

## IN THE COMMONWEALTH COURT OF PENNSYLVANIA

SIMON CAMPBELL,	:	
Petitioner	:	Case No.
	:	
v.	:	
	:	
PENNSYLVANIA INTERSCHOLASTIC	:	
ATHELETIC ASSOCIATION,	:	
Respondent	:	

**PETITION FOR REVIEW**  
(Appellate Jurisdiction)

AND NOW comes SIMON CAMPBELL (Campbell), and files this Petition for Review from the denial of his request submitted pursuant to the Right-to-Know Law (RTKL), 65 P.S. §§ 67.101-3104, to the PENNSYLVANIA INTERSCHOLASTIC ATHELETIC ASSOCIATION (PIAA) and from the denial of portions of his subsequent RTKL appeal to the Office of Open Records (OOR), and represents in support thereof the following:

**I. STATEMENT OF BASIS FOR JURISDICTION OF THE COURT**

1. This Honorable Court has *de novo* appellate jurisdiction over this appeal pursuant to Section 1301(a) of the RTKL, 65 P.S. § 67.1301(a).

**II. NAME OF PARTIES**

2. Campbell is adult individual legally residing in the Commonwealth of

Pennsylvania with a mailing address at 668 Stony Hill Road #298, Yardley PA 19067. Campbell is as a “requester” under Section 102 of the RTKL, 65 P.S. § 67.102.

3. PIAA is a “Commonwealth agency” and “State-affiliated entity” as defined by Section 102 of the RTKL, 65 P.S. § 67.102.

### **III. ORDER SOUGHT TO BE REVIEWED**

4. As explained below, Campbell elects to appeal one item from the OOR’s Final Determination of January 13, 2021, designated as Item 7. Campbell further challenges the OOR’s nonbinding determination that PIAA did not act in bad faith. Campbell contends that PIAA did act in bad faith in its responses to Items 1, 2, 3, 4, 5, and 8 of his request.

5. On November 2, 2020, Campbell filed an eight-part RTKL request with PIAA. A true and correct copy of Campbell’s RTKL request is attached hereto as Exhibit “A.”

6. On November 6, 2020, PIAA invoked a 30-day extension to respond pursuant to 65 P.S. §67.902(a).

7. On December 7, 2020, PIAA denied the request by asserting that the records requested in items 1, 2, 3, 4, 7 and 8 did not exist. As to item 5 (audits), it responded that these records had been requested from its auditors but it “had not

yet received them,” (and they have still not been produced) and as to item 6 (Form 990s), it directed Campbell to an IRS website. A true and correct copy of PIAA’s response is attached hereto as Exhibit “B.”

8. On December 10, 2020, Campbell filed an appeal to the OOR challenging the denials and stating grounds supporting disclosure of the requested records. The OOR invited both parties to supplement the record to the extent they wished to do so. A true and correct copy of Campbell’s appeal is attached hereto as Exhibit “C.”

9. On December 11, 2020, in its docketing instructions OOR set a record closing deadline of December 22, 2020 for the parties to make submissions into the appeal should they wish to do so.

10. Instead of attempting to meet its evidentiary burden of proof to OOR to try and explain the denial/deemed denial of requested records, ahead of the looming record-closing deadline, on December 21, 2020, PIAA instead motioned to OOR to place an indefinite stay on the appeal.

11. On December 22, 2020, the OOR denied the motion to stay filed by PIAA and informed the parties of a new second deadline for submitting evidence relevant to the appeal of December 30, 2020.

12. In an 11:55 p.m. filing on December 30, 2020, five (5) minutes before

the records-closing deadline PIAA filed a position statement restating its original grounds for denial and asserting, as it had in its motion to stay, that it is not subject to the Right-to-Know Law (RTKL) and other related arguments.

13. As a result of the aforesaid ‘midnight’ filing, Campbell requested on December 31, 2020, that the record be held open for an additional two or three days to permit a cogent reply. Campbell also asserted that PIAA had acted in bad faith. The OOR granted that request and held the record open to both parties until January 5, 2021 (third record closing deadline).

14. On January 5, 2021, Campbell filed a submission with the OOR asserting that any redaction arguments raised now by PIAA were untimely and waived and requested a finding by the appeals officer that PIAA had acted in bad faith and in wanton disregard of the law. Instead of attempting to meet its evidentiary burden to OOR, by this third record-closing deadline, PIAA instead made a submission on the same day asserting that certain submissions of Campbell should be rejected by OOR as untimely.

15. On January 13, 2021, the OOR issued its Final Determination granting in part and denying in part Campbell’s appeal. A true and correct copy of the Final Determination is attached hereto and marked Exhibit “D.”

#### **IV. STATEMENT OF ERRORS AS TO THE FINAL DETERMINATION**

16. Campbell asserts that the OOR erred in its Final Determination to the extent it denied the request for public records of Campbell to PIAA, Item 7 and in its denial of Campbell's request. Items 1, 2, 3, 4, 5, and 8, to find PIAA acted or failed to act in bad faith and appeals to this Court pursuant to 65 P.S. §67.1301(a).

17. Item 7 of Campbell's request sought "all written communications between [the] PIAA officials, including legal counsel" from January 1, 2020, to the date of the request concerning discussions surrounding its claim it was improperly included in the RTKL (emphasis supplied).

18. In denying this portion of Campbell's request, PIAA relied solely on a single affidavit of its Executive Director, Dr. Robert Lombardi. OOR found that Dr. Lombardi stated he "conducted a thorough search of all PIAA records...and found no responsive records" and further attested that all such contacts were limited to him and counsel with no other PIAA official involved and were oral and not written and, therefore, no records responsive to this request existed.

19. Without any further evidence or other substantiation, the OOR found these few statements were sufficient to establish a good faith search on PIAA's part and for OOR to hold it had demonstrated it did not "possess records responsive to Item 7 of the Request."

20. Although an agency affidavit may be sufficient evidentiary support to establish the non-existence of records, those affidavits may not be conclusory.

Office of Governor v. Scolforo, 65 A.3d 1095 (Pa. Cmwh. 2013).

21. The affidavit of Dr. Lombardi speaks in general conclusory terms, does not state that he inquired of other PIAA officials, employees or third parties associated with PIAA regarding potential responsive records, or where or how he conducted his search or the basis of his alleged knowledge that “no other PIAA official” was involved in the subject matter requested despite having earlier attested that PIAA is comprised of twelve administrative districts. According to PIAA’s website, each administrative district has a District Committee which presumably has officials/individuals who could potentially have responsive records. In addition, according to its website, PIAA has a Board consisting of approximately 35 members and a staff of approximately 15. There is no attestation of record that any of these individuals were made aware of the request or consulted as to potentially responsive records.

22. In addition, in addressing Campbell’s Item 8 regarding screenshot information concerning PIAA’s ability to electronically redact records, the OOR, in holding that PIAA had failed to support its claim of no responsive records existing, determined that the Lombardi affidavit was deficient in that it did not

include “what steps he took in conducting his search.” The appeals officer specifically noted that Dr. Lombardi failed to state if he inquired “of other relevant personnel” like its IT Department. Due to these deficiencies, the appeals officer found that PIAA had failed to demonstrate that it did not possess responsive records.

23. Despite similar deficiencies in the Lombardi affidavit as to Item 7, the OOR found 4 paragraphs of the Lombardi affidavit which tracked similar language sufficient evidence of the good faith search requirement of 65 P.S. §67.901.

24. An agency has a duty as part of its good faith search requirement to advise all custodians, including third-party contractors, of potentially responsive records about a request and to obtain and to review such records. Uniontown Newspapers, Inc., v. Pa. Department of Corrections, 185 A.3d 1161, 1171-72 (Pa. Cmwlth. 2013), Mollick v. Twp. Of Worcester, 32 A.3d 859, 875 (Pa. Cmwlth. 2011).

25. Campbell contends that the acceptance of the Lombardi affidavit as to Item 7, was error by the OOR as the sole evidence submitted by PIAA to support its denial, the Lombardi affidavit, is conclusory, deficient and lacks sufficient evidence to support that PIAA fulfilled its obligation to conduct a good faith search for the requested records.

26. Campbell had requested that the OOR make a finding that PIAA had acted in bad faith.

27. In its Final Determination, the OOR held that the conduct of PIAA in responding to Campbell's request did not "rise to the level of bad faith."

28. Campbell asserts that this was error and herein incorporates paragraphs 15-23 above.

29. Campbell contends that the conduct of PIAA in failing to produce any records to date and in failing to fulfill its obligations under the RTKL to conduct a good faith search among its personnel and third-party contractors as set forth above, constitutes bad faith. Uniontown Newspapers, Inc. v. Pa. Department of Corrections, \_\_ A.3d \_\_, 2020 WL 7502321, \*5 (Pa. 2020) (a finding of bad faith does not require proof of fraud or corruption but can be supported by an abnegation of mandatory duties by an agency including the performance of a detailed search.)

30. The open records officer has a duty to inquire of others in the agency of the request and if they possess responsive records. It is also reasonable to impose on the open records officer a duty of due diligence when directing requests to others in the agency. Id., 65 P.S. §67.502(b).

31. As the averments above demonstrate, the open records officer here



submitted no evidence that he informed others in the agency of Campbell's request or whether they might possess responsive records despite being a state-wide organization and despite having multiple opportunities to present such evidence.

32. In addition, the actions of PIAA in its consideration of Campbell's request demonstrates a consistent pattern of failing to make a good faith search for responsive records and an abnegation of its statutory duties under the RTKL.

33. As to Item 1 (legal invoices), Dr. Lombardi in his response simultaneously asserts that there are no responsive records (just paper copies) and then, to the extent they do exist, must be redacted prior to production. He also asserts that he has requested electronic copies from counsel, but he has "not received them," Lombardi Affidavit ¶42, despite having had two months since the initial request was made. His affidavit contains no details on when he made such inquiries, to whom they were made, what the responses were and when or what follow up steps were taken to pursue the records internally or externally. The implication of such statements is that he did not seek the records from a third-party contractor, i.e. law firms used, did not seek them promptly and/or failed to diligently pursue the records requested from those third parties. Such actions or inactions provide a basis for a finding of bad faith. Uniontown Newspapers, supra.

34. As to Item 2 (check images), PIAA responded that no documents

existed and that its bank's "security features" did not allow redaction and Dr. Lombardi's affidavit on this issue merely recited PIAA's position that the records in this category were voluminous and producing them would be burdensome. Lombardi Affidavit, ¶¶51-57. Again however, there was no evidence submitted as to whether on-line banking records were actually pursued or whether any actual search for such records or the ability to produce them was made.

35. As to Items 3 and 4, similar responses to Item 2 were made by PIAA and the same deficiencies exist in those responses and the same failure to comply with the statutory duties of the RTKL giving rise to a basis of a finding of bad faith.

36. As to Item 5 (audits), PIAA responded that it had requested those records from its auditors but had not received them. Just as with the legal invoices, there is no evidence as to why such records which should be readily available, particularly past audits, from its accountants, was not and still has not been produced or when the request to them was made, what the initial responses were or what follow up was done to insure their prompt production. Such actions or inactions provide a basis for a finding of bad faith. Uniontown Newspapers, supra.

37. As to Item 8 (screenshot), the appeals officer specifically found that the agency had failed to conduct a good faith search as required by 65 P.S.

§67.901. The appeals officer found that the Lombardi Affidavit, beyond just reciting a ‘search’ had been done, contained no information on what search was conducted or how he had conducted it. The appeals officer specifically noted that the Affidavit contained no indication PIAA’s IT Department had been consulted. It was error by the OOR to fail to make a finding of bad faith, especially when coupled with the conduct noted above as to other Items.

38. Such conduct constitutes grounds for a finding of bad faith which the OOR erred in denying.

39. PIAA acted in bad faith by ignoring its duties under RTKL. Uniontown supra, Office of the Dist. Attorney of Philadelphia v. Bagwell, 155 A.3d 1119, 1142 (Pa. Cmwlth. 2017)(Bagwell 2017), reconsideration denied (Apr. 12, 2017).

40. The conduct of PIAA is sufficient to support the imposition of the statutory civil penalty of \$1500 under 65 P.S. §67.1305 and attorneys’ fees and costs involved in this Petition and subsequent actions. 65 P.S. §67.1304.

41. To qualify for an award of fees it is not necessary that the court reverse the OOR in a situation like here were the requester was largely successful, but a reversal of the agency’s denial will support such an award where bad faith by the agency is demonstrated, and its denial is ‘reversed.’ Uniontown, supra \*9-10,

(observing that to authorize the award of fees only if the “appeals officer” (OOR) was reversed would lead to absurd results and, in essence, punish successful requesters)

## **V. STATEMENT OF RELIEF SOUGHT**

42. Campbell seeks an order reversing the Final Determination dated January 13, 2021 of the Office of Open Records as to its findings regarding Item 7 of his November 2, 2020 request and to its failure to make a finding of bad faith.

43. He seeks the imposition of a civil penalty of \$1,500 upon PIAA pursuant to Section 1305(a) of the RTKL because PIAA’s failure to conform with its duties under the RTKL constitutes bad faith.

