail. The Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **granted**, and the County is required to take further action as directed.

FACTUAL BACKGROUND

On March 16, 2020, the Request was filed, seeking “the most recent pandemic or emergency preparedness plans or policy for the jail.”¹ On March 20, 2020, the County denied the

¹ The Request noted that it “could be published by the [C]ounty, the jail or by its third-party health provider.”

Request, arguing that disclosure of the records would threaten public safety, 65 P.S. § 67.708(b)(2), and the physical security of the jail, 65 P.S. § 67.708(b)(3).

On April 6, 2020, the Requester appealed to the OOR, 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. *See* 65 P.S. § 67.1101(c).

Due to the COVID-19 emergency, the OOR indefinitely stayed the appeal to ensure that both parties could meaningfully participate. After a series of status updates from the County, the OOR established a submissions schedule for the parties and a final determination issuance date.

On May 27, 2020, the County submitted a position statement and the sworn affidavits of David L. Kratz, Deputy Director of the County Department of Corrections, and Scott Forster, Director of the County Emergency Services.

The Requester did not make an additional submission addressing the merits of the appeal.

LEGAL ANALYSIS

“The objective of the Right to Know Law ... is to empower citizens by affording them access to information concerning the activities of their government.” *SWB Yankees L.L.C. v. Wintermantel*, 45 A.3d 1029, 1041 (Pa. 2012). Further, this important open-government law is “designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials and make public officials accountable for their actions.” *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 is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. § 67.503(a). An appeals officer is required “to review all information filed relating to the

request.” 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. The decision to hold a hearing is discretionary and non-appealable. *Id.* The law also states that an appeals officer may admit into evidence testimony, evidence and documents that the appeals officer believes to be reasonably probative and relevant to an issue in dispute. *Id.* Here, neither party requested a hearing; however, the OOR has the necessary information and evidence before it to properly adjudicate the matter.

The County is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.302. Records in the possession of a local agency are presumed public unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. An agency bears the burden of proving the applicability of any cited exemptions. *See* 65 P.S. § 67.708(b).

Section 708 of the RTKL places the burden of proof on the public body to demonstrate that a record is exempt. In pertinent part, Section 708(a) states: “(1) The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence.” 65 P.S. § 67.708(a). 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 County argues that disclosure of the requested records² would threaten public safety and the physical security of the jail. Section 708(b)(2) of the RTKL exempts from disclosure “[a]

² However, the County does not explain what responsive records exist.

record maintained by an agency in connection with ... [a] public safety activity that if disclosed would be reasonably likely to jeopardize or threaten public safety or preparedness....” 65 P.S. § 67.708(b)(2). Meanwhile, Section 708(b)(3) of the RTKL exempts from disclosure “[a] record, the disclosure of which creates a reasonable likelihood of endangering the safety or the physical security of a building....” 65 P.S. § 67.708(b)(3). “In interpreting the ‘reasonably likely’ part of the test[s], as with all the security-related exceptions, we look to the likelihood that disclosure would cause the alleged harm, requiring more than speculation.” *Cal. Borough v. Rothey*, 185 A.3d 456, 468 (quoting *Carey v. Dep’t of Corr.*, 61 A.3d 367, 374-75 (Pa. Commw. Ct. 2013)); see also *Lutz v. City of Phila.*, 6 A.3d 669, 676 (Pa. Commw. Ct. 2010) (noting that “[m]ore than mere conjecture is needed”).

Under the RTKL, a sworn affidavit or an attestation made under the penalty of perjury may serve as sufficient evidentiary support. See *Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). However, conclusory statements are not sufficient for an agency to meet its burden of proof. See *Office of the District Attorney of Phila. v. Bagwell*, 155 A.3d 1119, 1130 (“Relevant and credible testimonial affidavits may provide sufficient evidence in support of a claimed exemption; however, conclusory affidavits, standing alone, will not satisfy the burden of proof an agency must sustain to show that a requester may be denied access to records under the RTKL”) (citations omitted).

The affidavits provided by the County do not demonstrate how disclosure of the records would be reasonably likely to threaten public safety or the physical security of the jail. Both affidavits simply parrot the language of the exemption, stating:

With regard to the records being sought, such records, if disclosed, would be reasonably likely to jeopardize or threaten public safety or preparedness or public

activity and would likely endanger the safety of the physical security of the Bucks County Correctional Facility and [are] therefore exempt from disclosure under Section 708 (b)(2) and (3) of the Right to Know Law.

The affidavit of Mr. Forster adds that:

If such records were to be disclosed, the Bucks County Correctional Facility would have no way to control how these plans are safe guarded and how the information would be protected, thereby jeopardizing the safety and security of the Bucks County Correctional Facility and, by extension, the citizens of Bucks County.

However, neither statement explains *how* the release of the records would be reasonably likely to threaten harm; without such explanation, the conclusory statements amount only to speculation.³ As explained above, conclusory affidavits are not competent evidence under the RTKL. Therefore, because the County has not provided sufficient evidence to demonstrate, by a preponderance of the evidence, that the records are exempt, the records are subject to access.

CONCLUSION

For the foregoing reasons, Requester's appeal is **granted**, and the County is required to provide all responsive records within thirty days. Within thirty days of the mailing date of this Final Determination, any party may appeal to the Bucks 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 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.⁴ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

³ Further, the affidavits do not address why the records must be withheld in their entirety, rather than redacted. See 65 P.S. § 67.706. The mere fact that the records relate to a prison does not justify their withholding; rather, the County has the burden of proving that the records are exempt. 65 P.S. § 67.708(a)(1).

⁴ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

FINAL DETERMINATION ISSUED AND MAILED: June 15, 2020


/s/ Kyle Applegate

APPEALS OFFICER
KYLE APPLGATE, ESQ.

Sent to: Joseph Jaafari (via email only);
Janet Simon (via email only)

VERIFICATION

I, Keith J. Bidlingmaier, Esquire, hereby state that I am an Assistant Solicitor for the County of Bucks, that I am authorized to make this verification on behalf of the Petitioner County of Bucks, and that the statements made in the foregoing Petition for Review are true and correct to the best of my knowledge, information and belief. The undersigned understands that the statements therein are made subject to the penalties of 18 Pa. C.S. § 4909 relating to unsworn falsification to authorities.



Keith J. Bidlingmaier

Dated:

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.

Signature: 

Printed Name: Keith Bidlingmeyer

Attorney No. (if applicable): 87776

BUCKS COUNTY LAW DEPARTMENT
By: Keith J. Bidlingmaier, Esquire
Attorney I.D. No. 87776
ADMINISTRATION BUILDING
55 East Court Street, 5th floor
Doylestown, PA 18901
215-348-6464

Attorney for Petitioner,
Bucks County

IN THE COURT OF COMMON PLEAS OF BUCKS COUNTY, PENNSYLVANIA


BUCKS COUNTY, :
Petitioner, :
vs. : Civil Action – Appeal from State Agency
JOSEPH JAAFARI, :
Respondent. : Docket No.:

CERTIFICATE OF SERVICE

I, Keith J. Bidlingmaier, hereby certify that on July 14, 2020, I served a true and correct copy of the foregoing Petition for Review, via email and U.S. First Class Mail, postage prepaid, upon the following:

Joseph Jaafari
PA Post
4801 Lindle Road
Harrisburg, PA 17110
jjaafari@papst.org

Kyle Applegate, Esquire
Pennsylvania Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
kyapplegat@pa.gov



Keith J. Bidlingmaier

Dated: 7-14-20