



COURT OF COMMON PLEAS OF BUCKS COUNTY, PENNSYLVANIA

RECEIVED

NOV 24 2020

OFFICE OF OPEN RECORDS

COUNTY OF BUCKS

vs.

BRETT SHOLTIS

NO. 2020-05950

CIVIL COVER SHEET

State Rule 205.5 requires this form be attached to any document commencing an action in the Bucks County Court of Common Pleas. The information provided herein is used solely as an aid in tracking cases in the court system. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

Name of Plaintiff/Appellant's Attorney: Austin Soldano, Esq., ID: 323207

Self-Represented (Pro Se) Litigant ☐

Class Action Suit ☐ Yes ☒ No

MDJ Appeal ☐ Yes ☒ No

Money Damages Requested ☐

Commencement of Action:

Amount in Controversy:

Petition

Case Type and Code

Miscellaneous:

Other

Other:

PETITION FOR REVIEW OF FINAL DETERMINATION OF

Supreme Court of Pennsylvania

Court of Common Pleas

County of Bucks



County

For Prothonotary Use Only:

Docket No:

TIME \$1 App

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.

Commencement of Action: <input type="checkbox"/> Complaint <input type="checkbox"/> Writ of Summons <input checked="" type="checkbox"/> Petition <input type="checkbox"/> Transfer from Another Jurisdiction <input type="checkbox"/> Declaration of Taking			
Lead Plaintiff's Name: County of Bucks		Lead Defendant's Name: Brett Sholtis	
Are money damages requested? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Dollar Amount Requested: <input type="checkbox"/> within arbitration limits <input type="checkbox"/> outside arbitration limits (check one)	
Is this a <i>Class Action Suit</i> ? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Is this an <i>MDJ Appeal</i> ? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Name of Plaintiff/Appellant's Attorney: Austin J. Soldano <input type="checkbox"/> Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)			

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) <input type="checkbox"/> Intentional <input type="checkbox"/> Malicious Prosecution <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Nuisance <input type="checkbox"/> Premises Liability <input type="checkbox"/> Product Liability (does not include mass tort) <input type="checkbox"/> Slander/Libel/ Defamation <input type="checkbox"/> Other: _____	CONTRACT (do not include Judgments) <input type="checkbox"/> Buyer Plaintiff <input type="checkbox"/> Debt Collection: Credit Card <input type="checkbox"/> Debt Collection: Other _____ <input type="checkbox"/> Employment Dispute: Discrimination <input type="checkbox"/> Employment Dispute: Other _____ <input type="checkbox"/> Other: _____	CIVIL APPEALS Administrative Agencies <input type="checkbox"/> Board of Assessment <input type="checkbox"/> Board of Elections <input checked="" type="checkbox"/> Dept. of Transportation <input checked="" type="checkbox"/> Statutory Appeal: Other Appeal from State Agency (PA Office of Open Records) <input type="checkbox"/> Zoning Board <input type="checkbox"/> Other: _____
MASS TORT <input type="checkbox"/> Asbestos <input type="checkbox"/> Tobacco <input type="checkbox"/> Toxic Tort - DES <input type="checkbox"/> Toxic Tort - Implant <input type="checkbox"/> Toxic Waste <input type="checkbox"/> Other: _____	REAL PROPERTY <input type="checkbox"/> Ejectment <input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Ground Rent <input type="checkbox"/> Landlord/Tenant Dispute <input type="checkbox"/> Mortgage Foreclosure: Residential <input type="checkbox"/> Mortgage Foreclosure: Commercial <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Other: _____	MISCELLANEOUS <input type="checkbox"/> Common Law/Statutory Arbitration <input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Mandamus <input type="checkbox"/> Non-Domestic Relations Restraining Order <input type="checkbox"/> Quo Warranto <input type="checkbox"/> Replevin <input type="checkbox"/> Other: _____
PROFESSIONAL LIABILITY <input type="checkbox"/> Dental <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional: _____		

BUCKS COUNTY LAW DEPARTMENT
Austin J. Soldano, Assistant County Solicitor
Attorney I.D. No. 323207
55 East Court Street, Fifth Floor
Doylestown, PA 18901
(215) 348-6464

Attorneys for Petitioner

IN THE COURT OF COMMON PLEAS OF BUCKS COUNTY, PENNSYLVANIA

COUNTY OF BUCKS,	:	Civil Action – Appeal from State Agency
55 East Court Street	:	
Doylestown, PA 18901,	:	
	:	
Petitioner,	:	
	:	
v.	:	Docket No.
	:	
BRETT SHOLTIS,	:	
4801 Lindle Road	:	
Harrisburg, PA 17111,	:	
	:	
Respondent.	:	

ORDER FOR HEARING

AND NOW, this ____ day of _____, 202_, upon consideration of the County of Bucks's Petition for Review, it is hereby ORDERED and DECREED that a hearing shall be held on said Petition on _____, 202_, at ____: ____m., in Courtroom No. _____ of the Bucks County Justice Center, 100 North Main Street, Doylestown, PA 18901.

BY THE COURT:

J.

J.

BUCKS COUNTY LAW DEPARTMENT
 Austin J. Soldano, Assistant County Solicitor
 Attorney I.D. No. 323207
 55 East Court Street, Fifth Floor
 Doylestown, PA 18901
 (215) 348-6464

Attorneys for Petitioner

IN THE COURT OF COMMON PLEAS OF BUCKS COUNTY, PENNSYLVANIA

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	:	
BRETT SHOLTIS,	:	
4801 Lindle Road	:	
Harrisburg, PA 17111,	:	
	:	
Respondent.	:	

**PETITION FOR REVIEW OF THE
 OCTOBER 16, 2020 FINAL DETERMINATION OF
 THE PENNSYLVANIA OFFICE OF OPEN RECORDS**

Petitioner, the County of Bucks, through its undersigned counsel, hereby submits this Petition for Review of the October 16, 2020 Final Determination of the Pennsylvania Office of Open Records concerning the July 17, 2020 request of Respondent, Brett Sholtis, for the production of records pursuant to the Right-to-Know Law, 65 P.S. 67.101 *et seq.* In support of its Petition, the County of Bucks avers as follows:

JURISDICTION

1. This Honorable Court has jurisdiction over this Petition for Review pursuant to Section 1302(a) of the Right-to-Know Law (“RTKL”). 65 P.S. § 67.1301(a).

PARTIES

2. Petitioner is the County of Bucks ("County"), a local agency as defined by Section 102 of the RTKL. See 65 P.S. § 67.102.

3. Respondent is Brett Sholtis ("Requester"), who submitted the at-issue Right-to-Know ("RTK") request to the County in this matter.

PROCEDURAL HISTORY AND RELEVANT BACKGROUND

4. On July 17, 2020, the County received a RTK request from Requester. Therein, Requester sought a video recording from the Bucks County Correctional Facility on May 20, 2020 regarding the following, *verbatim*: "Inmate Kimberly Stringer was 'hit with pepper spray by correction officers' according to Bucks County District Attorney Matt Weintraub, who can confirm details and existence of this video, including the exact time of the event." The July 17, 2020 RTK request is attached as Exhibit A.

5. On July 23, 2020, the County denied Requester's request via letter. In support of its decision, the County cited Section 708 of the RTKL and Section 9106 of the Criminal History Record Information Act ("CHRIA"). The July 23, 2020 denial letter is attached as Exhibit B.

6. On August 6, 2020, Requester appealed the County's denial of his RTK request to the Pennsylvania Office of Open Records ("OOR"). Requester's appeal submission and the corresponding appeal documents submitted to the parties are attached as Exhibit C.

7. On August 14, 2020, the County submitted its response to Requester's appeal submission. Therein, the County reiterated its basis for the denial of the request as Section 708 of the RTKL and Section 9106 of the CHRIA. In further support of its position, the County submitted the affidavit of Bucks County District Attorney Matthew D. Weintraub. Therein, District Attorney Weintraub explained that the requested footage was related to a criminal investigation and

constituted investigative information. The County's response to Requester's appeal submission and the affidavit of District Attorney Weintraub, are attached as Exhibit D.

8. On October 16, 2020, Appeals Officer Joy Ramsingh, Esquire, of the OOR issued a Final Determination granting Requester's appeal and directing the County to provide the requested video footage. Therein, Appeals Officer Ramsingh determined that the County failed to establish that the requested video footage related to a criminal investigation. The October 16, 2020 Final Determination is attached as Exhibit E.

9. To supplement the record before this Honorable Court's *de novo* review, the County has submitted the affidavit of David Kratz, Deputy Director of the Bucks County Correctional Facility. The affidavit of Deputy Director Kratz is attached as Exhibit F.

10. The instant Petition for Review now follows.

THE COUNTY'S APPEAL TO THIS HONORABLE COURT

Standard and Scope of Review

11. In adjudicating the instant matter, this Honorable Court functions as fact finder and exercises a standard of review akin to *de novo* review. See Bowling v. Office of Open Records, 990 A.2d 813, 818 (Pa. Commw. Ct. 2010). This Honorable Court "may substitute its own findings of fact for that of the [OOR]." Id.

12. A *de novo* review allows for full consideration of a case another time, and this Honorable Court is "substituted for . . . the prior decision maker, and redecide[s] the case." Forest Area Sch. Dist. v. Sloup, 621 A.2d 1121, 1125 (Pa. Commw. Ct. 1993) (citation omitted).

13. This Honorable Court, when reviewing an appeal from the OOR, is "entitled to the broadest scope of review." Bowling, 990 A.2d at 820. The RTKL does not prohibit the court's supplementation of the record. Id.

14. An agency is required to “raise all its challenges before the close of evidence before the court.” Chambersburg Area Sch. Dist. v. Dorsey, 97 A.3d 1281, 1288 (Pa. Commw. Ct. 2014) (citation omitted).