44. He seeks an award of costs and attorneys’ fees pursuant to Section 1304 (a)(1) of the RTKL against PIAA.

WHEREFORE, Simon Campbell, Petitioner, respectfully requests that this Court enter an Order: (i) reversing the Final Determination dated January 13, 2021 of the Office of Open Records as to its findings denying production of the records requested in Item 7 of his November 2, 2020, request and that the Court make a finding of bad faith as to PIAA’s conduct in this matter, (ii) imposing a civil penalty of \$1,500 upon PIAA, and (iii) entering an award in Campbell’s favor for costs and attorney’s fees against PIAA involved in this Petition and subsequent

proceedings.

**NAUMAN, SMITH, SHISSLER & HALL, LLP**

By: /s/Craig J. Staudenmaier

Craig J. Staudenmaier, Esquire

Supreme Court ID# 34996

Joshua D. Bonn, Esquire

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Supreme Court ID #329351

200 North Third Street, 18<sup>th</sup> Floor

Harrisburg, PA 17101

Telephone: (717) 236-3010 ext. 122

*Counsel for Simon Campbell, Petitioner*

Date: January 15, 2021

**CERTIFICATE OF COMPLIANCE**

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

Submitted by: Craig J. Staudenmaier, Esquire

Signature: /s/Craig J. Staudenmaier

Name: Craig J. Staudenmaier, Esquire

Attorney No. (if applicable): 34996

**CERTIFICATE OF SERVICE**

I, Karen L. Gagne, hereby certify that I am this day, in conformance with Pa.R.A.P. 121, serving the foregoing Petition for Review upon the persons listed below as follows:

**Via First Class Mail**

Alan R. Boynton, Jr., Esquire  
McNees Wallace & Nurick, LLC  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166

Magdalene C. Zeppos-Brown, Esquire  
Right to Know Law Appeals Officer  
Pennsylvania Office of Open Records  
333 Market Street, 16<sup>th</sup> Floor  
Harrisburg, PA 17101-2234

/s/Karen L. Gagne  
Karen L. Gagne

Date: January 15, 2021

# **EXHIBIT “A”**





**pennsylvania**  
OFFICE OF OPEN RECORDS

## Standard Right-to-Know Law Request Form

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

**SUBMITTED TO AGENCY NAME:** Pennsylvania Interscholastic Athletic Association (PIAA) (Attn: AORO)

Date of Request: November 2, 2020 Submitted via: ☒ Email ☐ U.S. Mail ☐ Fax ☐ In Person

**PERSON MAKING REQUEST:**

Name: Simon Campbell Company (if applicable): \_\_\_\_\_

Mailing Address: 668 Stony Hill Rd #298

City: Yardley State: PA Zip: 19067 Email: parighttoknow@gmail.com

Telephone: 267-229-3165 Fax: \_\_\_\_\_

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

**RECORDS REQUESTED:** *Be clear and concise. Provide as much specific detail as possible, ideally including subject matter, time frame, and type of record or party names. RTKL requests should seek records, not ask questions. Requesters are not required to explain why the records are sought or the intended use of the records unless otherwise required by law. Use additional pages if necessary.*

**Please see attached and below. The specificity of my request/s is important. Right-to-Know Law (RTKL) legal analysis cannot be assessed against records that are simply not requested. An agency may not amend the request nor attempt to produce records not sought. Only the Requester has authority to define the breadth and scope of the request. 65 P.S. §67.703. See also Section 102 definition of a Record ("Information, regardless of physical form or characteristics ...stored or maintained electronically"). I am exclusively seeking electronic information.**

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

**[No printed copies]** ☒ Yes, electronic copies ~~preferred if available~~ **ONLY (see attached)**

☐ No, in person inspection of records preferred (~~may request copies later~~)

Do you want certified copies? ☐ Yes (*may be subject to additional costs*) ☒ No

RTKL requests may require payment or prepayment of fees. See the Official RTKL Fee Schedule for more details.

Please notify me if fees associated with this request will be more than ☐ \$100 (or) ☒ \$ **0.00**.

**ITEMS BELOW THIS LINE FOR AGENCY USE ONLY**

Tracking: \_\_\_\_\_ Date Received: \_\_\_\_\_ Response Due (5 bus. days): \_\_\_\_\_

30-Day Ext.? ☐ Yes ☐ No (If Yes, Final Due Date: \_\_\_\_\_) Actual Response Date: \_\_\_\_\_

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

☐ Appropriate third parties notified and given an opportunity to object to the release of requested records.

NOTE: In most cases, a completed RTKL request form is a public record.  
More information about the RTKL is available at <https://www.openrecords.pa.gov>

Form updated Feb. 3, 2020



## RIGHT TO KNOW LAW REQUEST ITEMS

### Introduction

When I refer to “PIAA” throughout my request items it should be apparent, but is nonetheless here stated for clarity, that I incorporate reference to any and all of the twelve administrative districts of PIAA. These districts may be responsible for their local finances but they are all part of PIAA. It is understood that most people/entities do not manage their finances by storing cash under the bed. They have bank accounts. It is further understood that modern financial institutions provide online banking features where transactions and statements can be viewed online and/or downloaded in electronic form. Given that some financial institutions limit the period of time an account holder can “look back” online for certain records, I posit that PIAA should not delay in preserving requested online banking records for the time periods that I seek because PIAA is required to act in good faith when responding to RTKL requests.

Making a RTKL request is not merely a statutory right in Pennsylvania it is also a constitutionally-protected *Noerr-Pennington* petitioning right under the First Amendment. See *Campbell et al v. PSBA et al*, 336 F. Supp. 3d 482 - Dist. Court, ED Pennsylvania 2018. (“...courts have regularly recognized that statutorily authorized petitions are protected by the First Amendment. E.g., *Herr v. Pequea Twp.*, 274 F.3d 109, 119 n.9 (3d Cir. 2001) (applications to county planning commission); *Brownsville Golden Age Nursing Home, Inc. v. Wells*, 839 F.2d 155, 160 (3d Cir. 1988) (reports to state and federal agencies). There is no reason why petitions pursuant to statutory authority should be given less protection than petitions independent of that authority”); *aff’d* in relevant part by the Third Circuit Court of Appeals, No. 18-3112.

### ITEM 1

Using the cheapest redaction (if necessary), copy, and delivery methods possible, please send me electronic copies of all legal invoices that **already exist in electronic form** that were paid by PIAA to any and all attorneys/law firms between the dates of January 1, 2012 and the present. If legal invoices in the possession or constructive possession of PIAA only exist in paper form then such paper records do not constitute part of my request. No Section 701 analysis should occur on records not requested<sup>1</sup>. Moreover, a Requester defines the scope and breadth of the request, not

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<sup>1</sup> See “[a] record being provided to a Requester ...” 65 P.S. § 67.701. [I am not requesting that paper records be provided. PIAA must not think it can amend my request to provide something I do not want].

PIAA<sup>2</sup>. That said, PIAA must still perform a ‘constructive possession’ search under Section 901<sup>3</sup> and/or Section 506(d)<sup>4</sup> for responsive electronic records that might exist in the possession of applicable third parties such as the retained lawyers/law firms that generated the requested electronic legal invoices (self-evidently a client ‘controls’ the attorney-client relationship).<sup>5</sup>

## ITEM 2

Using the cheapest redaction (if necessary), copy, and delivery methods possible, please send me electronic copies of the fronts of all electronic cleared check images that **already exist in electronic form** (e.g. via online banking) for all financial accounts owned/operated by PIAA between the dates of June 1, 2019 and the present. A redacted illustration of what I seek is shown below. Most financial institutions have online banking features where cleared check images can be viewed by the account owner. I am looking for snapshot copies of such check images in whatever electronic form PIAA might wish to take the electronic copies e.g. screenshot capture, print to PDF, etc. I do not authorize PIAA to print any cleared check image to paper because, again, I am not seeking paper copies of electronic records (Requester defines the scope and parameters of the request, not the PIAA; 65 P.S. § 67.703). To the extent the requested electronic cleared check images are not in the PIAA’s actual possession I posit that they are in PIAA’s constructive possession (“control”) via the applicable financial institutions’ online banking features. Example:

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<sup>2</sup> 65 P.S. § 67.703 (“[a] written request should identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested”).

<sup>3</sup> 65 P.S. § 67.901 (“[w]hether the agency has possession, custody or **control** of the identified record”).

<sup>4</sup> 65 P.S. § 67.506(d).

<sup>5</sup> See *Uniontown Newspapers, Inc. v. Pa. Department of Corrections*, 185 A.3d 1161, 1171-72 (Pa. Commw. Ct. 2018) (“When records are not in an agency’s physical possession, an open records officer has a **duty to contact agents within its control**, including third-party contractors ... After obtaining potentially responsive records, an agency has the duty to review the records and assess their public nature under ... the RTKL”).

## Check Details



Item 7 of 29 [Show full image](#) \*

### EXAMPLE OF A CLEARED CHECK IMAGE OBTAINED VIA ONLINE BANKING.

Print

Check Number

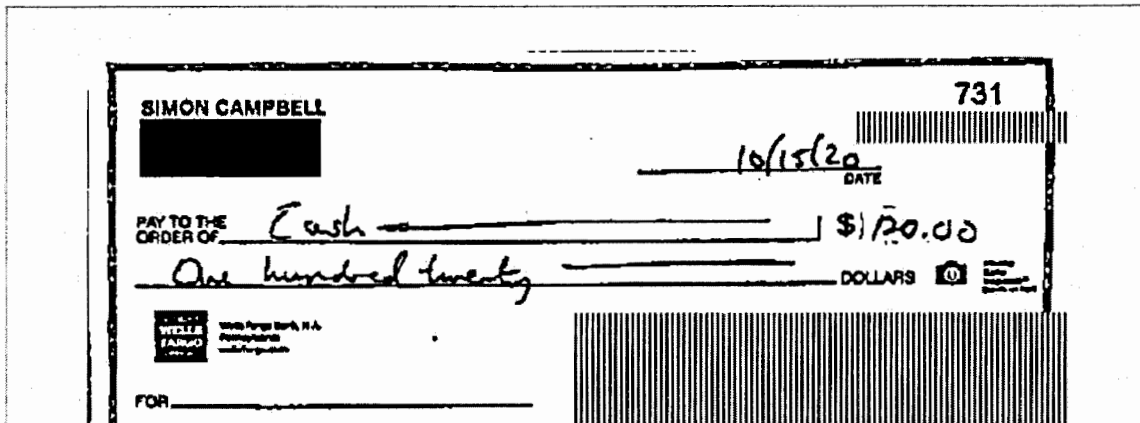
731

Date Posted

10/15/20

Check Amount

\$120.00



< Previous

Flip

Zoom

Next >

\* For your security, information like account numbers, signatures, and the ability to view the backs of checks have been removed from the images.

You can see full or partial fronts and backs of the images by using the link at the top of the window.

Equal Housing Lender

### ITEM 3

Using the cheapest redaction (if necessary), copy, and delivery methods possible, please send me electronic copies of all monthly bank (or other financial institution) statements that **already exist in electronic form** for all financial accounts owned/operated by PIAA between the dates of December 1, 2013 and the present. Again, no paper records are requested. Example:

## Statements and Documents

It's easy to access your account documents online. Wells Fargo offers a secure, convenient, and environmentally friendly way to manage your documents from one central place – helping you reduce clutter and stay organized.

### Related Information

[Request statement copies by mail](#)

[Manage Delivery Preferences](#) >

### Statements and Disclosures

Select account


For time period


Recent statements


#### Statements


Deposit account statements are available online for up to 7 years.


 [Statement 09/30/20 \(23K, PDF\)](#)


 [Statement 08/31/20 \(21K, PDF\)](#)


 [Statement 07/31/20 \(21K, PDF\)](#)


 [Statement 06/30/20 \(24K, PDF\)](#)


 [Statement 05/31/20 \(23K, PDF\)](#)


 [Statement 04/30/20 \(22K, PDF\)](#)

 [Statement 03/31/20 \(22K, PDF\)](#)

 [Statement 02/29/20 \(22K, PDF\)](#)

 [Statement 01/31/20 \(23K, PDF\)](#)

 [Statement 12/31/19 \(24K, PDF\)](#)

 [Statement 11/30/19 \(24K, PDF\)](#)

**EXAMPLE OF MONTHLY BANK  
STATEMENTS BEING  
READILY AVAILABLE ONLINE,  
FOR UP TO 7 YEARS, IN  
ELECTRONIC FORM (PDF).**

Wells Fargo will notify you when your account statement is available online. If we do not have a valid email address for you, we cannot provide this notice and will have to switch future online statements to paper statements via U.S. mail. As an online customer, you are responsible for notifying us if you change your email address. Please refer to the [Online Access Agreement](#) for details. If you receive both paper and online statements on an account, we will not notify you by email when your online statement is ready.

## ITEM 4

Using the cheapest redaction (if necessary), copy, and delivery methods possible<sup>6</sup>, please send me all posted line item transactions in all bank (or other financial institution) accounts that **already exist in electronic form** for all financial accounts owned/operated by PIAA between the dates of June 1, 2019 and the present. Again, no paper records are requested. Example:

<sup>6</sup> For Request Item 4 I seek the delivery method of comma delimited (ASCII, Spreadsheet) if it is an available option, otherwise any available electronic form and electronic delivery method will suffice.

## Download Your Account Activity

Personal Accounts [What is this?](#)

**Upgrade to Direct Connect** and you can automatically download all your eligible accounts and pay bills directly through Quicken or QuickBooks - just select Wells Fargo Bank from within your software.

- See fees and learn more about using Online Banking and Bill Pay with Quicken or QuickBooks.
- Need financial management software? Purchase discounted QuickBooks software.

Download your account information by following these steps:

Step 1: Choose an account.<sup>1</sup>

Account

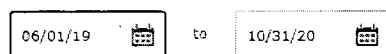


Step 2: Verify the pre-filled date range.<sup>2</sup>

For the selected account, you can download up to 18 months of previous account history.

**Note:** Always confirm "From" and "To" dates before downloading account activity.

Date Range



Step 3: Select a file format to download.<sup>3</sup>

File Format

- ☐ Quicken® (Web Connect)
- ☐ QuickBooks® (Web Connect)
- ☐ QuickBooks® (.qif) (More Information)
- ☐ Comma Delimited (ASCII, Spreadsheet)

Download

<sup>1</sup> Account Disclosures

<sup>2</sup> Only posted transactions are available for download.

Please note that if PIAA downloads the requested line item transactions into a manipulable database format and then redacts certain information I think it is important to identify in the file itself what information has been redacted. Unlike a blacked out image on a document or image file, I cannot visibly "see" if a column, row, or cell box has been deleted.

### ITEM 5

Using the cheapest redaction (if necessary), copy, and delivery methods possible, please send me PIAA's most recent three (3) years of independent audited financial statements that **already exist in electronic form**. If they do not already exist in electronic form then the financial statements are not requested (if necessary, PIAA must check with the auditors to see if the auditors possess them in electronic form).

### ITEM 6

Using the cheapest redaction (if necessary), copy, and delivery methods possible, please send me PIAA's most recent Form 990 filing with the IRS<sup>7</sup> that **already exists in electronic form**. If the requested document does not already exist in electronic form then it is not requested (if necessary, PIAA must check with its Form 990 preparer to see if he/she possesses it in electronic form).

#### ITEM 7

This request item stems from my curiosity about a recent Office of Open Records ("OOR") Final Determination, *Francis Scarella & the Daily Item v. PIAA*; Dkt. No. AP 2020-1371. On September 2, 2020, PIAA submitted argument to the OOR via counsel. On page 2 footnote 1 of that pleading, PIAA stated:

*"[PIAA] does not receive any tax money<sup>8</sup> ... Unless all not-for-profit corporations that have schools for members are Commonwealth authorities or entities, PIAA believes that it is improperly included in the RTKL. For purposes of the current proceeding, it has chosen not to object to the request submitted by Requester on this ground nor pursue this issue here as the OOR is not the appropriate venue to address the validity and/or constitutionality of the legislative enactment."*

I quote the above because I wish to be clear what records I am seeking. Using the cheapest redaction (if necessary), copy, and delivery methods possible, please send me electronic copies of all written communications that **already exist in electronic form**, and that were exchanged between PIAA officials (and between PIAA officials and counsel) between the dates of January 1, 2020 and the present, that discuss the topic of PIAA being improperly included in the RTKL.

When I use the term "PIAA officials" I am referring to the PIAA's Board of Directors, Executive Committee (President, Vice President, and Treasurer), and Executive Director. When I use the term "written communications" I am referring to any and all non-verbal communications (examples would include emails, text messages, social media messages) irrespective of whether

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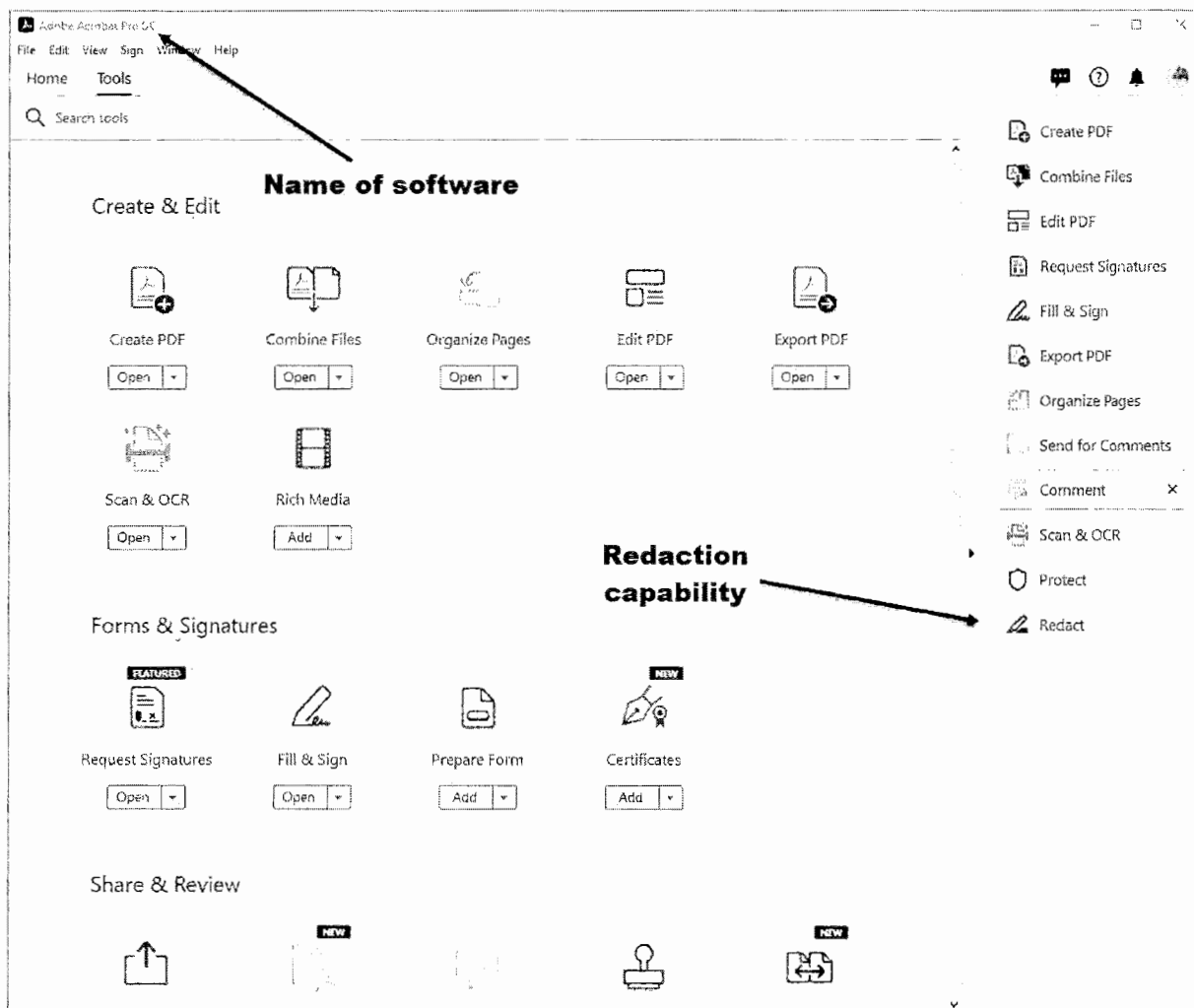
<sup>7</sup> "Return of Organization Exempt from Income Tax" (Form 990).

<sup>8</sup> A disingenuous argument to make. PIAA's member public schools are not private donors. They are public entities funded by taxpayers; and for constitutional purposes PIAA is a pervasively entwined State Actor. See *Brentwood Academy v. Tennessee Secondary School Athletic Association*, 531 U.S. 288 (2001); also see *Campbell et al v. PSBA et al*, 336 F. Supp. 3d 482 - Dist. Court, ED Pennsylvania 2018 (PSBA Motion to Dismiss denied, June 19, 2018). PIAA should not seek to bypass the statutory scheme of the RTKL if wishing to argue that the RTKL is unconstitutional as to PIAA's inclusion. Any legal action taken by PIAA outside of the RTKL, involving my request items, would be First Amendment retaliation. PIAA can make any arguments it likes but it must do so via the RTKL statutory process to which I am clearly entitled. PIAA cannot presume the RTKL is unconstitutional and must therefore follow it. PIAA is required to act in good faith and can be sanctioned if it does not. 65 P.S. § 67.1304. Put plainly, PIAA can hold whatever fanciful legal theories it likes if it wants to sue the Commonwealth of Pennsylvania and have the Attorney General defend against such suit as required by the Commonwealth Attorneys Act. But such fanciful legal theories must be pursued within the confines of the RTKL process. That said, it is hard to imagine any public relations consultant counseling that PIAA use taxpayer-sourced member dues for such a speculative headline-grabbing endeavor. Even harder to imagine the media and general assembly being impressed by such move. If anything, it might trigger the general assembly to add the likes of PSBA into the RTKL. That would be a good amendment. All pervasively entwined State Actors should be accountable to the public that *de facto* funds them.

such communications occurred on the agency officials' personal communication devices. I posit that PIAA's "good faith effort" (Section 901) to search for responsive records necessitates the PIAA's Open Records Officer asking the agency officials to preserve (then release to the Open Records Officer for analysis) all responsive records on any personal communication devices.

### ITEM 8

Please send me a screenshot image showing the name of the software program/s in PIAA's possession, custody or control that can perform electronic redactions on PDF files and/or other electronic file types. By way of example one software program that I use myself to perform such tasks is called Adobe Acrobat Pro:



### POSITION STATEMENT/S OF REQUESTER

It seems from reading the appeal submissions to OOR in *Francis Scarcella and The Daily Item v. Pennsylvania Interscholastic Athletic Association*, OOR Dkt. AP 2020-1371, that PIAA District IV may be run by people unfamiliar with modern banking tools and modern software tools. The



Glenn Fogel (District IV Treasurer) affidavit of September 2, 2020, stated in paragraph 12 “As Treasurer, I keep almost all District IV third party records, such as ...bank records<sup>9</sup>, in paper format” and in paragraph 15 “I am not aware of any records of District IV that were requested by Mr. Scarcella that are kept electronically” . If District IV has a bank account then it is irrelevant what bank records Mr. Fogel personally keeps or what banking facilities he may be unaware of. What is relevant is what online banking facilities he (or the appropriate PIAA official) has the **actual ability to access** even if he has never done it before and even if he isn’t personally aware that online records exist. Ignorance is a not a valid denial argument under the RTKL. The Daily Item newspaper did not press these issues so these issues were not adjudicated. By contrast, I am putting PIAA on notice to think about these issues. If local Treasurers have never done things like set up an online banking username and password, or never accessed online banking records before, it doesn’t mean they can avoid doing it now in response to my request items. PIAA has a *duty* to retrieve what I seek if PIAA possesses or controls access to the records in the electronic medium that I seek them.

Aside from Adobe Acrobat Pro I possess an inexpensive software tool called “SnagIt” that, like Adobe Acrobat Pro, can be used to capture screen images and create blacked out areas to redact image files like .gif, .jpg, .tiff, etc. (and do it far more securely than a black sharpie pen on a piece of paper, where holding up the paper to a bright light can reveal the redaction underneath<sup>10</sup>). By no means are these software tool examples meant to be exhaustive of all possibilities for how electronic records may be electronically redacted by PIAA. In 2020, we live in a modern world with modern software tools that are readily available to us.

The particular electronic form of the sought-after electronic copies is irrelevant to my request items. Aside from the the limited (additional) specificity of re: Item 4, PIAA is welcome to use any electronic format and any electronic medium of its choice to grant and deliver my requested items (e.g. image files, database files, document files, etc.). Since fee disputes can be adjudicated separately to PIAA's position on the merits of requested information being public or nonpublic, please do not actually incur any allegedly chargeable fees to process any of my request items without first seeking agreement from me that I will pay the allegedly chargeable fees (see Section 1304; PIAA required to act in good faith<sup>11</sup>). My position is that any redactions (which are not

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<sup>9</sup> The phrase “bank records” was not probed by the Requester but self-evidently it speaks to the existence of a bank account. Should it become relevant here I ask that PIAA attorneys provide careful counsel to affiants, given the potential of a Requester to seek sanctions in court for perjury.

<sup>10</sup> OOR has no statutory authority to include non-defined phrases like “secure redaction” in its fee schedule (footnote 6) when no such phrase exists in the statute. Section 706 (redactions) does not mention either the word “secure” or “securely”. OOR has no statutory authority to set redaction costs on electronic records in its fee schedule. That OOR has acted outside the scope of its statutory authority in establishing its current fee schedule, re: redacting electronic records, cannot be used as a denial basis by PIAA. OOR cannot cite a single case for the premise that it can unilaterally declare, via its fee schedule, that agencies have a “right” to print pieces of paper (at \$0.25 per page cost to the Requester) from electronic records in order to take out a black sharpie pen and redact them. PIAA is obliged to follow the law not OOR’s unlawful power grab.

<sup>11</sup> See also OOR Final Determination, *Francis Scarcella and The Daily Item v. Pennsylvania Interscholastic Athletic Association*, OOR Dkt. AP 2020-1371 (PIAA not entitled to copy fees where Requester objection is on record).

admitted is necessary) on electronic records would need to be performed electronically in accordance with Sections 706 and 1307(g) of the RTKL<sup>12</sup>.