15. “The decision of the court shall contain findings of fact and conclusions of law based upon the evidence as a whole.” 65 P.S. § 67.1302(a). “The decision shall clearly and concisely explain the rationale for the decision.” Id.

**The October 16, 2020 Final Determination Should Be Reversed because
the Requested Records are Exempt from Disclosure Under
Section 708 of the RTKL and Section 9106 of the CHRIA**

16. Here, the County respectfully requests this Honorable Court to hold a hearing on this matter and reverse the October 16, 2020 Final Determination directing the County to provide the requested video footage to Requester. For the following reasons, the requested records are not public records and are exempt from disclosure.

17. In support of its position, the County seeks to supplement the record for this Honorable Court’s *de novo* review by way of the affidavit of Deputy Director Kratz, Exhibit F, and by offering the testimony of Deputy Director Kratz at a hearing in this matter. In addition, the County would readily make the requested records available for *in camera* review.

18. A record exempt from disclosure under Section 708 of the RTKL or under any state law, such as the CHRIA, does not constitute a public record. 65 P.S. § 67.102. If a record does not constitute a public record, then an agency has no obligation to provide the record to a requester. See 65 P.S. § 67.302; see also 65 P.S. § 67.305; see also 65 P.S. § 67.701.

19. The requested records in this matter constitute video footage taken with handheld recording devices by Bucks County Correctional Facility staff during a “use of force” event involving the deployment of “pepper spray” by facility staff against an offender. Such video

27. The requested records are also exempt from disclosure under Section 9106 of the CHRIA because they constitute investigative information. See 18 Pa.C.S. § 9106(c)(4) (prohibiting the dissemination of investigative information).

28. Specifically, the requested records constitute investigative information since they were created for an exclusive investigative purpose and presented to the Bucks County District Attorney's Office as part of a criminal inquiry into the subject matter of the filmed event. See 18 Pa.C.S. § 9102 (defining "investigative information").

29. The County respectfully submits that, in a *de novo* hearing before this Honorable Court, it shall meet its burden of establishing that the requested records are exempt from disclosure pursuant to the RTKL and the CHRIA.

RELIEF SOUGHT


WHEREFORE, the County respectfully requests this Honorable Court to hold a hearing on this matter and, thereafter, enter an Order:

- A. Reversing the October 16, 2020 Final Determination;
- B. Declaring that the requested records are not public records and exempt from disclosure;
and
- C. Declaring that the County is not required to take any further action on Requester's July 17, 2020 request for records.

Respectfully submitted:


JOSEPH J. KHAN
County Solicitor

Date: November 13, 2020


Austin J. Soldano
Assistant County Solicitor

VERIFICATION

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



Austin J. Soldano

Date: November 13, 2020

Exhibit A

Law Enforcement Recording Request Form – Act 22 of 2017

This form can be used to request law enforcement recordings ("any audio recording or video recording made by a law enforcement agency") under Act 22 of 2017. Note that the Right-to-Know Law does not apply to such recordings. Any denials must be appealed to the appropriate Court of Common Pleas, not the Office of Open Records.

SUBMITTED TO AGENCY NAME: BUCKS COUNTY CORRECTIONAL FACILITY (Attn: AORO)

Date of Request: JULY 14, 2020 Submitted via: ☒ U.S. Mail ☐ In Person
(Act 22 requires requests to be submitted via "personal delivery or certified mail.")

PERSON MAKING REQUEST:

Name: BRETT SHOLTIS Company (if applicable): WITF

Mailing Address: 4801 LINDLE ROAD

City: HARRISBURG State: PA Zip: 17111 Email: BRETT_SHOLTIS@WITF.ORG

Telephone: 717-736-0352 Fax: _____

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

RECORDING REQUESTED: Requests must be submitted within 60 days of the event recorded. All of the following information is required. Be thorough; use additional pages if necessary.

Date and Time of the Event: MAY 20, 2020, TIME UNKNOWN

Location of the Event: BUCKS COUNTY CORRECTIONAL FACILITY

Describe the Event: INMATE KIMBERLY STRINGER WAS "HIT WITH PEPPER SPRAY BY CORRECTION OFFICERS" ACCORDING TO BUCKS COUNTY DISTRICT ATTORNEY MATT WEINTRAUB, WHO CAN CONFIRM DETAILS AND EXISTENCE OF THIS VIDEO, INCLUDING THE EXACT TIME OF THE EVENT.

Describe Your Relationship to the Event: JOURNALIST FOCUSED ON PROBLEMS WITH MENTAL HEALTH SERVICES IN PENNSYLVANIA.

If the Event Occurred in a Residence, Identify All People Present (unless unknown & not reasonably ascertainable):

N/A

If an Act 22 request is granted, the agency may charge "reasonable fees" to provide a copy of the recording.

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

ITEMS BELOW THIS LINE FOR AGENCY USE ONLY

Tracking: 2932 Date Received: 7-17-20 Response Due (30 cal. days): 7-24-20

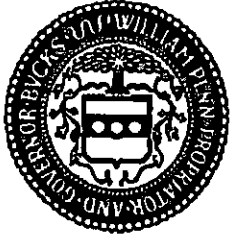
Extension? ☐ Yes ☐ No (If Yes, Final Due Date: _____) Actual Response Date: _____

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

NOTE: In most cases, a completed Request Form is a public record.
More information about Act 22 is available at <https://www.openrecords.pa.gov>

Form updated March 16, 2020
by the Office of Open Records

Exhibit B



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

July 23, 2020

Mr. Brett Sholtis
4801 Lindle Road
Harrisburg, PA 17111
Brett_Sholtis@witf.org

Re: Open Records Request # 2933 – re: K. Stringer

Dear Mr. Sholtis:

The following request, pursuant to the Pennsylvania Right-To-Know Law, was received by the Bucks County Office of Open Records on July 17, 2020¹:

Date and Time of the Event: May 20, 2020, time unknown

Location of the Event: Bucks County Correctional Facility

Describe the Event: Inmate Kimberly Stringer was "hit with pepper spray by Correction Officers" according to Bucks County District Attorney Matt Weintraub who can confirm details and existence of this video, including the exact time of the event

Your request is denied. Section 708 of the Right to Know law states:

Exceptions for public records.

(16) A record of an agency relating to or resulting in a criminal investigation, including:

- (i) Complaints of potential criminal conduct other than a private criminal complaint.
- (ii) Investigative materials, notes, correspondence, videos and reports.
- (iii) A record that includes the identity of a confidential source or the identity of a suspect who has not been charged with an offense to whom confidentiality has been promised.
- (iv) A record that includes information made confidential by law or court order.
- (v) Victim information, including any information that would jeopardize the safety of the victim.
- (vi) A record that, if disclosed, would do any of the following:
 - (A) Reveal the institution, progress or result of a criminal investigation, except the filing of criminal charges.
 - (B) Deprive a person of the right to a fair trial or an impartial adjudication.

¹ Note that this request was sent on a form entitled Law Enforcement Recording Request Form – Act 22 of 2017.

Mr. Brett Sholtis
July 23, 2020
Page 2

- (C) Impair the ability to locate a defendant or codefendant.
- (D) Hinder an agency's ability to secure an arrest, prosecution or conviction.
- (E) Endanger the life or physical safety of an individual.

- (17) A record of an agency relating to a noncriminal investigation, including:
- (i) Complaints submitted to an agency.
 - (ii) Investigative materials, notes, correspondence and reports.
 - (iii) A record that includes the identity of a confidential source, including individuals subject to the act of December 12, 1986 (P.L.1559, No.169), known as the Whistleblower Law.
 - (iv) A record that includes information made confidential by law.
 - (v) Work papers underlying an audit.
 - (vi) A record that, if disclosed, would do any of the following:
 - (A) Reveal the institution, progress or result of an agency investigation, except the imposition of a fine or civil penalty, the suspension, modification or revocation of a license, permit, registration, certification or similar authorization issued by an agency or an executed settlement agreement unless the agreement is determined to be confidential by a court.
 - (B) Deprive a person of the right to an impartial adjudication.
 - (C) Constitute an unwarranted invasion of privacy.
 - (D) Hinder an agency's ability to secure an administrative or civil sanction.
 - (E) Endanger the life or physical safety of an individual.

See also 65 Pa. Stat. Ann. § 67.708(b)

Further the above-mentioned records constitute investigative information, which cannot be disclosed pursuant to the Criminal History Record Information Act. See 18 Pa. C.S. § 9106(c)(4).

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.

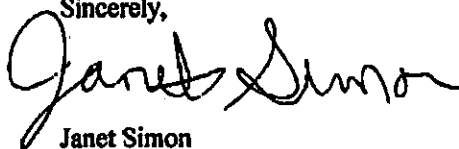
Sincerely,

Janet Simon
Open Records Officer

Exhibit C

NOTICE RELATED TO THE CORONAVIRUS (COVID-19) EMERGENCY

Pennsylvania is currently under a declared state of emergency related to the coronavirus (COVID-19). Some agencies and requesters may face challenges in regard to their ability to meaningfully participate in Right-to-Know Law (RTKL) appeals. Accordingly, and to ensure due process, the Office of Open Records (OOR) is taking the following temporary steps.

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

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

The Final Determination is currently due on **October 16, 2020**.

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

Submissions in this case are currently due on **August 27, 2020**.

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

Every staff member of the OOR is working remotely, and we are only able to receive postal mail on a limited basis at this time. Accordingly, we urge agencies and requesters to use email for all communication with the OOR at this time.

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



pennsylvania
OFFICE OF OPEN RECORDS

August 7, 2020

Via Email Only:

Mr. Brett Sholtis
WITF
4801 Lindle Road
Harrisburg, PA 17111
brett_sholtis@witf.org

Via Email Only:

Janet Simon
Agency Open Records Officer
Bucks County
55 East Court St
Doylestown, PA 18901
openrecordsofficer@buckscounty.org

----- RE: OFFICIAL NOTICE OF APPEAL - DOCKET #AP 2020-1317

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 August 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):

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

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

Sincerely,

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.