My position (given the specificity of my requests) is that Section 1307(b) – which references the OOR’s fee schedule - is not triggered, at least in terms of redaction, by any of my request items<sup>13</sup>. I do not agree that any paper copy fees can be charged because I am only seeking electronic copies of records that *already exist* in electronic form. Put another way, it is not a ‘necessarily incurred’ cost to print electronic records onto paper in order to redact or copy them.<sup>14</sup>

My position is that the only permissible fees that may be charged to me is the delivery method by which the electronic information is sent. If the granted records are too large to send as e-mail attachments PIAA should seek the lowest cost alternative delivery method to send me the released records. Examples might include mailing me a USB stick or DVD (where the cost of the thumb drive/disc plus postage might be chargeable). Or, even better, PIAA could use a free file-share cloud service like Google Drive, OneDrive, Dropbox etc<sup>15</sup>. I encourage PIAA to enter into constructive dialogue with me about delivery costs rather than assume PIAA is entitled to charge whatever PIAA wants to charge.

If PIAA disagrees with any of my position statements and wishes to charge paper copy fees, please estimate (but do not actually incur) the allegedly chargeable fees into a dollar amount and please explain the rationale behind such position, including providing legal citation as required by Section 903(2) of the RTKL when issuing PIAA’s final answer.

In recent days I googled and found these media stories about PIAA:

“Open records office rules PIAA can’t charge for some documents”

[https://www.dailyitem.com/news/open-records-office-rules-piaa-cant-charge-for-some-documents/article\\_492b9e20-1557-11eb-9f8a-eb810ce71104.html](https://www.dailyitem.com/news/open-records-office-rules-piaa-cant-charge-for-some-documents/article_492b9e20-1557-11eb-9f8a-eb810ce71104.html)

“Legislators want to discuss District IV concerns with PIAA Oversight Committee”

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<sup>12</sup> Numerous software tools exist – many for free – that can be used to electronically redact a range of different electronic file types. If the PIAA wishes to allege that it doesn’t possess any applicable software redaction tool and further wishes to argue it is under no obligation to obtain one, please state that position when issuing the PIAA’s final answer because my position is that the PIAA would be required to obtain such software tool.

<sup>13</sup> The RTKL only authorizes OOR to establish “fees for duplication” not fees for redaction. 65 P.S. § 67.1307(b)(1). Any necessarily incurred costs for redaction “must be reasonable” and fall under Section 1307(g). See OOR Final Determination, *Mezzacappa v. Colonial Intermediate Unit 20*, Dkt. No. 2019-1922 (“[t]he {PIAA’s} redactions are governed by Section 1307(g) of the RTKL”).

<sup>14</sup> Redaction costs are limited to costs that the “agency **necessarily incurs** ...for complying with the request, and such fees must be reasonable.” 65 P.S. § 67.1307(g) (emphasis added).

<sup>15</sup> Many options exist at no cost. See <https://www.computerworld.com/article/3262636/top-10-file-sharing-options-dropbox-box-google-drive-onedrive-and-more.html>. I encourage PIAA to review the statutory language of Section 1307(g) in this regard (i.e. “**necessarily incurs**” and “such fees must be reasonable”). To me, it seems so, well, 1950s to think of mailing items on a USB stick. I’m not sure it’s necessary. PIAA could probably tap into the expertise of a 14 year high school member to see how to use a free file-share service. If PIAA wants to have a fight about 1307(g) I encourage PIAA to read *Mezzacappa v. Colonial Intermediate Unit 20*, Dkt. No. AP 2019-1922 (July 31, 2010); footnotes 8 & 9.

[https://www.dailyitem.com/news/legislators-want-to-discuss-district-iv-concerns-with-piaa-oversight-committee/article\\_dfe4c2f2-c6be-11ea-956f-f76d6997bd3a.html](https://www.dailyitem.com/news/legislators-want-to-discuss-district-iv-concerns-with-piaa-oversight-committee/article_dfe4c2f2-c6be-11ea-956f-f76d6997bd3a.html)

It seems like there is no love lost between PIAA and the Daily Item newspaper when it comes to the RTKL. But as the Pennsylvania Newspaper Association attorney Melissa Melewsy was quoted in the second article: "PIAA's position on the use of the RTKL is unfortunate ...[t]he RTKL was not intended to be an adversarial process, but one designed to inform the public and improve government function. Reasonableness and collaboration can go a long way in easing the process along."

Indeed so.

I want to know what is going on with the millions of dollars of taxpayer-sourced money that flows into PIAA and I want to understand why PIAA thinks it should be unaccountable to the public for any of that money by suggesting that PIAA not be included in the RTKL. To any extent it may be relevant please know that I intend to publish all released records on the internet.

I look forward to hearing from PIAA within the required five (5) business days.

Sincerely,  
Simon Campbell

PS. OOR recently invited the public to provide input into its decision-making process for the biannual review of its fee schedule. See <https://openrecordspennsylvania.com/2020/10/27/oor-solicits-comments-on-biannual-review-of-rtkl-fee-schedule/>. FYI, to help PIAA better understand my position on copy fees, I attach my own feedback to OOR. I encourage PIAA not to rely on statutory authority that OOR does not possess when deciding what fees PIAA thinks might be chargeable, and instead focus only on what the RTKL says. Put plainly, if the only argument PIAA has about copy fees is "the OOR fee schedule says we can do it" then we have a problem in which OOR could become an indispensable party because there are certain things that OOR is not allowed to say in its fee schedule that PIAA can do.



Simon Campbell &lt;parighttoknow@gmail.com&gt;

## OOR's fee schedule - revisions needed

1 message

Simon Campbell &lt;parighttoknow@gmail.com&gt;

Sat, Oct 31, 2020 at 6:13 PM

To: FeeReviewOOR@pa.gov

Cc: Erik Arneson &lt;earneson@pa.gov&gt;, Nathanael &lt;nbyerly@pa.gov&gt;, "Brown, Charles (OOR)" &lt;charlebrow@pa.gov&gt;, "Lantz-Johnson, Delene" &lt;dlantz-joh@pa.gov&gt;, "Spiess, George" &lt;gespiess@pa.gov&gt;

Dear OOR,

What's the expression for activist Judges? Legislating from the bench, I believe. Why would OOR do that from an administrative office? I was happy to see the general assembly limit OOR's 1307(b) statutory authority to "fees for duplication". I can only assume that whomever fell in love, inside OOR, with a "securely redacting" black sharpie pen several years ago (see current OOR fee schedule footnotes 4 & 6) that person wanted to re-write the RTKL to give more power to OOR than the general assembly gave to OOR.

See OOR Final Determination, page 8:

<https://www.openrecords.pa.gov/Appeals/DocketGetFile.cfm?id=55570>

[Quote]: "With respect to the electronic invoices that were in Dr. Lombardi's possession, the OOR's Fee Schedule does not permit fees to be imposed for redactions, see 65 P.S. § 67.1307(g), but does state that "[i]f a requester seeks records requiring redaction, an agency may copy or print the records to provide for secure redaction. Accordingly, the agency may charge the fees noted above for ... copies, as appropriate."

May I suggest OOR pen more succinct FDs?. The above verbiage - making the exact same legal points - would be better written:

"With respect to the electronic invoices that were in Dr. Lombardi's possession, the OOR's Fee Schedule does not permit fees to be imposed for redactions, see 65 P.S. § 67.1307(g), but OOR does it anyway."

Of course, even the more succinct version doesn't address the underlying cultural problem at OOR. The problem right now, and the reason so many citizens are continuing to be ripped off with unlawful copy fees being imposed on them by an OOR with General Assembly aspirations, is not OOR's fee schedule per se. The structural problem is that OOR is addressing things in its fee schedule that OOR is not allowed to address in its fee schedule.

Specifically, OOR is not statutorily authorized to suggest, infer, or otherwise rule in its fee schedule that agencies have a right to print electronic records onto paper to redact them with a black sharpie pen. That entire mentality at OOR is far removed from OOR's statutory authority in Section 1307(b). OOR may adjudicate but OOR may not legislate. Different agencies might have different costs for e-redaction. Not all agencies possess the same, if any, software redaction tools. "Necessary" costs may vary between agencies. Different arguments may be put forth by different agencies. And the wording of requests may vary between requesters.

Such realities suggest that redaction cost disputes be assessed on a case-by-case basis where OOR acts only as an adjudicator not as a legislator. In setting its upcoming revised fee schedule OOR needs to resist a desire to still be King. Section 1307(b) should be seen as restricting not as all encompassing.

Redaction costs for all **electronic records** are properly analyzed under Section 1307(g) not Section 1307(b). See OOR Final Determination, *Mezzacappa v. Colonial Intermediate Unit 20*, Dkt. No. AP 2019-1922(July 31, 2010)("The Unit's redactions are governed by Section 1307(g) of the RTKL"). The electronic records at issue in *Mezzacappa* were video records. It is absurd for OOR to believe that one type of electronic record (video) can have redaction costs assessed under 1307(g) while another type of electronic record (non-video) has redaction costs assessed under 1307(b). *Mezzacappa* drew its own authority from a PA Supreme Court case. *Easton Area Sch. Dist. v. Miller* 13 MAP 2019, 2020 Pa. LEXIS 3378:

"Thus, insofar as the video itself is a public record subject to disclosure under the RTKL but contains the images of school students which are not subject to disclosure, which, in our view, it is and does, the District is obligated to redact students' images by, for example, blurring or darkening portions of the video revealing the students' identities, and to subsequently provide access to the redacted video." [Footnote 15]: "We do not suggest the District is obligated to finance such redaction, which responsibility may fall either to the District or to the Requester depending upon other laws, policies, or legal directives that are not before the Court in the present appeal."

Notably, the PA Supreme Court did not state that redaction costs on e-records could be established by the OOR in its fee schedule. The OOR's sound reasoning in *Mezzacappa* flowed from this Supreme Court decision. Different facts presented by different cases are going to arise over the issue of redaction costs on **electronic records**. It is not appropriate for OOR to declare or suggest, via its fee schedule, how redactions on electronic records must occur and what the costs associated with such redaction can be.

Part of the challenge is that OOR was operating in the 1920s under Terry Mutchler in terms of being a forward-looking entity. Mr.

Arneson has at least elevated OOR into the 1950s. But all this obsession about paper records is an obsession that only government officials get wrapped up in. What agency does NOT keep its records in some computer form or another? Why are we talking about paper copies in 2020? It is a dinosaur mentality where type-writers and filing cabinets still rule the day. Such dinosaur mentality has been ripping citizens off for years. \$0.25 per page copy fees? Come on. Even if an agency really did live in the 1950s with a type-writer and filing cabinet instead of a computer, you can go to Staples and get paper copies done for \$0.10 per page. As a reminder, OOR is limited in terms of what it can do by the language of Section 1307(b)(2). I Hope someone at OOR is surveying local business entities.

OOR lives in an ivory tower when it comes to seeing the RTKL. It is a sheltered governmental world where OOR never sees the ordinary Requester who gets beaten down with denials and who quits because they think (often, all too correctly) the system is stacked against them. OOR needs to stop listening to the government people and the 'advocacy' self-serving special interest groups who cater to them. OOR needs to re-focus on the ordinary citizen and the law itself. This time around, OOR needs to pay much greater attention to what it is NOT ALLOWED to establish in terms of fees. There can be no King OOR. Section 1307(b) fee-setting needs to be an exercise in restraint. In line with case law and the statutory limits imposed on OOR by the general assembly, I propose the follow changes to the OOR's current fee schedule:

Footnote 4: Problem. The 1950s dinosaur is in town (i.e. someone still in love with paper records and black sharpie pens). The current phrase "records which require redactions in electronic format" makes no legal sense because the word "records" doesn't differentiate between paper records and electronic records (how can paper records "require" electronic redaction?). Redactions for paper records have costs assessed under 1307(b) whereas redactions for electronic records have costs assessed under 1307(g). Solution: eliminate this footnote in its entirety. Stop telling agencies they can live in the 1950s. Stop legislating. OOR doesn't have statutory authority to establish, in its fees schedule, any costs relating to redaction. Let such issues be decided on a case-by-case basis via Final Determinations.

Footnote 6: Same problem. Same solution. Scrap it.

#### Additional Notes

Inspection of Redacted Records: Similar problem. Current phraseology is legally contradictory ("An agency may not charge the requester for the redaction itself. However, an agency may charge (in accordance with the OOR's Official Fee Structure) for any copies it must make [to do the redaction]"). The implication is that the agency "must" print paper to perform the redaction. Where does such thinking come from? Certainly not the law. It is the 1950s dinosaur mentality again. Suppose the Requester wanted to inspect a screenshot image that needed to be redacted. Under the current phraseology OOR falls right back into the trap of Footnotes 4 and 6. When in fact the agency might be easily able to redact the screenshot electronically and present it for inspection electronically. By setting fees for things OOR is not authorized to set fees for (redaction costs of e-records) OOR is shutting out legal arguments - good legal arguments - that citizens could otherwise make during an appeal. Instead of adjudicating the law, OOR has fallen into the trap of becoming the law. The solution again is to simply abolish this particular additional note in its entirety.

All other aspects of the OOR's fee schedule are fine as they are. Don't mess with what works. Just fix the stuff that has been ripping citizens off because King OOR has been exceeding its statutory authority.

Do I win a free black sharpie pen if my ideas are deemed the best?

SC.

# **EXHIBIT “B”**



# PENNSYLVANIA INTERSCHOLASTIC ATHLETIC ASSOCIATION, INC.

550 Gettysburg Road • P.O. Box 2008  
Mechanicsburg, Pennsylvania 17055-0708  
(800) 382-1392 • (717) 697-0374  
FAX (717) 697-7721  
WEB SITE: [www.piaa.org](http://www.piaa.org)

December 7, 2020

Mr. Simon Campbell  
668 Stony Hill Road #298  
Yardley, PA 19067

Mr. Campbell:

The purpose of this letter is to respond to the Right To Know Law (RTKL) request sent by you on November 2, 2020 and received by me the same date. Under Section 902 of the RTKL, PIAA requested an extension of 30 days to respond to your request. Our responses to your requests are as follows:

General objection: PIAA is not a Commonwealth authority or entity. It is a 501c(3) nonprofit membership corporation that receives no tax dollars and was not created by an Act of the General Assembly. For this reason, it is not subject to the Pennsylvania Right To Know Law. Please be on notice that it is the intention of PIAA to litigate this issue in response to this request.

## Specific responses:

Request #1: All legal invoices that already exist in electronic form that were paid by PIAA to any and all attorneys/law firms between the dates of January 1, 2012 and the present.

Response #1: PIAA has no documents responsive to this request. Law firms paid by PIAA since 2012 are believed to have thousands of pages of invoices but PIAA is not aware of how many of those are in an electronic format. All such records, if they exist, must be redacted prior to productions.

Request #2: the fronts of all electronic cleared check images that already exist in electronic form for all financial accounts owned/operated by PIAA between the dates of June 1, 2019 and the present.

Response #2: PIAA has no documents that exist which are responsive to this request. The security features of our banking institution do not allow for modification of electronic images to remove confidential information. PIAA also has no current means of obtaining, preserving and producing the requested records in an electronic format.

Request #3: electronic copies of all monthly bank (or other financial institution) statements that already exist in electronic form for all financial records owned or operated by PIAA between the dates of December 1, 2013 and the present.

Response #3: There are no documents that exist which are responsive to this request nor any current means to obtain, preserve and produce electronic files from such institutions in an electronic format.

Request #4: all posted line item transactions in all bank (or other financial institution) accounts that already exist in electronic form for all financial records owned or operated by PIAA between the dates of June 1, 2019 and the present.

Response #4: There are no documents that exist which are responsive to this request nor any current means to obtain, preserve and produce electronic files from such institutions in an electronic format.

Request #5: PIAA's most recent three (3) years of independent audited financial statements that already exist in electronic form.

Response #5: PIAA has requested these records from its auditors but has not yet received them. They will be produced upon receipt.

Request #6: PIAA's most recent Form 990 filing with the IRS that already exist in electronic form.

Response #6: The IRS 990 Form is available for public view on the IRS site. This may be accessed at [www.irs.gov](http://www.irs.gov)

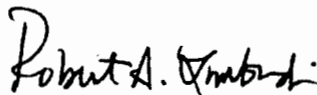
Request #7: all electronic copies of written communications that already exist in electronic form and that were exchanged between PIAA officials' (and between PIAA officials and legal counsel) between the dates of January 1, 2020 and the present that discuss the topic of PIAA being improperly included in the RTKL.

Response #7: There are no documents responsive to this request.

Request #8: Please send me a screenshot image showing the name of the software program in PIAA's possession, custody or control that can perform electronic redactions on PDF files and/or other electronic type files.

Response #8: PIAA is not aware of any record responsive to this request.

Sincerely,



Dr. Robert A. Lombardi  
Executive Director

RAL/bl



# **EXHIBIT “C”**



**pennsylvania**  
OFFICE OF OPEN RECORDS

December 11, 2020

**Via Email Only:**

Mr. Simon Campbell  
668 Stony Hill Rd #298  
Yardley, PA 19067  
parighttoknow@gmail.com

**Via Email Only:**

Robert Lombardi  
Agency Open Records Officer  
Pennsylvania Interscholastic Athletic  
Association (PIAA)  
550 Gettysburg Rd  
Mechanicsburg, PA 17055  
rlombardi@piaa.org

**RE: OFFICIAL NOTICE OF APPEAL - Campbell v. Pennsylvania Interscholastic Athletic Association (PIAA) OOR Dkt. AP 2020-2639**

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 December 10, 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.

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**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.

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## 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.*

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## **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](http://openrecords.pa.gov).

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

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## **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...”

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## **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.

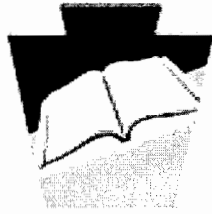
If mediation is successful, the requester will withdraw the appeal. This ensures that the case will not proceed to court — saving both sides time and money.

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.

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# **pennsylvania**

## **OFFICE OF OPEN RECORDS**

**APPEALS OFFICER:**

**Magdalene C. Zeppos-Brown, Esq.**

**CONTACT INFORMATION:**

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

**FACSIMILE:**

**(717) 425-5343**

**EMAIL:**

**mazepposbr@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.

## 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

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**From:** no-reply@openrecordspennsylvania.com  
**Sent:** Thursday, December 10, 2020 6:42 PM  
**To:** parighttoknow@gmail.com  
**Subject:** [External] PA Office of Open Records - Appeal Confirmation

**ATTENTION:** This email message is from an external sender. Do not open links or attachments from unknown sources. To report suspicious email, forward the message as an attachment to [CWOPA\\_SPAM@pa.gov](mailto:CWOPA_SPAM@pa.gov).



**pennsylvania**  
OFFICE OF OPEN RECORDS

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

<b>Name:</b>	Simon Campbell
<b>Company:</b>	
<b>Address 1:</b>	668 Stony Hill Rd #298
<b>Address 2:</b>	
<b>City:</b>	Yardley
<b>State:</b>	Pennsylvania
<b>Zip:</b>	19067
<b>Phone:</b>	267-229-3165
<b>Email:</b>	parighttoknow@gmail.com
<b>Agency (list):</b>	Pennsylvania Interscholastic Athletic Association (PIAA)
<b>Agency Address 1:</b>	550 Gettysburg Rd
<b>Agency Address 2:</b>	
<b>Agency City:</b>	Mechanicsburg
<b>Agency State:</b>	Pennsylvania
<b>Agency Zip:</b>	17055
<b>Agency Phone:</b>	717-697-0374
<b>Agency Email:</b>	rlombardi@piaa.org

<b>Records at Issue in this Appeal:</b>	See attached request. The agency's final answer reflects a denial or deemed denial of all seven (7) request items. The agency's refusal to provide records responsive to all seven (7) request items is challenged on appeal. The agency acted in bad faith/wanton disregard of law by refusing to conduct a timely good faith search for, and timely release of, responsive records that do, in fact, exist.
<b>Request Submitted to Agency Via:</b>	e-mail
<b>Request Date:</b>	11/02/2020
<b>Response Date:</b>	12/07/2020
<b>Deemed Denied:</b>	No
<b>Agency Open Records Officer:</b>	Robert Lombardi
<b>Attached a copy of my request for records:</b>	Yes
<b>Attached a copy of all responses from the Agency regarding my request:</b>	Yes
<b>Attached any letters or notices extending the Agency's time to respond to my request:</b>	Yes
<b>Agree to permit the OOR additional time to issue a final determination:</b>	No
<b>Interested in resolving this issue through OOR mediation:</b>	No
<b>Attachments:</b>	<ul style="list-style-type: none"> <li>• 11-2-20 RTKL Request of PIAA.pdf</li> <li>• 11-6-20 30-Day Extension.pdf</li> <li>• 12-8-20 Final Answer.pdf</li> </ul>

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





# PENNSYLVANIA INTERSCHOLASTIC ATHLETIC ASSOCIATION, INC.

550 Gettysburg Road • P.O. Box 2008  
Mechanicsburg, Pennsylvania 17055-0708  
(800) 382-1392 • (717) 697-0374  
FAX (717) 697-7721  
WEB SITE: [www.plaa.org](http://www.plaa.org)

December 7, 2020

Mr. Simon Campbell  
668 Stony Hill Road #298  
Yardley, PA 19067

Mr. Campbell:

The purpose of this letter is to respond to the Right To Know Law (RTKL) request sent by you on November 2, 2020 and received by me the same date. Under Section 902 of the RTKL, PIAA requested an extension of 30 days to respond to your request. Our responses to your requests are as follows:

General objection: PIAA is not a Commonwealth authority or entity. It is a 501c(3) nonprofit membership corporation that receives no tax dollars and was not created by an Act of the General Assembly. For this reason, it is not subject to the Pennsylvania Right To Know Law. Please be on notice that it is the intention of PIAA to litigate this issue in response to this request.

## Specific responses:

Request #1: All legal invoices that already exist in electronic form that were paid by PIAA to any and all attorneys/law firms between the dates of January 1, 2012 and the present.

Response #1: PIAA has no documents responsive to this request. Law firms paid by PIAA since 2012 are believed to have thousands of pages of invoices but PIAA is not aware of how many of those are in an electronic format. All such records, if they exist, must be redacted prior to productions.

Request #2: the fronts of all electronic cleared check images that already exist in electronic form for all financial accounts owned/operated by PIAA between the dates of June 1, 2019 and the present.

Response #2: PIAA has no documents that exist which are responsive to this request. The security features of our banking institution do not allow for modification of electronic images to remove confidential information. PIAA also has no current means of obtaining, preserving and producing the requested records in an electronic format.

Request #3: electronic copies of all monthly bank (or other financial institution) statements that already exist in electronic form for all financial records owned or operated by PIAA between the dates of December 1, 2013 and the present.

Response #3: There are no documents that exist which are responsive to this request nor any current means to obtain, preserve and produce electronic files from such institutions in an electronic format.

Request #4: all posted line item transactions in all bank (or other financial institution) accounts that already exist in electronic form for all financial records owned or operated by PIAA between the dates of June 1, 2019 and the present.

Response #4: There are no documents that exist which are responsive to this request nor any current means to obtain, preserve and produce electronic files from such institutions in an electronic format.

Request #5: PIAA's most recent three (3) years of independent audited financial statements that already exist in electronic form.

Response #5: PIAA has requested these records from its auditors but has not yet received them. They will be produced upon receipt.

Request #6: PIAA's most recent Form 990 filing with the IRS that already exist in electronic form.

Response#6: The IRS 990 Form is available for public view on the IRS site. This may be accessed at [www.irs.gov](http://www.irs.gov)

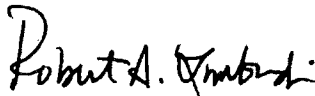
Request #7: all electronic copies of written communications that already exist in electronic form and that were exchanged between PIAA officials' (and between PIAA officials and legal counsel) between the dates of January 1, 2020 and the present that discuss the topic of PIAA being improperly included in the RTKL.

Response #7: There are no documents responsive to this request.

Request #8: Please send me a screenshot image showing the name of the software program in PIAA's possession, custody or control that can perform electronic redactions on PDF files and/or other electronic type files.

Response #8: PIAA is not aware of any record responsive to this request.

Sincerely,



Dr. Robert A. Lombardi  
Executive Director

RAL/bl



# PENNSYLVANIA INTERSCHOLASTIC ATHLETIC ASSOCIATION, INC.

550 Gettysburg Road • P.O. Box 2008  
Mechanicsburg, Pennsylvania 17055-0708  
(800) 382-1392 • (717) 697-0374  
FAX (717) 697-7721  
WEB SITE: [www.plaa.org](http://www.plaa.org)

November 6, 2020

Mr. Simon Campbell  
668 Stony Hill Road #298  
Yardley, PA 19067

Mr. Campbell:

The purpose of this letter is to respond to the Right To Know Law (RTKL) request received by me Sunday, November 1, 2020, but dated by you Monday, November 2, 2020.

Your request requires an extension of time under Section 902 of the RTKL to review and analyze your request, gather any documents responsive to this request, and appropriately consider any sort of confidential and/or privileged information that may be contained in any responsive documents. Therefore, we will provide a response to you on or before Monday, December 7, 2020.

Sincerely,

Dr. Robert A. Lombardi  
Executive Director

RAL/bl



**pennsylvania**  
OFFICE OF OPEN RECORDS

## Standard Right-to-Know Law Request Form

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

**SUBMITTED TO AGENCY NAME:** Pennsylvania Interscholastic Athletic Association (PIAA) (Attn: AORO)

Date of Request: November 2, 2020 Submitted via: ☒ Email ☐ U.S. Mail ☐ Fax ☐ In Person

**PERSON MAKING REQUEST:**

Name: Simon Campbell Company (if applicable): \_\_\_\_\_

Mailing Address: 668 Stony Hill Rd #298

City: Yardley State: PA Zip: 19067 Email: parighttoknow@gmail.com

Telephone: 267-229-3165 Fax: \_\_\_\_\_

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

**RECORDS REQUESTED:** *Be clear and concise. Provide as much specific detail as possible, ideally including subject matter, time frame, and type of record or party names. RTKL requests should seek records, not ask questions. Requesters are not required to explain why the records are sought or the intended use of the records unless otherwise required by law. Use additional pages if necessary.*

**Please see attached and below. The specificity of my request/s is important. Right-to-Know Law (RTKL) legal analysis cannot be assessed against records that are simply not requested. An agency may not amend the request nor attempt to produce records not sought. Only the Requester has authority to define the breadth and scope of the request. 65 P.S. §67.703. See also Section 102 definition of a Record ("Information, regardless of physical form or characteristics ...stored or maintained electronically"). I am exclusively seeking electronic information.**

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

**[No printed copies]** ☒ Yes, electronic copies preferred if available **ONLY (see attached)**

☐ No, in person inspection of records preferred (may request copies later)

Do you want certified copies? ☐ Yes (may be subject to additional costs) ☒ No

RTKL requests may require payment or prepayment of fees. See the Official RTKL Fee Schedule for more details.