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.

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

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

Either party can end mediation at any time.

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

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



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

OOB MEDIATION AGREEMENT

OOB 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: _____



pennsylvania

OFFICE OF OPEN RECORDS

APPEALS OFFICER:

Joy Ramsingh, Esq.

CONTACT INFORMATION:

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

FACSIMILE:

(717) 425-5343

EMAIL:

mramsingh@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

IN THE MATTER OF

BRETT SHOLTIS,
Requester

v.

BUCKS COUNTY,
Respondent

:
:
:
:
:
:
:
:
:

Docket No.: AP 2020-1317

This correspondence confirms the above-referenced Requester's agreement to an additional thirty (30) day extension of time to issue a Final Determination in this matter as indicated in the Requester's appeal form. Accordingly, pursuant to 65 P.S. § 67.110(b)(1), the Office of Open Records will now issue a Final Determination in the above-captioned matter on or before October 16, 2020.

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.

Devenyi, Dylan

From: no-reply@openrecords.pa.gov
Sent: Thursday, August 6, 2020 11:57 AM
To: brett_sholtis@witf.org
Subject: PA Office of Open Records - Appeal Confirmation



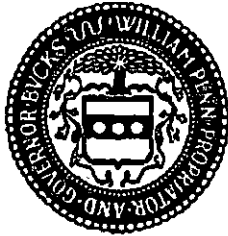
pennsylvania
OFFICE OF OPEN RECORDS

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

Name:	Brett Sholtis
Company:	WITF
Address 1:	4801 Lindle Road
Address 2:	
City:	Harrisburg
State:	Pennsylvania
Zip:	17111
Phone:	717-910-2905
Email:	brett_sholtis@witf.org
Agency (list):	Bucks County
Agency Address 1:	55 East Court St.
Agency Address 2:	
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:	A May 20, 2020 video recorded by Bucks County Correctional Facility staff that shows corrections officers using an irritant such as "pepper spray" or "O.C. spray" on inmate Kimberly Stringer, a woman with two serious mental health diagnoses and a documented

	history of mental health issues, including an involuntary commitment within the past year.
Request Submitted to Agency Via:	mail
Request Date:	07/14/2020
Response Date:	07/23/2020
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"> • Sholtis v. Bucks County RTK 2933 Act 22 Aug. 6, 2020.docx • Sholtis Act 22 request.pdf • Bucks County response.pdf • Addendum A.pdf • Addendum B.pdf • Addendum C.pdf • Addendum D.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

July 23, 2020

Mr. Brett Sholtis
4801 Lindle Road
Harrisburg, PA 17111
Brett_Sholtis@witf.org

Re: Open Records Request # 2933 – re: K. Stringer

Dear Mr. Sholtis:

The following request, pursuant to the Pennsylvania Right-To-Know Law, was received by the Bucks County Office of Open Records on July 17, 2020¹:

Date and Time of the Event: May 20, 2020, time unknown

Location of the Event: Bucks County Correctional Facility

Describe the Event: Inmate Kimberly Stringer was "hit with pepper spray by Correction Officers" according to Bucks County District Attorney Matt Weintraub who can confirm details and existence of this video, including the exact time of the event

Your request is denied. Section 708 of the Right to Know law states:

Exceptions for public records.

(16) A record of an agency relating to or resulting in a criminal investigation, including:

- (i) Complaints of potential criminal conduct other than a private criminal complaint.
- (ii) Investigative materials, notes, correspondence, videos and reports.
- (iii) A record that includes the identity of a confidential source or the identity of a suspect who has not been charged with an offense to whom confidentiality has been promised.
- (iv) A record that includes information made confidential by law or court order.
- (v) Victim information, including any information that would jeopardize the safety of the victim.
- (vi) A record that, if disclosed, would do any of the following:
 - (A) Reveal the institution, progress or result of a criminal investigation, except the filing of criminal charges.
 - (B) Deprive a person of the right to a fair trial or an impartial adjudication.

¹ Note that this request was sent on a form entitled Law Enforcement Recording Request Form – Act 22 of 2017.

Mr. Brett Sholtis
July 23, 2020
Page 2

- (C) Impair the ability to locate a defendant or codefendant.
- (D) Hinder an agency's ability to secure an arrest, prosecution or conviction.
- (E) Endanger the life or physical safety of an individual.

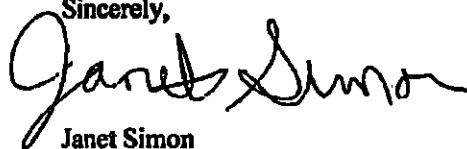
- (17) A record of an agency relating to a noncriminal investigation, including:
- (i) Complaints submitted to an agency.
 - (ii) Investigative materials, notes, correspondence and reports.
 - (iii) A record that includes the identity of a confidential source, including individuals subject to the act of December 12, 1986 (P.L.1559, No.169), known as the Whistleblower Law.
 - (iv) A record that includes information made confidential by law.
 - (v) Work papers underlying an audit.
 - (vi) A record that, if disclosed, would do any of the following:
 - (A) Reveal the institution, progress or result of an agency investigation, except the imposition of a fine or civil penalty, the suspension, modification or revocation of a license, permit, registration, certification or similar authorization issued by an agency or an executed settlement agreement unless the agreement is determined to be confidential by a court.
 - (B) Deprive a person of the right to an impartial adjudication.
 - (C) Constitute an unwarranted invasion of privacy.
 - (D) Hinder an agency's ability to secure an administrative or civil sanction.
 - (E) Endanger the life or physical safety of an individual.

See also 65 Pa. Stat. Ann. § 67.708(b)

Further the above-mentioned records constitute investigative information, which cannot be disclosed pursuant to the Criminal History Record Information Act. See 18 Pa. C.S. § 9106(c)(4).

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

Law Enforcement Recording Request Form – Act 22 of 2017

This form can be used to request law enforcement recordings ("any audio recording or video recording made by a law enforcement agency") under Act 22 of 2017. Note that the Right-to-Know Law does not apply to such recordings. Any denials must be appealed to the appropriate Court of Common Pleas, not the Office of Open Records.

SUBMITTED TO AGENCY NAME: BUCKS COUNTY CORRECTIONAL FACILITY (Attn: AORO)

Date of Request: JULY 14, 2020 Submitted via: ☒ U.S. Mail ☐ In Person
(Act 22 requires requests to be submitted via "personal delivery or certified mail.")

PERSON MAKING REQUEST:

Name: BRETT SHOLTZ Company (if applicable): WITF

Mailing Address: 4801 LINDLE ROAD

City: HARRISBURG State: PA Zip: 17111 Email: BRETT_SHOLTZ@WITF.ORG

Telephone: 717-736-0352 Fax: _____

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

RECORDING REQUESTED: Requests must be submitted within 60 days of the event recorded. All of the following information is required. Be thorough; use additional pages if necessary.

Date and Time of the Event: MAY 20, 2020, TIME UNKNOWN

Location of the Event: BUCKS COUNTY CORRECTIONAL FACILITY

Describe the Event: INMATE KIMBERLY STRINGER WAS "HIT WITH PEPPER SPRAY BY CORRECTION OFFICERS" ACCORDING TO BUCKS COUNTY DISTRICT ATTORNEY MATT WEINTRAUB WHO CAN CONFIRM DETAILS AND EXISTENCE OF THIS VIDEO, INCLUDING THE EXACT TIME OF THE EVENT.

Describe Your Relationship to the Event: JOURNALIST FOCUSED ON PROBLEMS WITH MENTAL HEALTH SERVICES IN PENNSYLVANIA.

If the Event Occurred in a Residence, Identify All People Present (unless unknown & not reasonably ascertainable):

N/A

If an Act 22 request is granted, the agency may charge "reasonable fees" to provide a copy of the recording.

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

ITEMS BELOW THIS LINE FOR AGENCY USE ONLY

Tracking: 2932 Date Received: 7-17-20 Response Due (30 cal. days): 7-24-20

Extension? ☐ Yes ☐ No (If Yes, Final Due Date: _____) Actual Response Date: _____

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

NOTE: In most cases, a completed Request Form is a public record.
More information about Act 22 is available at <https://www.openrecords.pa.gov>

Form updated March 16, 2020
by the Office of Open Records

8/4/2020

DA: Bucks jail followed protocol in pepper spraying of severely mentally ill inmate - News - Waynesboro Record Herald - Waynesboro, PA ...

TheRecordHerald.com

DA: Bucks jail followed protocol in pepper spraying of severely mentally ill inmate

By Jo Ciavaglia

Posted Jul 8, 2020 at 6:00 PM

“I don’t know in what universe pepper spraying someone on suicide watch is proper protocol,” said the mother of a Bucks County prison inmate with severe mental illness whose treatment has sparked a local call for reform.

Bucks County prison corrections officers committed no criminal acts when they used pepper spray on a severely mentally ill inmate, the district attorney’s office announced Wednesday.

District Attorney Matt Weintraub revealed the findings of his investigation at a meeting of the Bucks County Prison Oversight Board, which concluded that the corrections officers followed proper use-of-force protocols with Kim Stringer, 28, of Lower Makefield.

But Weintraub, who sits on the board, added that while no laws were broken, a county jail is not an appropriate environment for individuals with severe mental illness, and reforms are needed to meet the needs of these inmates.

“There were other better options for her, especially once she deteriorated,” Weintraub said.

His investigation found the the county worked “exhaustively” to find Stringer an appropriate mental health placement, but could not find a psychiatric hospital with an open bed willing to accept her, Weintraub said.