Please notify me if fees associated with this request will be more than ☐ \$100 (or) ☒ \$ 0.00.

**ITEMS BELOW THIS LINE FOR AGENCY USE ONLY**

Tracking: \_\_\_\_\_ Date Received: \_\_\_\_\_ Response Due (5 bus. days): \_\_\_\_\_

30-Day Ext.? ☐ Yes ☐ No (If Yes, Final Due Date: \_\_\_\_\_) Actual Response Date: \_\_\_\_\_

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

☐ Appropriate third parties notified and given an opportunity to object to the release of requested records.

NOTE: In most cases, a completed RTKL request form is a public record.  
More information about the RTKL is available at <https://www.openrecords.pa.gov>

Form updated Feb. 3, 2020



## RIGHT TO KNOW LAW REQUEST ITEMS

### Introduction

When I refer to “PIAA” throughout my request items it should be apparent, but is nonetheless here stated for clarity, that I incorporate reference to any and all of the twelve administrative districts of PIAA. These districts may be responsible for their local finances but they are all part of PIAA. It is understood that most people/entities do not manage their finances by storing cash under the bed. They have bank accounts. It is further understood that modern financial institutions provide online banking features where transactions and statements can be viewed online and/or downloaded in electronic form. Given that some financial institutions limit the period of time an account holder can “look back” online for certain records, I posit that PIAA should not delay in preserving requested online banking records for the time periods that I seek because PIAA is required to act in good faith when responding to RTKL requests.

Making a RTKL request is not merely a statutory right in Pennsylvania it is also a constitutionally-protected *Noerr-Pennington* petitioning right under the First Amendment. See *Campbell et al v. PSBA et al*, 336 F. Supp. 3d 482 - Dist. Court, ED Pennsylvania 2018. (“...courts have regularly recognized that statutorily authorized petitions are protected by the First Amendment. E.g., *Herr v. Pequea Twp.*, 274 F.3d 109, 119 n.9 (3d Cir. 2001) (applications to county planning commission); *Brownsville Golden Age Nursing Home, Inc. v. Wells*, 839 F.2d 155, 160 (3d Cir. 1988) (reports to state and federal agencies). There is no reason why petitions pursuant to statutory authority should be given less protection than petitions independent of that authority”); *aff’d* in relevant part by the Third Circuit Court of Appeals, No. 18-3112.

### ITEM 1

Using the cheapest redaction (if necessary), copy, and delivery methods possible, please send me electronic copies of all legal invoices that **already exist in electronic form** that were paid by PIAA to any and all attorneys/law firms between the dates of January 1, 2012 and the present. If legal invoices in the possession or constructive possession of PIAA only exist in paper form then such paper records do not constitute part of my request. No Section 701 analysis should occur on records not requested<sup>1</sup>. Moreover, a Requester defines the scope and breadth of the request, not

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<sup>1</sup> See “[a] record being provided to a Requester ...” 65 P.S. § 67.701. [I am not requesting that paper records be provided. PIAA must not think it can amend my request to provide something I do not want].

PIAA<sup>2</sup>. That said, PIAA must still perform a 'constructive possession' search under Section 901<sup>3</sup> and/or Section 506(d)<sup>4</sup> for responsive electronic records that might exist in the possession of applicable third parties such as the retained lawyers/law firms that generated the requested electronic legal invoices (self-evidently a client 'controls' the attorney-client relationship).<sup>5</sup>

## ITEM 2

Using the cheapest redaction (if necessary), copy, and delivery methods possible, please send me electronic copies of the fronts of all electronic cleared check images that **already exist in electronic form** (e.g. via online banking) for all financial accounts owned/operated by PIAA between the dates of June 1, 2019 and the present. A redacted illustration of what I seek is shown below. Most financial institutions have online banking features where cleared check images can be viewed by the account owner. I am looking for snapshot copies of such check images in whatever electronic form PIAA might wish to take the electronic copies e.g. screenshot capture, print to PDF, etc. I do not authorize PIAA to print any cleared check image to paper because, again, I am not seeking paper copies of electronic records (Requester defines the scope and parameters of the request, not the PIAA; 65 P.S. § 67.703). To the extent the requested electronic cleared check images are not in the PIAA's actual possession I posit that they are in PIAA's constructive possession ("control") via the applicable financial institutions' online banking features. Example:

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<sup>2</sup> 65 P.S. § 67.703 ("[a] written request should identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested").

<sup>3</sup> 65 P.S. § 67.901 ("[w]hether the agency has possession, custody or **control** of the identified record").

<sup>4</sup> 65 P.S. § 67.506(d).

<sup>5</sup> See *Uniontown Newspapers, Inc. v. Pa. Department of Corrections*, 185 A.3d 1161, 1171-72 (Pa. Commw. Ct. 2018) ("When records are not in an agency's physical possession, an open records officer has a **duty to contact agents within its control**, including third-party contractors ... After obtaining potentially responsive records, an agency has the duty to review the records and assess their public nature under ... the RTKL").

## Check Details

X


Item 7 of 29 [Show full image](#) \*

Check Number

Date Posted

Check Amount

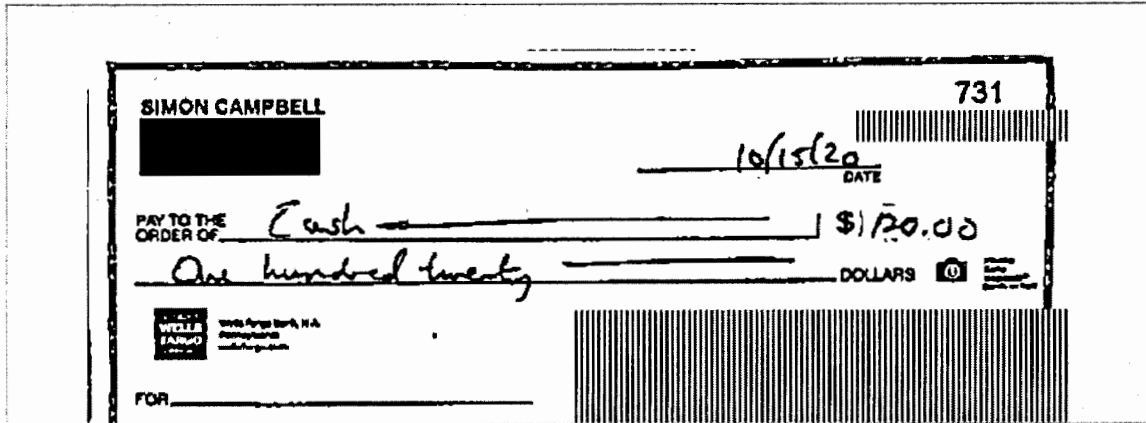
### EXAMPLE OF A CLEARED CHECK IMAGE OBTAINED VIA ONLINE BANKING.

 Print

731

10/15/20

\$120.00



< Previous


File

Zoom

Next >

\* For your security, information like account numbers, signatures, and the ability to view the backs of checks have been removed from the images.

You can see full or partial fronts and backs of the images by using the link at the top of the window.

 Equal Housing Lender

### ITEM 3

Using the cheapest redaction (if necessary), copy, and delivery methods possible, please send me electronic copies of all monthly bank (or other financial institution) statements that **already exist in electronic form** for all financial accounts owned/operated by PIAA between the dates of December 1, 2013 and the present. Again, no paper records are requested. Example:

## Statements and Documents

It's easy to access your account documents online. Wells Fargo offers a secure, convenient, and environmentally friendly way to manage your documents from one central place – helping you reduce clutter and stay organized.

### Related Information

[Request statement copies by mail](#)

[Manage Delivery Preferences](#) >

### Statements and Disclosures

Select account




For time period


Recent statements





### Statements


Deposit account statements are available online for up to 7 years.


 [Statement 09/30/20 \(23K, PDF\)](#)


 [Statement 08/31/20 \(21K, PDF\)](#)


 [Statement 07/31/20 \(21K, PDF\)](#)


 [Statement 06/30/20 \(24K, PDF\)](#)


 [Statement 05/31/20 \(23K, PDF\)](#)


 [Statement 04/30/20 \(22K, PDF\)](#)

 [Statement 03/31/20 \(22K, PDF\)](#)

 [Statement 02/29/20 \(22K, PDF\)](#)

 [Statement 01/31/20 \(23K, PDF\)](#)

 [Statement 12/31/19 \(24K, PDF\)](#)

 [Statement 11/30/19 \(24K, PDF\)](#)

**EXAMPLE OF MONTHLY BANK  
STATEMENTS BEING  
READILY AVAILABLE ONLINE,  
FOR UP TO 7 YEARS, IN  
ELECTRONIC FORM (PDF).**

Wells Fargo will notify you when your account statement is available online. If we do not have a valid email address for you, we cannot provide this notice and will have to switch future online statements to paper statements via U.S. mail. As an online customer, you are responsible for notifying us if you change your email address. Please refer to the [Online Access Agreement](#) for details. If you receive both paper and online statements on an account, we will not notify you by email when your online statement is ready.

## ITEM 4

Using the cheapest redaction (if necessary), copy, and delivery methods possible<sup>6</sup>, please send me all posted line item transactions in all bank (or other financial institution) accounts that **already exist in electronic form** for all financial accounts owned/operated by PIAA between the dates of June 1, 2019 and the present. Again, no paper records are requested. Example:

<sup>6</sup> For Request Item 4 I seek the delivery method of comma delimited (ASCII, Spreadsheet) if it is an available option, otherwise any available electronic form and electronic delivery method will suffice.



## Download Your Account Activity

Personal Accounts [What is this?](#)

**Upgrade to Direct Connect** and you can automatically download all your eligible accounts and pay bills directly through Quicken or QuickBooks - just select Wells Fargo Bank from within your software.

- See fees and learn more about using Online Banking and Bill Pay with Quicken or QuickBooks.
- Need financial management software? Purchase discounted QuickBooks software.

Download your account information by following these steps:

Step 1: Choose an account.<sup>1</sup>

Account

Step 2: Verify the pre-filled date range.<sup>2</sup>

For the selected account, you can download up to 18 months of previous account history.

**Note:** Always confirm "From" and "To" dates before downloading account activity.

Date Range

Step 3: Select a file format to download.<sup>3</sup>

File Format

- ☐ Quicken® (Web Connect)
- ☐ QuickBooks® (Web Connect)
- ☐ QuickBooks® (.jif) (More Information)
- ☐ Comma Delimited (ASCII, Spreadsheet)

Download

<sup>1</sup> Account Disclosures

<sup>2</sup> Only posted transactions are available for download.

Please note that if PIAA downloads the requested line item transactions into a manipulable database format and then redacts certain information I think it is important to identify in the file itself what information has been redacted. Unlike a blacked out image on a document or image file, I cannot visibly "see" if a column, row, or cell box has been deleted.

### ITEM 5

Using the cheapest redaction (if necessary), copy, and delivery methods possible, please send me PIAA's most recent three (3) years of independent audited financial statements that **already exist in electronic form**. If they do not already exist in electronic form then the financial statements are not requested (if necessary, PIAA must check with the auditors to see if the auditors possess them in electronic form).

### ITEM 6

Using the cheapest redaction (if necessary), copy, and delivery methods possible, please send me PIAA's most recent Form 990 filing with the IRS<sup>7</sup> that **already exists in electronic form**. If the requested document does not already exist in electronic form then it is not requested (if necessary, PIAA must check with its Form 990 preparer to see if he/she possesses it in electronic form).

## ITEM 7

This request item stems from my curiosity about a recent Office of Open Records ("OOR") Final Determination, *Francis Scarella & the Daily Item v. PIAA*; Dkt. No. AP 2020-1371. On September 2, 2020, PIAA submitted argument to the OOR via counsel. On page 2 footnote 1 of that pleading, PIAA stated:

*"[PIAA] does not receive any tax money<sup>8</sup> ... Unless all not-for-profit corporations that have schools for members are Commonwealth authorities or entities, PIAA believes that it is improperly included in the RTKL. For purposes of the current proceeding, it has chosen not to object to the request submitted by Requester on this ground nor pursue this issue here as the OOR is not the appropriate venue to address the validity and/or constitutionality of the legislative enactment."*

I quote the above because I wish to be clear what records I am seeking. Using the cheapest redaction (if necessary), copy, and delivery methods possible, please send me electronic copies of all written communications that **already exist in electronic form**, and that were exchanged between PIAA officials (and between PIAA officials and counsel) between the dates of January 1, 2020 and the present, that discuss the topic of PIAA being improperly included in the RTKL.