County Commissioners Chair Diane Marseglia also announced Wednesday that she is meeting this month with the Bucks County president judge to explore creating a mental health court.

8/4/2020

DA: Bucks jail followed protocol in pepper spraying of severely mentally ill inmate - News - Waynesboro Record Herald - Waynesboro, PA ...

Bucks County is the only county in the Philadelphia region that does not have a mental health court, which diverts offenders with severe mental illness into a judicially supervised program and community-based treatment.

Stringer has a long-documented history of mental illness including 52 contacts with Falls police over the last six years, according to the department.

She was incarcerated at Bucks County's jail for 71 days after Falls police arrested her in April for allegedly punching a woman and threatening to kill a neighbor during what her parents described as a psychotic break.

At the time of her arrest, her parents, Martha and Paul Stringer, say their daughter's mental health steadily deteriorated after she stopped taking her court-ordered medication in October to treat her bipolar and borderline personality disorders.

She is currently being treated at Norristown State Hospital, a 375-bed long-term psychiatric hospital in Montgomery County where she was moved on June 17.

The transfer came days after a concerned inmate and her mother tracked down the Stringers and told them that Kim Stringer was on suicide watch, unresponsive, subjected to pepper spray and other alleged mistreatment at the jail.

Until that point, her parents said they had not had contact with Stringer after her arrest in the midst of the coronavirus pandemic and what little information they received about her condition in the jail was not negative, they said.

While she was incarcerated, Stringer twice cut herself with a pen and piece of plastic, stuck items into an electrical outlet, pounded her head onto a sink and wall in her cell, and attempted to cover her prison cell window, Weintraub said his investigation found.

She also urinated and defecated on her suicide smock, which was the only clothing allowed inmates on suicide watch and refused to shower.

Weintraub called two incidents where officers used pepper spray on Stringer, on May 11 and May 20, "very difficult to watch."

8/4/2020

DA: Bucks jail followed protocol in pepper spraying of severely mentally ill inmate - News - Waynesboro Record Herald - Waynesboro, PA ...

In both incidents, Weintraub said the officers followed use-of-force protocol “to the letter.” One ordered Stringer 30 times to comply before deploying pepper spray, he said.

Weintraub added that Stringer was medically checked after the incidents. There was no evidence she was physically injured.

“The guards within their protocol treated her appropriately and fairly,” he added.

The investigation included statements from three inmate monitor whistleblowers who were responsible for observing Stringer’s behavior while she was on suicide watch. The inmates were the ones who brought the situation to the attention of the Stringers on June 12.

Martha Stringer who attended the prison oversight board meeting remotely, expressed disappointment at what she called a lack of “concrete steps toward change,” despite an investigation that described the treatment of her daughter as “horrific and sickening.”

In an email, she also raised concerns about a potential “conflict of interest” since the district attorney and commissioners sit on the board, though they are also responsible for oversight and investigation of incidents involving the prison.

“I don’t know in what universe pepper spraying someone on suicide watch is proper protocol,” Martha Stringer added. “If it’s an attempt to prevent someone from committing suicide or self-harm, because they don’t want a suicide or self harm to occur in prison, then the protocol serves only to protect the jail, not the individual suffering from a psychotic episode.”

6/13/2020

Gmail - Urgent



Martha Stringer <marthastringer6@gmail.com>

Urgent

6 messages

Martha Stringer <marthastringer6@gmail.com>
To: "Ellis-Marseglia, Diane M." <dmellismarseglia@buckscounty.org>

Fri, Jun 12, 2020 at 5:58 PM

YOU NEED YOU CALL ME IMMEDIATELY THIS IN AN EMERGENCY

215-219-6379

Ellis-Marseglia, Diane M. <dmellismarseglia@buckscounty.org>
To: Martha Stringer <marthastringer6@gmail.com>

Fri, Jun 12, 2020 at 10:13 PM

Mrs Stringer

I had company and had not checked my emails since 5 PM. Steve Santarsiero texted me you were having a concern about Kim being in a blanket only... so I checked my emails, saw your message, and called the jail.

I am not sure who gave you this information, but if it was an inmate...it may be inaccurate.

As you know Kim is extremely ill. She needs desperately to be in Norristown and be provided 24 hour medication and support and attendance. She is clearly in need of this...no question. THEY ARE STILL REFUSING TO TAKE ANYONE because of COVID.

Kim is in the mental health wing which is 3 or 4 private cells with no guard watching them every single minute. She is actively suicidal and we have had suicides with every the tiniest piece of swallowed cloth to plastic shoved down a throat. I lost a child to suicide and it is amazing how easy it CAN be.

They have offered her a suicide smock which would give her full body coverage. It is offered every day. Every day she urinates on it, spits at the guards/nurse, and when she can, gather urine and throws it at them.

The suicide blanket is safe and warm and provides comfort as a weighted blanket does.

She is alive. She is being watched. She is in need of care that is not available.

Before I typed this I reached out to the staff and we are going to SEE if there is some kind of special court order we can get to move her somewhere.

I am so sorry. We didn't become mothers to watch our babies suffer.

Diane M Ellis-Marseglia, LCSW
Bucks County Commissioner

"Right now, we are in the middle of what those of us who have deployed in the military call 'the suck.' Welcome to 'the suck,'" he said. "But we need you to buckle down."

— Black Hawk County Sheriff Thompson, a 21-year military veteran.

6/13/2020

Gmail - Urgent

From: Martha Stringer <marthastringer6@gmail.com>
Sent: Friday, June 12, 2020 5:58 PM
To: Ellis-Marseglia, Diane M. <dmellismarseglia@buckscounty.org>
Subject: Urgent

YOU NEED YOU CALL ME IMMEDIATELY THIS IN AN EMERGENCY

215-219-6379

Please Be Advised

The information in this email is confidential and may be legally privileged and protected under State and/or Federal Laws. It is intended solely for the addressee. Access to this email by anyone else is unauthorized. If you are not the intended recipient, any disclosure, copying, distribution or any action taken or omitted to be taken in reliance on it, is prohibited and may be unlawful. If you believe that you have received this email in error, please contact the sender or call 215-348-6000. The opinions expressed herein may not necessarily represent those of the County of Bucks

Martha Stringer <marthastringer6@gmail.com>
To: "Ellis-Marseglia, Diane M." <dmellismarseglia@buckscounty.org>

Sat, Jun 13, 2020 at 9:24 AM

Every time I inquired about her state of well being I was told she was safe - nothing negative to report -

This inmate was given the "job" of watching out for Kim and at risk to herself has been reporting to her mother that Kim has been peppered sprayed, injected with thorazine, and what else I cannot imagine. Thank God the mother was able to track me down through a reporter I reached out for a story about this a year ago and he plans on running another story.

This is unacceptable. She should be transported to Lower Bucks ER and then admitted to the behavioral health unit. The ER is open, I called, I need a guarantee that from the ER she will be admitted and we will post bail and get her the hell out of there. She has a disease and her civil rights are being violated. WE NEED TO DO MORE.

[Quoted text hidden]

Martha Stringer <marthastringer6@gmail.com>
To: Pstrin4444 <pstrin4444@aol.com>

Sat, Jun 13, 2020 at 9:30 AM

----- Forwarded message -----

From: Martha Stringer <marthastringer6@gmail.com>
Date: Fri, Jun 12, 2020 at 5:58 PM
Subject: Urgent
To: Ellis-Marseglia, Diane M. <dmellismarseglia@buckscounty.org>

[Quoted text hidden]

Martha Stringer <marthastringer6@gmail.com>
To: Pstrin4444 <pstrin4444@aol.com>

Sat, Jun 13, 2020 at 9:44 AM

----- Forwarded message -----

From: Martha Stringer <marthastringer6@gmail.com>

6/13/2020

Gmail - Urgent

Date: Fri, Jun 12, 2020 at 5:58 PM
Subject: Urgent
To: Ellis-Marseglia, Diane M. <dmellismarseglia@buckscounty.org>

[Quoted text hidden]

Martha Stringer <marthastringer6@gmail.com>
To: Pstrin4444 <pstrin4444@aol.com>

Sat, Jun 13, 2020 at 9:48 AM

Forwarded Conversation

Subject: Urgent

From: Martha Stringer <marthastringer6@gmail.com>
Date: Fri, Jun 12, 2020 at 5:58 PM
To: Ellis-Marseglia, Diane M. <dmellismarseglia@buckscounty.org>

YOU NEED YOU CALL ME IMMEDIATELY THIS IN AN EMERGENCY
215-219-6379

From: Ellis-Marseglia, Diane M. <dmellismarseglia@buckscounty.org>
Date: Fri, Jun 12, 2020 at 10:13 PM
To: Martha Stringer <marthastringer6@gmail.com>

Mrs Stringer

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6/13/2020

Gmail - Urgent

Diane M Ellis-Marseglia, LCSW
Bucks County Commissioner

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From: Martha Stringer <marthastringer6@gmail.com>
Sent: Friday, June 12, 2020 5:58 PM
To: Ellis-Marseglia, Diane M. <dmellismarseglia@buckscounty.org>
Subject: Urgent

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215-219-6379

Please Be Advised

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It is

intended solely for the addressee. Access to this email by anyone else is unauthorized. If you are not the intended recipient, any disclosure, copying, distribution or any action taken or omitted to be taken in reliance on it, is prohibited and may be unlawful.