When I use the term "PIAA officials" I am referring to the PIAA's Board of Directors, Executive Committee (President, Vice President, and Treasurer), and Executive Director. When I use the term "written communications" I am referring to any and all non-verbal communications (examples would include emails, text messages, social media messages) irrespective of whether

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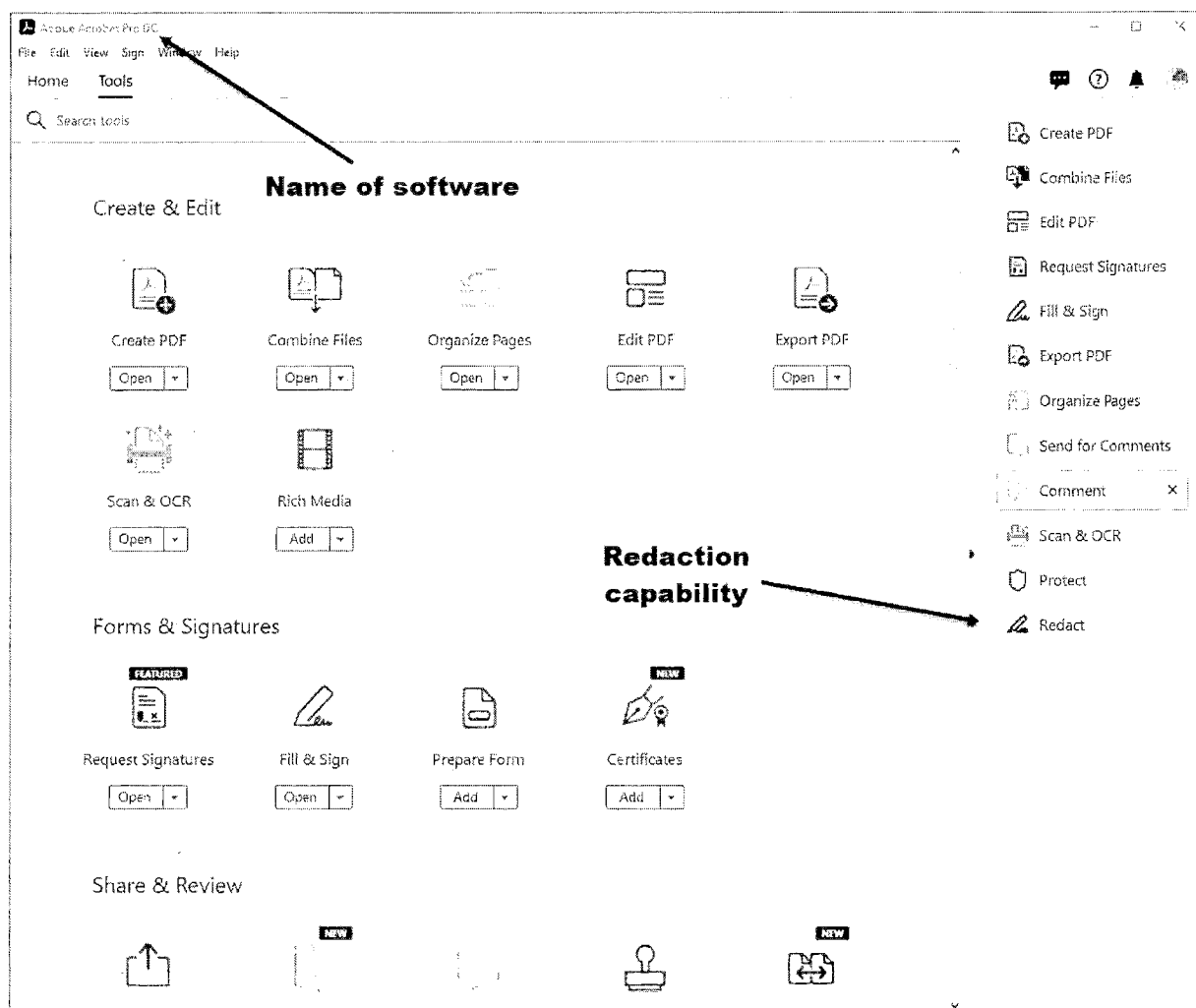
<sup>7</sup> "Return of Organization Exempt from Income Tax" (Form 990).

<sup>8</sup> A disingenuous argument to make. PIAA's member public schools are not private donors. They are public entities funded by taxpayers; and for constitutional purposes PIAA is a pervasively entwined State Actor. *See Brentwood Academy v. Tennessee Secondary School Athletic Association*, 531 U.S. 288 (2001); *also see Campbell et al v. PSBA et al*, 336 F. Supp. 3d 482 - Dist. Court, ED Pennsylvania 2018 (PSBA Motion to Dismiss denied, June 19, 2018). PIAA should not seek to bypass the statutory scheme of the RTKL if wishing to argue that the RTKL is unconstitutional as to PIAA's inclusion. Any legal action taken by PIAA outside of the RTKL, involving my request items, would be First Amendment retaliation. PIAA can make any arguments it likes but it must do so via the RTKL statutory process to which I am clearly entitled. PIAA cannot presume the RTKL is unconstitutional and must therefore follow it. PIAA is required to act in good faith and can be sanctioned if it does not. 65 P.S. § 67.1304. Put plainly, PIAA can hold whatever fanciful legal theories it likes if it wants to sue the Commonwealth of Pennsylvania and have the Attorney General defend against such suit as required by the Commonwealth Attorneys Act. But such fanciful legal theories must be pursued within the confines of the RTKL process. That said, it is hard to imagine any public relations consultant counseling that PIAA use taxpayer-sourced member dues for such a speculative headline-grabbing endeavor. Even harder to imagine the media and general assembly being impressed by such move. If anything, it might trigger the general assembly to add the likes of PSBA into the RTKL. That would be a good amendment. All pervasively entwined State Actors should be accountable to the public that *de facto* funds them.

such communications occurred on the agency officials' personal communication devices. I posit that PIAA's "good faith effort" (Section 901) to search for responsive records necessitates the PIAA's Open Records Officer asking the agency officials to preserve (then release to the Open Records Officer for analysis) all responsive records on any personal communication devices.

### ITEM 8

Please send me a screenshot image showing the name of the software program/s in PIAA's possession, custody or control that can perform electronic redactions on PDF files and/or other electronic file types. By way of example one software program that I use myself to perform such tasks is called Adobe Acrobat Pro:



### POSITION STATEMENT/S OF REQUESTER

It seems from reading the appeal submissions to OOR in *Francis Scarcella and The Daily Item v. Pennsylvania Interscholastic Athletic Association*, OOR Dkt. AP 2020-1371, that PIAA District IV may be run by people unfamiliar with modern banking tools and modern software tools. The

Glenn Fogel (District IV Treasurer) affidavit of September 2, 2020, stated in paragraph 12 “As Treasurer, I keep almost all District IV third party records, such as ...bank records<sup>9</sup>, in paper format” and in paragraph 15 “I am not aware of any records of District IV that were requested by Mr. Scarcella that are kept electronically” . If District IV has a bank account then it is irrelevant what bank records Mr. Fogel personally keeps or what banking facilities he may be unaware of. What is relevant is what online banking facilities he (or the appropriate PIAA official) has the **actual ability to access** even if he has never done it before and even if he isn’t personally aware that online records exist. Ignorance is a not a valid denial argument under the RTKL. The Daily Item newspaper did not press these issues so these issues were not adjudicated. By contrast, I am putting PIAA on notice to think about these issues. If local Treasurers have never done things like set up an online banking username and password, or never accessed online banking records before, it doesn’t mean they can avoid doing it now in response to my request items. PIAA has a *duty* to retrieve what I seek if PIAA possesses or controls access to the records in the electronic medium that I seek them.

Aside from Adobe Acrobat Pro I possess an inexpensive software tool called “Snagit” that, like Adobe Acrobat Pro, can be used to capture screen images and create blacked out areas to redact image files like .gif, .jpg, .tiff, etc. (and do it far more securely than a black sharpie pen on a piece of paper, where holding up the paper to a bright light can reveal the redaction underneath<sup>10</sup>). By no means are these software tool examples meant to be exhaustive of all possibilities for how electronic records may be electronically redacted by PIAA. In 2020, we live in a modern world with modern software tools that are readily available to us.

The particular electronic form of the sought-after electronic copies is irrelevant to my request items. Aside from the the limited (additional) specificity of re: Item 4, PIAA is welcome to use any electronic format and any electronic medium of its choice to grant and deliver my requested items (e.g. image files, database files, document files, etc.). Since fee disputes can be adjudicated separately to PIAA's position on the merits of requested information being public or nonpublic, please do not actually incur any allegedly chargeable fees to process any of my request items without first seeking agreement from me that I will pay the allegedly chargeable fees (see Section 1304; PIAA required to act in good faith<sup>11</sup>). My position is that any redactions (which are not

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<sup>9</sup> The phrase “bank records” was not probed by the Requester but self-evidently it speaks to the existence of a bank account. Should it become relevant here I ask that PIAA attorneys provide careful counsel to affiants, given the potential of a Requester to seek sanctions in court for perjury.

<sup>10</sup> OOR has no statutory authority to include non-defined phrases like “secure redaction” in its fee schedule (footnote 6) when no such phrase exists in the statute. Section 706 (redactions) does not mention either the word “secure” or “securely”. OOR has no statutory authority to set redaction costs on electronic records in its fee schedule. That OOR has acted outside the scope of its statutory authority in establishing its current fee schedule, re: redacting electronic records, cannot be used as a denial basis by PIAA. OOR cannot cite a single case for the premise that it can unilaterally declare, via its fee schedule, that agencies have a “right” to print pieces of paper (at \$0.25 per page cost to the Requester) from electronic records in order to take out a black sharpie pen and redact them. PIAA is obliged to follow the law not OOR’s unlawful power grab.

<sup>11</sup> See also OOR Final Determination, *Francis Scarcella and The Daily Item v. Pennsylvania Interscholastic Athletic Association*, OOR Dkt. AP 2020-1371 (PIAA not entitled to copy fees where Requester objection is on record).

admitted is necessary) on electronic records would need to be performed electronically in accordance with Sections 706 and 1307(g) of the RTKL<sup>12</sup>.

My position (given the specificity of my requests) is that Section 1307(b) – which references the OOR’s fee schedule - is not triggered, at least in terms of redaction, by any of my request items<sup>13</sup>. I do not agree that any paper copy fees can be charged because I am only seeking electronic copies of records that *already exist* in electronic form. Put another way, it is not a ‘necessarily incurred’ cost to print electronic records onto paper in order to redact or copy them.<sup>14</sup>

My position is that the only permissible fees that may be charged to me is the delivery method by which the electronic information is sent. If the granted records are too large to send as e-mail attachments PIAA should seek the lowest cost alternative delivery method to send me the released records. Examples might include mailing me a USB stick or DVD (where the cost of the thumb drive/disc plus postage might be chargeable). Or, even better, PIAA could use a free file-share cloud service like Google Drive, OneDrive, Dropbox etc<sup>15</sup>. I encourage PIAA to enter into constructive dialogue with me about delivery costs rather than assume PIAA is entitled to charge whatever PIAA wants to charge.

If PIAA disagrees with any of my position statements and wishes to charge paper copy fees, please estimate (but do not actually incur) the allegedly chargeable fees into a dollar amount and please explain the rationale behind such position, including providing legal citation as required by Section 903(2) of the RTKL when issuing PIAA’s final answer.

In recent days I googled and found these media stories about PIAA:

“Open records office rules PIAA can’t charge for some documents”  
[https://www.dailyitem.com/news/open-records-office-rules-piaa-cant-charge-for-some-documents/article\\_492b9e20-1557-11eb-9f8a-eb810ce71104.html](https://www.dailyitem.com/news/open-records-office-rules-piaa-cant-charge-for-some-documents/article_492b9e20-1557-11eb-9f8a-eb810ce71104.html)

“Legislators want to discuss District IV concerns with PIAA Oversight Committee”

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<sup>12</sup> Numerous software tools exist – many for free – that can be used to electronically redact a range of different electronic file types. If the PIAA wishes to allege that it doesn’t possess any applicable software redaction tool and further wishes to argue it is under no obligation to obtain one, please state that position when issuing the PIAA’s final answer because my position is that the PIAA would be required to obtain such software tool.

<sup>13</sup> The RTKL only authorizes OOR to establish “fees for duplication” not fees for redaction. 65 P.S. § 67.1307(b)(1). Any necessarily incurred costs for redaction “must be reasonable” and fall under Section 1307(g). See OOR Final Determination, *Mezzacappa v. Colonial Intermediate Unit 20*, Dkt. No. 2019-1922 (“[t]he {PIAA’s} redactions are governed by Section 1307(g) of the RTKL”).

<sup>14</sup> Redaction costs are limited to costs that the “agency **necessarily incurs** ...for complying with the request, and such fees must be reasonable.” 65 P.S. § 67.1307(g) (emphasis added).

<sup>15</sup> Many options exist at no cost. See <https://www.computerworld.com/article/3262636/top-10-file-sharing-options-dropbox-box-google-drive-onedrive-and-more.html>. I encourage PIAA to review the statutory language of Section 1307(g) in this regard (i.e. “**necessarily incurs**” and “such fees must be reasonable”). To me, it seems so, well, 1950s to think of mailing items on a USB stick. I’m not sure it’s necessary. PIAA could probably tap into the expertise of a 14 year high school member to see how to use a free file-share service. If PIAA wants to have a fight about 1307(g) I encourage PIAA to read *Mezzacappa v. Colonial Intermediate Unit 20*, Dkt. No. AP 2019-1922 (July 31, 2010); footnotes 8 & 9.