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From: Martha Stringer <marthastringer6@gmail.com>
Date: Sat, Jun 13, 2020 at 9:24 AM
To: Ellis-Marseglia, Diane M. <dmellismarseglia@buckscounty.org>

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From: Martha Stringer <marthastringer6@gmail.com>
Date: Sat, Jun 13, 2020 at 9:30 AM
To: Pstrin4444 <pstrin4444@aol.com>

6/13/2020

Gmail - Urgent

----- Forwarded message -----

From: **Martha Stringer** <marthastringer6@gmail.com>
Date: Fri, Jun 12, 2020 at 5:58 PM
Subject: Urgent
To: Ellis-Marseglia, Diane M. <dmellis@buckscounty.org>

From: **Martha Stringer** <marthastringer6@gmail.com>
Date: Sat, Jun 13, 2020 at 9:44 AM
To: Pstrin4444 <pstrin4444@aol.com>
[Quoted text hidden]

Brett Sholtis

From: Paul Stringer <pstrin4444@aol.com>
Sent: Sunday, June 14, 2020 1:05 PM
To: Brett Sholtis
Subject: Fwd: Kimberly Stringer

Brett,

Please see thread at bottom for the NEVER NEVER use pepper spray.

From: pstrin4444@aol.com
To: dmellismarseglia@buckscounty.org
Sent: 6/13/2020 3:18:50 PM Eastern Standard Time
Subject: Re: Kimberly Stringer

Diane,

First of all, Martha and I have NEVER heard about Courtney Lowe or her mother until last night. WE have not fed anyone anything. ALL of our communications has been to you, ray, the parole officer and Lenape Valley. I know in your position you have reason to protect yourself and your departments. I would too if I were you.

Second, the Falls Police have outright lied to you. I plan to file a formal grievance about that as I have every bit of evidence and witnesses that we NEVER spoke.

Based on what you have since learned about pepper spray and the fact you probably were told that it is NEVER NEVER used and now find out it was tells me you are surrounded by a culture of denial, liars and the reason why this country is up and arms about Police brutality which probably should include prison guards.

We still believe in you and your passion to fix a broken system.

We have only wanted to have our daughter get the help she needs and deserves and now find ourselves in a nightmare situation that could have been avoided if the Police had done the right thing.

Our hope is you continue to stand with us and NOT against us.

Paul Stringer

In a message dated 6/13/2020 2:19:17 PM Eastern Standard Time, dmellismarseglia@buckscounty.org writes:

Mr Stringer

I just got a relatively threatening email from a Courtney Lowes mom. Something about her having material and going to reporters and that she wants nothing to happen to her daughters job at the jail. Unfortunately, after months of communication with Mrs Stringer, she must have contacted this mother. Hence, I think it may be best If I have no further communication with either of you.

I will say that I was distraught that your daughter was arrested. I have worked long and hard to NOT let that happen to her and anyone with such challenges. Because she was arrested

instead of hospitalized, I convened a meeting with Lenape Valley, the County, Falls Police Chief, etc. At that meeting the police said YOU asked for her to be arrested and asked that your wife not be told. If they told the truth, her not understanding is simply making her feel worse.

If that did not happen, then the police lied

I will tell you this: The lawsuit you referenced stemmed from a 2011 incident. That man was terrible and I discovered it 2 months into my term in 2008. He is gone. We generally do NOT allow pepper spray. BUT the law requires that ALL methods be used BEFORE physical restraint. Kim has been extremely aggressive and agitated and it has taken herculean efforts to help keep her safe. Everyone I spoke to, since Friday told me pepper spray was not used....HOWEVER, I just learned that it is possible if there was a particularly combative time, it is possible it was. SO, I may be incorrect in saying we do NOT. They are checking the records for me. I hate the idea, but feel, for me (not speaking for Kim or your family)pepper spray is probably a little better than the trauma of helmeted guards restraining you and far better than the agony of psychosis. Moreover, the inmate monitor is REMOVED from the area before pepper spray etc is used ; they NEVER witness it. We film EVERY such event so they will check.

We have almost NEVER sent anyone to a hospital from the jail. First, they wont take them. Second, you cant take someone to such a hospital without sending guards to stay there AND a Judges order (she is under custody). Third, she is a 302 and 304 and has to be brought to a place that can restore her to competency. ONLY Norristown does that. As you know she is 3rd on our Norristown list and we are hoping THIS is the week they re-open. Finally, Norristown had us ask every hospital around to take Kim, prior to their putting her on their acceptance list.....so we already tried.

Diane M Ellis-Marseglia, LCSW
Bucks County Commissioner

"Right now, we are in the middle of what those of us who have deployed in the military call 'the suck.' Welcome to 'the suck,'" he said. "But we need you to buckle down."
-- Black Hawk County Sheriff Thompson, a 21-year military veteran.

From: Paul Stringer <pstrin4444@aol.com>
Sent: Saturday, June 13, 2020 1:27 PM
To: Ellis-Marseglia, Diane M. <dmellisarseglia@buckscounty.org>
Subject: Kimberly Stringer

Diane,

I want to let you know myself and Martha are deeply grateful for your ongoing support for Kim. We know you have had a tragedy so it hits close to home for you and reason why we have trusted you.

I do want to clarify some points in this email.

1. We did not contact a reporter. The reporter was contacted by the inmates mother and she had found a prior story that was written about Kim and she was desperately trying to find us to let us know about Kim. We received the call from the reporter last night, thus Martha's email to have you call her. As you can imagine the horror of finding out about these details after asking for months now how Kim was doing and why she hadn't contacted us? As you can now see we find out the hard way and the emotions and feelings that we have been lied to are running very deep. We have stressed very clearly to the reporter that you have been our main advocate and strongly believe that you can make a difference not only for Kim but fixing a very broken system.

2. The main fact that the lies started with the Falls township police saying that we asked for her to be arrested and not 302 are patently false and an excuse that they could not backup or corroborate. I called Police Chief myself and he told us that it was the Parole officer that directed Kim to jail and suggested we call the judge to see if she could redirect her. The Falls township HAS NEVER recognized Kim as mentally ill. In fact 2 weeks before she spent 35 days in the psychiatric ward after Lower Makefield police 302 her Falls Police ticketed Kim twice for lewdness because she was walking around town half naked, completely disheveled, catatonic and obviously in distress. You tell me why does one Police department recognize these symptoms and another doesn't?

3. You mentioned that the prison never uses pepper spray. I don't know why this other inmate would have told us that and hope she is not retaliated against for reaching out to the reporter. We cannot collaborate that information ourselves but we would like to hear from Kim and get her version. I did find an article that had a case at the Bucks county correctional abuse using pepper spray. Are you sure they don't?

<https://www.buckscountycouriertimes.com/article/20140730/NEWS/307309875>

We are still not sure why another mental health facility cannot take Kim in as a 302 which should have been the outcome the first time.

Emotions are high right now and feeling very helpless for our daughter. I want to be clear, we are not wavering our support for you. We are hoping this gives you the insight and ammunition to make things better.

Sincerely,

Paul Stringer

From: Ellis-Marseglia, Diane M. <dmellismarseglia@buckscounty.org>

Date: Sat, Jun 13, 2020 at 12:23 PM

To: Martha Stringer <marthastringer6@gmail.com>

So we do NOT EVER EVER use pepper spray.

I have tried to be supportive...but I honestly do not think that was nice to call a reporter based on information that might have been wrong. Especially the reporter I assume you contacted.

Also, we CANNOT transfer anyone to the ER for this! Where is he going? Norristown? Not open.

And the inmate watching her is given and paid for that role while a guard is there. She is clearly NOT capable of the job.

I am going to say something to you,,, that you may not want to hear...but I need to.
I called together a big meeting with the Falls Township police because I was so angry they didn't place Kim in Lower Bucks.
THEY were told by someone TO arrest her.

Please Be Advised

The information in this email is confidential and may be legally privileged and protected under State and/or Federal Laws. It is

intended solely for the addressee. Access to this email by anyone else is unauthorized. If you are not the intended recipient, any

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If you believe that you have received this email in error, please contact the sender or call 215-348-6000. The opinions expressed herein may not necessarily represent those of the County of Bucks

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'She's breaking down': Inmates at Bucks County jail decry treatment of suicidal woman with severe mental illness | WITF



'She's breaking down': Inmates at Bucks County jail decry treatment of suicidal woman with severe mental illness

Kim Stringer went to jail in April. Her parents
haven't heard from her since.

Brett Sholtis/Transforming Health

JUNE 15, 2020 | 6:00 AM

UPDATED: JUNE 18, 2020 | 9:04 AM

Update: As of June 17, Kim has been removed from Bucks County Correctional Facility and taken to Norristown State Hospital, according to Martha Stringer.

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(Doylestown) — Because the woman they knew only as “Kimberly” rarely spoke, it took the women at Bucks County Correctional Facility two months to figure out her last name.

Stringer. Her name was Kimberly Stringer.

They were concerned about her. After they learned her name, the inmates started calling: Their parents. Their friends. Anyone who would listen.

WITF Transforming Health profiled Kimberly Stringer in July 2019 <
<https://www.witf.org/2019/07/11/praying-for-involuntary-commitment-one-fa>
2/> as part of a series on problems with mental health services in Pennsylvania. Kimberly has been diagnosed with borderline personality disorder and bipolar disorder, and the story detailed Kim’s parents’ efforts to get her treatment that she legally declined once she turned 18.

After an inmate’s mother found the story online, the collect calls to this reporter started rolling in on Friday evening.

The three inmates told similar stories.

They say Kimberly has been confined to a bare cell, “completely naked,” in full view of male and female guards, with only a soiled blanket and a smock given to patients who are on suicide watch, which she rarely wears.

She urinates and defecates on the floor and on herself.

She has gone without a mattress at times and has no books or possessions.

She is covered with bruises, and at times has hit her head or punched herself.

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She hasn't had a shower in weeks.

"She's breaking down," said inmate Courtney Lowe. The 30-year-old, who lives with opioid addiction and is in jail for drug possession and related charges, said she fears repercussions for speaking out, but believes that Kim can't go on like this much longer.



Submitted

Martha Stringer shared this photo of Kim during fall of 2019, when she was following her treatment guidelines and was doing well.

Thirty-year old Karen Wood—in prison for numerous offenses related to drug possession or delivery, court records show—said Kimberly is incoherent. In one of the few times she spoke to Karen,

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Kim asked when she was going to get to leave the jail and go to a hospital.

"It hurts me seeing her like that," Wood said. "I wouldn't want to go through that."

Fifty-nine-year old Linda Ennis, in jail for a DUI, said she had been on work release but was moved into Kim's cell block when the coronavirus hit Pennsylvania.

Three hours into her stay there, Ennis recalls, she was shocked to see several corrections officers enter Kim's cell.

"They maced her," Ennis said. "They drug her out of the room. They put her in a cold shower. They strapped her to a chair. She screamed the whole time, 'Why are you torturing me?'"

Wood and Lowe also separately said they saw something they believe was pepper spray used on Kim.

On Friday evening after Kim's mother, Martha Stringer, heard what the inmates said they saw, she emailed Bucks County Commissioner Diane Ellis-Marseglia.

Marseglia denied that guards used mace or pepper spray on Kim, saying the county prison never uses pepper spray, a June 13 email shows. However, later that day she told Stringer that it's possible guards used pepper spray on her daughter and they were "checking the records."

Other parts of the inmates' stories were confirmed in a June 12 email between Martha Stringer and Marseglia:

"As you know Kim is extremely ill," Marseglia wrote. "She needs desperately to be in Norristown and be provided 24 hour medication and support and attendance. She is clearly in need of

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this...no question. THEY ARE STILL REFUSING TO TAKE ANYONE because of COVID."

"Kim is in the mental health wing which is 3 or 4 private cells with one guard watching them every single minute," Marsegia wrote. "She is actively suicidal and we have had suicides with even the tiniest piece of swallowed cloth to plastic shoved down a throat... They have offered her a suicide smock which would give her full body coverage. It is offered every day."

A "suicide smock," better known as a safety smock or anti-suicide smock, is a garment designed so that it cannot be used as an aid to death by suicide.

"Every day she urinates on it, spits at the guards/nurse, and when she can, gather [sic] urine and throws it at them," Marsegia wrote. "The suicide blanket is safe and warm and provides comfort as a weighted blanket does."

Until the three inmates reached out to draw attention to Kim's situation, Martha and her husband Paul had been completely unaware of their daughter's condition at the jail.

They had been trying to find out how Kim was doing. Martha cried upon learning that the two months' worth of emails between her and county mental health officials had failed to reveal what she called her daughter's "nightmare" circumstances.

In those emails, reviewed by WITF Transforming Health, county officials told Martha very little other than that her daughter was "safe."

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Brett Sholtis / Transforming Health

FILE PHOTO: Martha and Paul Stringer stand near a box of their daughter Kim's art from when she was in school. Martha said Kim left the art with them for safe keeping.

Kim's improvement stalls

The setback is the latest in the Stringers' long effort to get help for their daughter—an effort that shines a light on a system in which people with mental illness are often incarcerated instead of receiving needed treatment.

In June and July of 2019, when Kim participated in a story about her condition, she was living in a metal shed in her yard in Levittown, even though she had an apartment. She drank water out of a stream rather than her tap, pushed a shopping cart full of garbage around town, and was preoccupied with a fear that technology was poisoning her.

Kim's parents wanted her to be involuntarily committed before she hurt herself or someone else. However, Kim refused treatment.

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However, Martha said, "She stopped going to therapy, and then COVID happened."

On April 13—the last time Martha saw her daughter—Kim's therapist called her on the phone.

"[Kim] was very agitated, did not want to be on the phone, and we sent an email the same day saying we see her deteriorating, and something is going to happen," Martha said. "And then the next day, it did."

On April 14, Kim's neighbor called the Falls Township police. It's unclear what precipitated the call, but Kim was charged with simple assault, terroristic threats and harassment.

Instead of taking Kim to the hospital, where she could have been involuntarily committed, police took her to county jail, where she was imprisoned on \$50,000 bail awaiting trial.

The Stringers could have paid the bail, Paul Stringer noted, but they knew Kim needed to go to the hospital to be committed, and figured that's where the legal system would soon route her.

"They gave us reassurances she was safe," he said.

A bureaucratic tangle

Emails show Martha's unsuccessful efforts to help her daughter over the next two months.

On April 22, Martha requested the police report detailing Kim's arrest to learn why her daughter wasn't taken to the hospital. The Falls Township police department wouldn't give it to her, saying "because it involves an arrest, it is not able to be released."

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The next day, Bucks County Commissioner Marseglia told Martha that she had talked to Falls Township police, who told her that Martha and Paul had said they wanted Kim to go to jail.

Martha told Marseglia that she and Paul had never spoken with police.

In an April 30 email, Martha asked Raymond McManamon, Emergency and Court Services Coordinator/Forensic Liaison, Bucks County Department of MH/DP, if there was a way to get their daughter out of jail.

"At this point, I would wait to hear from probation and/or the jail about a plan to have her come home to make sure she is in the best position to return to the community and willing to accept treatment, whether in the community or some type of treatment facility," McManamon wrote. "I will be following up with probation and the jail."

Martha emphasized that her daughter needed treatment and medication. "What do we need to do to make that happen?" she wrote.

"Given what we've discussed so far, getting her stable at the jail or, if she can be released in an inpatient psych setting such as Lower Bucks, might be the best first steps," McManamon said.

Because of the coronavirus, county prison officials wouldn't let Martha and Paul visit Kim. They had written letters to their daughter and put money in her prison account so she could call them. They wondered why they never heard from her.

On May 11, Martha sought an update from Marseglia, who asked McManamon to provide one.

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After that story was published, her parents were successful in getting a judge to sign off on a 90-day involuntary outpatient commitment. Kim was able to live at her apartment, but was told to get a monthly injection of an antipsychotic drug and participate in weekly therapy sessions.

During that time, Kim started to improve.

"She was getting the injections," Martha said. "She was working with a case manager. She was accomplishing goals. She applied for food stamps. She was able to go to the grocery store. She was able to be social with us again."

In Pennsylvania, outpatient treatment doesn't include a provision < <https://papost.org/2019/02/11/advocates-flag-concerns-over-pa-s-new-mental-health-law/>> to force someone to take a medication, and in October, Kim began to refuse her monthly injections.

In late February, a judge told Kim to follow the advice of her therapist, according to Martha, who has extensively documented her daughter's interactions with the legal system.

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"While I cannot speak to her current state of mind or reasons for her not calling, I will continue to collaborate with the correctional MH unit at the jail to make sure they are addressing her needs and working toward re-entry with probation," McManamon wrote. "She may not be willing to sign the release of information forms presently, and in the case of the Public Defender may not have been willing to speak with or cooperate with her attorney. As soon as either of those parties have a means by which to provide more detail, I will ask that they do so."

On May 21, Martha reached out to McManamon again, asking for details on Kim's scheduled court date, set for June 11. He said he was "unable to provide specifics," but that Kim would "likely" have to receive treatment at a psychiatric facility before she would be able "to proceed with the court process."

On June 9, two days before Kim's scheduled court appearance, Stringer checked back in with McManamon.

Martha and Paul were stunned by the reply.

"It appears that the case has been continued and the next scheduled date is 7/22/2020," McManamon wrote in an email. "As far as next steps, having the jail make a referral to residential treatment would likely be appropriate for Kim. The type of program may be determined by her willingness to participate."

Martha asked when she and Paul could visit the jail to see Kim. At that point, Marseglia responded.

"I am jumping in here to suggest a few things: First, Kim is safe," she said. "She will be protected here and, frankly, she is not going to get that much better care if we get her into Norristown [state mental hospital]."

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McManamon added that he wasn't sure when Martha and Paul would be allowed to visit their daughter, and he wasn't allowed to share more information. "With regard to updates, I don't think there is any way for the jail or public defender to share information without permission," he wrote.

'Brave' for speaking out

Although county officials repeatedly said they could not relay information about Kim, after Martha sent the June 12 email with an inmate's account of Kim's condition, Marseglia provided some details.

She confirmed much of what Wood, Lowe and Ennis said.

And, Marseglia made a promise, one that could cut through the bureaucracy that has kept Kim incarcerated for more than two months.

"Before I typed this I reached out to the staff and we are going to SEE if there is some kind of special court order we can get to move her somewhere," she wrote.

On June 14, Marseglia agreed to an interview but ended the conversation after a few minutes. McManamon and officials at Bucks County Jail and Falls Township Police Department were not available for comment on Sunday.

Martha Stringer said the inmates were "brave" for speaking up, and she was grateful they were looking out for her daughter.



Submitted

This undated photo, which was titled "Courtney 18 months clean," shows Courtney Lowe, at right, with her mom, Cristy Bearden, at left.

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Paul Stringer said given all the efforts from the experts tasked with helping their daughter, the system set up to help people with mental illness itself has proven to be the problem.

"It's turned out horribly wrong," he said, noting that Marseglia has been an advocate for their daughter for years. "We just think she's inherited a very broken system, and we hope she fixes it."

TAGS

incarceration mental illness Through the Cracks

CATEGORIES

HEALTH

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Exhibit D

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

August 14, 2020

Joy Ramsingh, Esquire
Commonwealth of Pennsylvania
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
mramsingh@pa.gov

Re: Sholtis v Bucks County #AP 2020-1317

Dear Ms. Ramsingh:

This response is in connection with the above Appeal filed with the Pennsylvania Office of Open Records by requester Mr. Brett Sholtis. On July 17, 2020, the Bucks County Office of Open Records received the below request pursuant to the Pennsylvania Right-To-Know Law:

Date and Time of the Event: May 20, 2020, time unknown

Location of the Event: Bucks County Correctional Facility

Describe the Event: Inmate Kimberly Stringer was "hit with pepper spray by Correction Officers" according to Bucks County District Attorney Matt Weintraub, who can confirm details and existence of this video, including the exact time of the event.

**Bucks County Open Records Office
Factual and Legal Grounds Supporting Denial of Record**

1. On July 17, 2020 the Bucks County Office of Open Records received the above request from Mr. Brett Sholtis, journalist with WITF.
2. On July 23, 2020 the Bucks County Office of Open Records denied Mr. Sholtis' request citing Section 708 of the Right to Know Law which speaks to criminal and non-criminal investigations as well as the Criminal History Record Information Act. 18 Pa. C.S. Section 9106 (c)(4).
3. On August 7, 2020, the Bucks County Office of Open Records received, via email, notification that Mr. Sholtis was appealing the denial.
4. Attached hereto, in support of its denial, is the affidavit of The Honorable Matthew D. Weintraub, District Attorney of Bucks County.

For the foregoing reasons, the County of Bucks respectfully requests that this Appeal be denied.

Respectfully,

Janet Simon
Open Records Officer


Encl.
cc: Brett Sholtis

AFFIDAVIT OF THE HONORABLE MATTHEW D. WEINTRAUB

I, Matthew D. Weintraub, District Attorney of Bucks County, pursuant to 18 Pa. C.S. §4904, declare and verify as follows:

1. I am the elected District Attorney of Bucks County and have been serving as District Attorney since 2016. I have served as a prosecutor since 1993 in Bucks County, Lehigh County, and Cape May County, New Jersey.
2. In June, 2020, the District Attorney's Office (DAO) became aware of allegations that a female inmate of the Bucks County Correctional Facility (BCCF), Kimberly Stringer, was being mistreated by correctional officers at the jail. Ms. Stringer was in BCCF as a result of bail that had been set on her pending criminal case, in which it is alleged that she assaulted a female neighbor and threatened to assault and kill another neighbor. That criminal matter is still pending.
3. When the Assistant District Attorney (ADA) assigned to Ms. Stringer's criminal case, Colin Jenei, first became aware of the allegations of mistreatment of Ms. Stringer, he brought those allegations to my attention. Thereafter, a Bucks County Detective was assigned to investigate those allegations, which had originally been made by three fellow inmates at BCCF. The primary goal of that investigation was to determine whether any corrections officer had engaged in criminal conduct with respect to their treatment of Ms. Stringer, and/or engaged in illegal retaliatory conduct toward the inmate "whistle-blowers," and thus whether criminal charges against any such officer was warranted.
4. As part of this criminal investigation, my office obtained video from BCCF which captured two incidents that occurred in May 2020, during which corrections officers used pepper spray against Ms. Stringer in order to gain her compliance after she engaged in self-destructive behavior and repeatedly refused to comply with directions. I reviewed this video, along with other materials obtained during our criminal investigation, in order to determine whether criminal charges were appropriate. I understand that these two videos are the subject of the current Right to Know appeal.

5. Although I ultimately determined that criminal charges were not warranted in this case against any BCCF corrections officer, it is my belief that such videos in the possession of the DAO constitutes investigative information for purposes both of the Right to Know law, 65 P.S. §67.708(b)(16), and for purposes of the Criminal History Record Information Act (CHRIA), 18 Pa. C.S. §9106(a)(4). Specifically, the DAO only obtained and possessed the relevant videos as part of its investigation into whether criminal charges should be filed in this matter, and, accordingly, the videos were part of the information and materials the DAO assembled as part of our inquiry into an allegation of criminal wrongdoing. 18 Pa. C.S. §9102 (defining "investigative information" under CHRIA).


Matthew D. Weintraub
Bucks County District Attorney
Bucks County, PA

Date: August 14, 2020

State of Pennsylvania

County of Bucks

Signed and sworn to before me on 14 day of August, 2020

By Matthew D. Weintraub



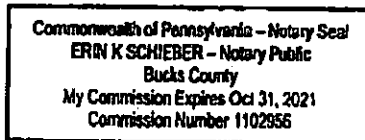


Exhibit E



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

**BRETT SHOLTIS AND WITF,
Requester**

v.

**BUCKS COUNTY,
Respondent**

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Docket No.: AP 2020-1317

INTRODUCTION

Brett Sholtis and WITF (collectively, the “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 jail video recordings. The County denied the Request, arguing, among other things, that the records relate to a criminal investigation. 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 additional action as directed.

FACTUAL BACKGROUND

On July 17, 2020 the Request was filed, seeking videos¹ showing:

Inmate Kimberly Stringer was ‘hit with pepper spray by correction officers’ according to Bucks County District Attorney Matt Weintraub, who can confirm details and existence of this video, including the exact time of the event.

¹ The Request was filed on an agency form, the use of which is specifically reserved for requesting video recordings.

On July 23, 2020, the County denied the Request, arguing that the responsive videos were exempt as relating to a criminal investigation (*see* 65 P.S. § 67.708(b)(16)), a noncriminal investigation (*see* 65 P.S. § 67.708(b)(17)), and that the records were otherwise exempt under the Criminal History Record Information Act (“CHRIA”) (*see* 18 Pa.C.S. § 9106(c)(4)).

On August 6, 2020, the Requester appealed to the OOR, challenging the denial and stating grounds for disclosure.² 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).

On August 14, 2020, the County submitted a position statement reiterating its grounds for denial. In support of its position, the County submitted the affidavit of Matthew Weintraub, Esq., the District Attorney of Bucks County.

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” and may consider testimony, evidence and documents that are reasonably probative and relevant to the matter at issue. 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing

² On appeal, the Requester granted the OOR an additional thirty days to issue a Final Determination in these appeals. *See* 65 P.S. § 67.1101(b)(1).

to resolve an appeal. 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.* The decision to hold a hearing is discretionary and non-appealable. *Id.*; *Giurintano v. Pa. Dep't of Gen. Servs.*, 20 A.3d 613, 617 (Pa. Commw. Ct. 2011). Here, the parties did not request 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. Upon receipt of a request, an agency is required to assess whether a record requested is within its possession, custody or control and respond within five business days. 65 P.S. § 67.901. 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)(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 County is permitted to interpret a request as an RTKL Request, regardless of form**

As a threshold issue, the Requester submitted his RTKL Request on a form labeled “Law Enforcement Recording Request Form – Act 22 of 2017.” Although neither party raised the issue before the OOR, the OOR does not have jurisdiction over requests which fall under the provisions of Act 22. *See* 42 Pa.C.S. § 67A03. In fact, on the form used by the Requester, there is an informational paragraph which states:

This form can be used to request law enforcement recordings (“any audio recording or video recording made by a law enforcement agency”) under Act 22 of 2017. Note that the Right-to-Know Law does not apply to such recordings. Any denials must be appealed to the appropriate Court of Common Pleas, not the Office of Open Records.

Notwithstanding the use of this Act 22 form, the County responded to the Requester by stating, “The following request, pursuant to the Pennsylvania Right-to-Know Law, was received by the Bucks County Office of Open Records on July 17, 2020....” The County then proceeded to deny the Request on the basis of several RTKL exemptions. It is clear, therefore, that regardless of the form upon which the Request was made, the County received and interpreted the Request as a RTKL Request. *See, e.g., Epstein v. Central Dauphin School District*, OOR Dkt. AP 2020-1110, 2020 PA O.O.R.D. LEXIS 2529, *6-7 (explaining that an agency is not prohibited from interpreting an inquiry in any form as a request for records under the RTKL); *see also* 65 P.S. § 67.702 (“Agencies may fulfill verbal, written or anonymous verbal or written requests for access to records under this act.”).

As to the substance of the Request, the County does not argue or provide evidence establishing that these videos were created by a law enforcement agency. Moreover, the OOR has repeatedly held that correctional facility videos are subject to the RTKL. *See, e.g., Gaikwad v. Clearfield County*, OOR Dkt. AP 2020-0407, 2020 PA O.O.R.D. LEXIS 2215, footnote 1 (explaining that a County correctional facility does not automatically qualify as a “law

enforcement agency” under Act 22 of 2017). Accordingly, we hold that the form used by the Requester is not fatal to the substance of the Request, especially in this instance, when interpreted as a RTKL Request by the County.

2. The County has not established that the responsive records relate to a criminal investigation

The County argues that the requested records are exempt from disclosure pursuant to Section 708(b)(16) of the RTKL, and Section 9106(c)(4) of CHRIA. Section 708(b)(16) exempts from disclosure “[a] record of an agency relating to or resulting in a criminal investigation” (*see* 65 P.S. § 67.708(b)(16)) and CHRIA prevents the disclosure of “investigative information” to the public. 18 Pa.C.S. § 9106(c)(4). CHRIA defines “investigative information” as: “Information assembled as a result of the performance of any inquiry, formal or informal, into a criminal incident or an allegation of criminal wrongdoing and may include modus operandi information.” 18 Pa.C.S. § 9102.

Section 503(d)(2) of the RTKL states that the appeals officer designated by the district attorney of a county shall hear appeals “relating to access to criminal investigative records” in the possession of a local agency in that county. 65 P.S. § 67.503(d)(2). Section 503(d)(2) adds that “[t]he appeals officer ... shall determine if the record requested is a criminal investigative record.” *Id.* As a result, the OOR ordinarily lacks jurisdiction over appeals involving criminal investigative records in the possession of a local agency.

In *Silver v. City of Pittsburgh*, however, the OOR found that it had jurisdiction over records alleged to be exempt under Section 708(b)(16) that were held by the City of Pittsburgh:

Because the City alleges that the records are criminal investigative records, and the Appeals Officer for the Allegheny County District Attorney’s Office has held that the records are criminal investigative records, it appears that the OOR lacks jurisdiction over the present appeal. However, it strains credulity to imagine that the requested records -- overtime report forms and correspondence regarding how

said forms should be completed are criminal investigative records and thus exempt under Section 708(b)(16) of the RTKL. The withheld records are related to a criminal investigation only in the sense that they have been obtained by the FBI as evidence during their investigation. The fact that a record becomes evidence in a criminal investigation -- especially a nominally public record dealing with the expenditure of public funds -- does not transform that record into one exempt from disclosure pursuant to Section 708(b)(16). The investigation at issue is not being conducted by the City, and as such, the records at issue were not created or compiled by the City in relation to a criminal investigation. *See Hayes v. Pennsylvania Department of Public Welfare*, OOR Dkt. AP 2012-0415, 2012 PA O.O.R.D. LEXIS 530 (“[A] review of case law interpreting the RTKL and its predecessor statute indicates that the investigative exemption has only been extended to protect the records of the agency carrying out an investigation”). Further, it cannot be said that these records resulted in a criminal investigation.

OOR Dkt. AP 2013-1395, 2013 PA O.O.R.D. LEXIS 886; *see also Hockheimer v. City of Harrisburg*, OOR Dkt. AP 2015-1793, 2015 PA O.O.R.D. LEXIS 1588.

Here, the District Attorney responds to this appeal and attests that he reviewed the videos as part of a criminal investigation, after their creation. Attorney Weintraub attests, in part:

As part of this criminal investigation, my office obtained video from BCCF which captured two incident that occurred in May 2020, during which corrections officers used pepper spray against Ms. Stringer in order to gain her compliance after she engaged in self-destructive behavior and repeatedly refused to comply with directions. I reviewed this video, along with other materials obtained during our criminal investigation, in order to determine whether criminal charges were appropriate. I understand that these two videos are the subject of a current Right to Know appeal.

Although I ultimately determined that criminal charges were not warranted in this case against any BCCF corrections officer, it is my belief that such videos in the possession of the DAO constitutes investigative information.... (emphasis added).

Under the RTKL, an affidavit made under the penalty of perjury may serve as sufficient evidentiary support of the nonexistence of records. *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).

The Requester rebuts the District Attorney’s evidence as follows:

As stated on my [R]equest sent on July 14 (included in my appeal)[,] I requested the video from the Bucks County Correctional Facility -- not from the district attorney's office.

I understand that the district attorney obtained the video as part of an investigation, which as he noted, has concluded with no criminal proceedings.

However, as I lay forth in my appeal letter, the video itself was not created as part of an investigation. The prison possessed the video for about a month before the D.A. began his inquiry. The video exists because it is administratively required - not as part of an investigation. The fact that the D.A. used the record for purposes separate and distinct from the prison is not relevant. Public records of from the prison do not become non-public simply because they are swept up as part of a different agency's investigation-a circumstance which, in my estimation, would carve out a significant hole in the RTKL.

The Request was originally submitted to the Bucks County Correctional Facility and was then sent to the County's Office of Open Records, who responded to the Request. The Request seeks records in the possession of the County, not records in the possession of the District Attorney's office. At no point did the Requester submit a request to the District Attorney's Office. The County has its own Open Records Officer, distinct from the District Attorney's Office. Nothing in the record before the OOR reflects that the County, including the correctional facility—the agency to whom the Request was submitted—has conducted any investigation relating to these records. *See Hayes v. Pa. Dep't of Pub. Welf.*, OOR Dkt. AP 2012-0415, 2012 PA O.O.R.D. LEXIS 530 (“[A] review of case law interpreting the RTKL and its predecessor statute indicates that the investigative exemption has only been extended to protect the records of the agency carrying out an investigation”).

To hold that a record sought from an agency is exempt merely because it was reviewed at some point during an investigation conducted by a different agency, would significantly expand the criminal investigative exemption beyond our existing precedent. *See Pa. State Police v. Grove*, 161 A.3d 877, 992 (Pa. 2017) (“Consistent with the RTKL's goal of promoting government

transparency and its remedial nature, the exceptions to disclosure of public records must be narrowly construed”) (citing *Office of Governor v. Davis*, 122 A.3d 1185, 1191 (Pa. Commw. Ct. 2015)). Accordingly, the County has not established that these records are exempt under the criminal investigative exemption.

CONCLUSION

For the foregoing reasons, the appeal is **granted**, and the County is required to provide responsive records within thirty days. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to the 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. 65 P.S. § 67.1303. However, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.³ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: October 16, 2020

/s/ Joy Ramsingh

APPEALS OFFICER
JOY RAMSINGH

Sent to: Brett Sholtis (via email only);
Matthew Weintraub, Esq. (via email only);
Janet Simon (via email only)

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

Exhibit F

AFFIDAVIT OF DAVID KRATZ

1. I serve as the Deputy Director of the Bucks County Department of Corrections.
2. I have seventeen years of experience with the Bucks County Department of Corrections and in corrections in general.
3. The Bucks County Correctional Facility is a part of the Department of Corrections.
4. I am aware of a Right-to-Know request submitted to Bucks County by Brett Sholtis on July 17, 2020, seeking surveillance footage from the Bucks County Correctional Facility. Therein, Requester specifically sought surveillance footage from May 20, 2020, of "Inmate Kimberly Stringer" being "hit with pepper spray by Correction Officers."
5. The Bucks County Correctional Facility and its staff are sometimes required to physically respond with force due to the actions and/or behaviors of an offender. These interactions are referred to as "use of force" events.
6. For events involving "use of force," such as the deployment of "pepper spray," prison staff utilize handheld recording devices to document the events. Specifically, a member of prison staff is equipped with the recording device to create documentary evidence of the interaction in the event that the recording is needed as part of an investigation.
7. The video footage from handheld recording devices is created and maintained by the Bucks County Correctional Facility solely for the purpose of documenting "use of force" events, such as the use of "pepper spray" against offenders. This documentary evidence is used only as an evidentiary record in conjunction with investigations – whether they are noncriminal or criminal in nature. The footage is maintained and catalogued by prison staff.
8. I am familiar with the requested security footage here, which amounts to footage from a "use of force" event involving the deployment of "pepper spray" against an offender. As

16. Knowledge of expected prison staff and/or third-party provider behavior in specific situations can be exploited by offenders and jeopardize the safety of individuals within the prison facility, as well as compromise the security of the facility itself.

17. Offenders could exploit such information to create a risk to the personal security of individual staff members and third-party providers that could endanger their life and physical well-being.

18. Offenders could also exploit the information to create a risk to public safety, the protection of the Bucks County Correctional Facility and its staff, providers, and offenders, and the security of the Bucks County Correctional Facility.

19. The requested security footage would reveal measures (a) regarding the custody and control of offenders, (b) regarding the protection of prison staff, offenders, third-party providers, and the public, and (c) designed to maintain the security of the Bucks County Correctional Facility and protect those within the facility.

20. Revealing the particulars of security protocols or procedures – including those related to movements and interactions between staff, providers, and offenders in the context of “pepper spray” deployment – poses a threat to staff, offenders, third-party providers, and the general public.

21. Knowledge by an offender of the particulars of prison staff responses enables an offender to develop countermeasures to subvert the objectives of prison staff or providers regarding the custody and control of offenders, the security of the correctional facility, and the protection of the public, staff, third-party providers, and offenders.

22. Ultimately, information obtained from the requested footage could easily be used by offenders to facilitate security breaches, including attacks upon other offenders, staff, providers,

mentioned above, the footage was taken from a handheld recording device operated by prison staff while participating in the event.

9. In this instance, the footage was requested by and provided to the Bucks County District Attorney's Office to conduct a criminal investigation surrounding the event in question.

10. The Bucks County Correctional Facility would not create and maintain the footage absent the need to preserve a documentary record to be used in a possible investigation.

11. The filmed areas covered by the footage are not open to the public.

12. In addition to relating to an investigation, in my opinion, the disclosure of the footage in this request would create an undue and improper risk to the personal security of staff, providers, and offenders at the Bucks County Department of Corrections and would threaten the safety and security of the Bucks County Correctional Facility.

13. My opinion is based upon my knowledge and experience resulting from my position as Deputy Director of the Bucks County Department of Corrections and from my years of experience working in corrections in general.

14. Importantly, disclosure of the footage would also reveal how prison staff responds to certain incidents and the attendant procedures and protocols accompanying those responses. This is particularly the case in situations where "pepper spray" is used by prison staff against offenders. The footage would reveal to offenders the protocols, procedures, and actions utilized by prison staff in responding to such situations.

15. Because of security issues that would likely arise, offenders are not allowed access to footage at issue here. This is particularly so when footage reveals staff and offender interactions and how staff responds to certain situations, such as "pepper spray" deployment.

VERIFICATION

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

Date: November 13, 2020



David Kratz

BUCKS COUNTY LAW DEPARTMENT
Austin J. Soldano, Assistant County Solicitor
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Attorneys for Petitioner

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OFFICE OF OPEN RECORDS

IN THE COURT OF COMMON PLEAS OF BUCKS COUNTY, PENNSYLVANIA

COUNTY OF BUCKS,	:	Civil Action – Appeal from State Agency
55 East Court Street	:	
Doylestown, PA 18901,	:	
	:	
Petitioner,	:	
	:	
v.	:	Docket No.
	:	
BRETT SHOLTIS,	:	
4801 Lindle Road	:	
Harrisburg, PA 17111,	:	
	:	
Respondent.	:	

CERTIFICATE OF SERVICE

I, Austin J. Soldano, hereby certify that on November 13, 2020, I served a true and correct copy of the foregoing Petition for Review, via email and U.S. First Class Mail, upon the following individuals:

Brett Sholtis
4801 Lindle Road
Harrisburg, PA 17111
brett_sholtis@witf.org

Joy Ramsingh, Esquire
Pennsylvania Office of Open Records
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Austin J. Soldano