[https://www.dailyitem.com/news/legislators-want-to-discuss-district-iv-concerns-with-piaa-oversight-committee/article\\_dfe4c2f2-c6be-11ea-956f-f76d6997bd3a.html](https://www.dailyitem.com/news/legislators-want-to-discuss-district-iv-concerns-with-piaa-oversight-committee/article_dfe4c2f2-c6be-11ea-956f-f76d6997bd3a.html)

It seems like there is no love lost between PIAA and the Daily Item newspaper when it comes to the RTKL. But as the Pennsylvania Newspaper Association attorney Melissa Melewsy was quoted in the second article: "PIAA's position on the use of the RTKL is unfortunate ...[t]he RTKL was not intended to be an adversarial process, but one designed to inform the public and improve government function. Reasonableness and collaboration can go a long way in easing the process along."

Indeed so.

I want to know what is going on with the millions of dollars of taxpayer-sourced money that flows into PIAA and I want to understand why PIAA thinks it should be unaccountable to the public for any of that money by suggesting that PIAA not be included in the RTKL. To any extent it may be relevant please know that I intend to publish all released records on the internet.

I look forward to hearing from PIAA within the required five (5) business days.

Sincerely,  
Simon Campbell

PS. OOR recently invited the public to provide input into its decision-making process for the biannual review of its fee schedule. See <https://openrecordspennsylvania.com/2020/10/27/oor-solicits-comments-on-biannual-review-of-rtkl-fee-schedule/>. FYI, to help PIAA better understand my position on copy fees, I attach my own feedback to OOR. I encourage PIAA not to rely on statutory authority that OOR does not possess when deciding what fees PIAA thinks might be chargeable, and instead focus only on what the RTKL says. Put plainly, if the only argument PIAA has about copy fees is "the OOR fee schedule says we can do it" then we have a problem in which OOR could become an indispensable party because there are certain things that OOR is not allowed to say in its fee schedule that PIAA can do.



Simon Campbell &lt;parighttoknow@gmail.com&gt;

## OOR's fee schedule - revisions needed

1 message

Simon Campbell &lt;parighttoknow@gmail.com&gt;

Sat, Oct 31, 2020 at 6:13 PM

To: FeeReviewOOR@pa.gov

Cc: Erik Arneson &lt;earneson@pa.gov&gt;, Nathanael &lt;nbyerly@pa.gov&gt;, "Brown, Charles (OOR)" &lt;charlebrow@pa.gov&gt;, "Lantz-Johnson, Delene" &lt;dlantz-joh@pa.gov&gt;, "Spiess, George" &lt;gespiess@pa.gov&gt;

Dear OOR,

What's the expression for activist Judges? Legislating from the bench, I believe. Why would OOR do that from an administrative office? I was happy to see the general assembly limit OOR's 1307(b) statutory authority to "fees for duplication". I can only assume that whomever fell in love, inside OOR, with a "securely redacting" black sharpie pen several years ago (see current OOR fee schedule footnotes 4 & 6) that person wanted to re-write the RTKL to give more power to OOR than the general assembly gave to OOR.

See OOR Final Determination, page 8:

<https://www.openrecords.pa.gov/Appeals/DocketGetFile.cfm?id=55570>

[Quote]: "With respect to the electronic invoices that were in Dr. Lombardi's possession, the OOR's Fee Schedule does not permit fees to be imposed for redactions, see 65 P.S. § 67.1307(g), but does state that "[i]f a requester seeks records requiring redaction, an agency may copy or print the records to provide for secure redaction. Accordingly, the agency may charge the fees noted above for ... copies, as appropriate."

May I suggest OOR pen more succinct FDs?. The above verbiage - making the exact same legal points - would be better written:

"With respect to the electronic invoices that were in Dr. Lombardi's possession, the OOR's Fee Schedule does not permit fees to be imposed for redactions, see 65 P.S. § 67.1307(g), but OOR does it anyway."

Of course, even the more succinct version doesn't address the underlying cultural problem at OOR. The problem right now, and the reason so many citizens are continuing to be ripped off with unlawful copy fees being imposed on them by an OOR with General Assembly aspirations, is not OOR's fee schedule per se. The structural problem is that OOR is addressing things in its fee schedule that OOR is not allowed to address in its fee schedule.

Specifically, OOR is not statutorily authorized to suggest, infer, or otherwise rule in its fee schedule that agencies have a right to print electronic records onto paper to redact them with a black sharpie pen. That entire mentality at OOR is far removed from OOR's statutory authority in Section 1307(b). OOR may adjudicate but OOR may not legislate. Different agencies might have different costs for e-redaction. Not all agencies possess the same, if any, software redaction tools. "Necessary" costs may vary between agencies. Different arguments may be put forth by different agencies. And the wording of requests may vary between requesters.

Such realities suggest that redaction cost disputes be assessed on a case-by-case basis where OOR acts only as an adjudicator not as a legislator. In setting its upcoming revised fee schedule OOR needs to resist a desire to still be King. Section 1307(b) should be seen as restricting not as all encompassing.

Redaction costs for all **electronic records** are properly analyzed under Section 1307(g) not Section 1307(b). See OOR Final Determination, *Mezzacappa v. Colonial Intermediate Unit 20*, Dkt. No. AP 2019-1922(July 31, 2010)("The Unit's redactions are governed by Section 1307(g) of the RTKL"). The electronic records at issue in *Mezzacappa* were video records. It is absurd for OOR to believe that one type of electronic record (video) can have redaction costs assessed under 1307(g) while another type of electronic record (non-video) has redaction costs assessed under 1307(b). *Mezzacappa* drew its own authority from a PA Supreme Court case. *Easton Area Sch. Dist. v. Miller* 13 MAP 2019, 2020 Pa. LEXIS 3378:

"Thus, insofar as the video itself is a public record subject to disclosure under the RTKL but contains the images of school students which are not subject to disclosure, which, in our view, it is and does, the District is obligated to redact students' images by, for example, blurring or darkening portions of the video revealing the students' identities, and to subsequently provide access to the redacted video." [Footnote 15]: "We do not suggest the District is obligated to finance such redaction, which responsibility may fall either to the District or to the Requester depending upon other laws, policies, or legal directives that are not before the Court in the present appeal."

Notably, the PA Supreme Court did not state that redaction costs on e-records could be established by the OOR in its fee schedule. The OOR's sound reasoning in *Mezzacappa* flowed from this Supreme Court decision. Different facts presented by different cases are going to arise over the issue of redaction costs on **electronic records**. It is not appropriate for OOR to declare or suggest, via its fee schedule, how redactions on electronic records must occur and what the costs associated with such redaction can be.

Part of the challenge is that OOR was operating in the 1920s under Terry Mutchler in terms of being a forward-looking entity. Mr.

Arneson has at least elevated OOR into the 1950s. But all this obsession about paper records is an obsession that only government officials get wrapped up in. What agency does NOT keep its records in some computer form or another? Why are we talking about paper copies in 2020? It is a dinosaur mentality where type-writers and filing cabinets still rule the day. Such dinosaur mentality has been ripping citizens off for years. \$0.25 per page copy fees? Come on. Even if an agency really did live in the 1950s with a type-writer and filing cabinet instead of a computer, you can go to Staples and get paper copies done for \$0.10 per page. As a reminder, OOR is limited in terms of what it can do by the language of Section 1307(b)(2). I Hope someone at OOR is surveying local business entities.

OOR lives in an ivory tower when it comes to seeing the RTKL. It is a sheltered governmental world where OOR never sees the ordinary Requester who gets beaten down with denials and who quits because they think (often, all too correctly) the system is stacked against them. OOR needs to stop listening to the government people and the 'advocacy' self-serving special interest groups who cater to them. OOR needs to re-focus on the ordinary citizen and the law itself. This time around, OOR needs to pay much greater attention to what it is NOT ALLOWED to establish in terms of fees. There can be no King OOR. Section 1307(b) fee-setting needs to be an exercise in restraint. In line with case law and the statutory limits imposed on OOR by the general assembly, I propose the follow changes to the OOR's current fee schedule:

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Footnote 4: Problem. The 1950s dinosaur is in town (i.e. someone still in love with paper records and black sharpie pens). The current phrase "records which require redactions in electronic format" makes no legal sense because the word "records" doesn't differentiate between paper records and electronic records (how can paper records "require" electronic redaction?). Redactions for paper records have costs assessed under 1307(b) whereas redactions for electronic records have costs assessed under 1307(g). Solution: eliminate this footnote in its entirety. Stop telling agencies they can live in the 1950s. Stop legislating. OOR doesn't have statutory authority to establish, in its fees schedule, any costs relating to redaction. Let such issues be decided on a case-by-case basis via Final Determinations.

Footnote 6: Same problem. Same solution. Scrap it.

#### Additional Notes

Inspection of Redacted Records: Similar problem. Current phraseology is legally contradictory ("An agency may not charge the requester for the redaction itself. However, an agency may charge (in accordance with the OOR's Official Fee Structure) for any copies it must make [to do the redaction]"). The implication is that the agency "must" print paper to perform the redaction. Where does such thinking come from? Certainly not the law. It is the 1950s dinosaur mentality again. Suppose the Requester wanted to inspect a screenshot image that needed to be redacted. Under the current phraseology OOR falls right back into the trap of Footnotes 4 and 6. When in fact the agency might be easily able to redact the screenshot electronically and present it for inspection electronically. By setting fees for things OOR is not authorized to set fees for (redaction costs of e-records) OOR is shutting out legal arguments - good legal arguments - that citizens could otherwise make during an appeal. Instead of adjudicating the law, OOR has fallen into the trap of becoming the law. The solution again is to simply abolish this particular additional note in its entirety.

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All other aspects of the OOR's fee schedule are fine as they are. Don't mess with what works. Just fix the stuff that has been ripping citizens off because King OOR has been exceeding its statutory authority.

Do I win a free black sharpie pen if my ideas are deemed the best?

SC.



# **EXHIBIT “D”**



# pennsylvania

OFFICE OF OPEN RECORDS

## FINAL DETERMINATION

IN THE MATTER OF

SIMON CAMPBELL,  
Requester

v.

PENNSYLVANIA  
INTERSCHOLASTIC ATHLETIC  
ASSOCIATION, INC.,  
Respondent

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Docket No.: AP 2020-2639

## INTRODUCTION

Simon Campbell (“Requester”) submitted a request (“Request”) to the Pennsylvania Interscholastic Athletic Association, Inc. (“PIAA”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking, among other records, various legal invoices and check copies. The PIAA partially denied the Request, asserting that certain records do not exist. The Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **granted in part** and **denied in part**, and the PIAA is required to take further action as directed.

## FACTUAL BACKGROUND

On November 2, 2020, the Request was filed, seeking:

1. ... [E]lectronic copies of all legal invoices that already exist in electronic form that were paid by [the] PIAA to any and all attorneys/law firms between the dates of January 1, 2012 and the present....
2. [E]lectronic copies of the fronts of all electronic cleared check images that already exist in electronic form ... for all financial accounts owned/operated by [the] PIAA between the dates of June 1, 2019 and the present....
3. [E]lectronic copies of all monthly bank (or other financial institution) statements that already exist in electronic form for all financial accounts owned/operated by [the] PIAA between the dates of December 1, 2013 and the present.
4. [A]ll posted line item transactions in all bank (or other financial institution) accounts that already exist in electronic form for all financial accounts owned/operated by [the] PIAA between the dates of June 1, 2019 and the present....
5. [The] PIAA's most recent three (3) years of independent audited financial statements that already exist in electronic form....
6. [The] PIAA's most recent Form 990 filing with the IRS that already exists in electronic form....
7. [E]lectronic copies of all written communications that already exist in electronic form, and that were exchanged between [the] PIAA officials (and between [the] PIAA officials and counsel) between the dates of January 1, 2020 and the present that discuss the topic of [the] PIAA being improperly included in the RTKL....
8. [A] screenshot image showing [the Requester] the name of the software program/s in [the] PIAA's possession, custody or control that can perform electronic redactions on PDF files and/or other electronic file types....

On November 6, 2020, the PIAA invoked a thirty-day extension of time, 65 P.S. § 67.902(b), to respond to the Request. On December 7, 2020, the PIAA partially denied the Request, asserting that records responsive to Items 1, 2, 3, 4, 7 and 8 do not exist. With respect to Item 5, the PIAA stated that it "requested these records from its auditors but has not yet received them" and the records "will be produced upon receipt." In response to Item 6 of the Request, the PIAA directed the Requester to the IRS's publicly available website, [www.irs.gov](http://www.irs.gov). The PIAA also noted a

“[g]eneral objection” to the Request, stating that the PIAA “is not a Commonwealth authority or entity” that is subject to the RTKL and that it intended “to litigate this issue in response to th[e] [R]equest.”

On December 10, 2020, the Requester appealed to the OOR, challenging the denial and stating grounds for disclosure. The OOR invited both parties to supplement the record and directed the PIAA to notify any third parties of their ability to participate in this appeal. *See* 65 P.S. § 67.1101(c).

On December 21, 2020, the PIAA filed a Motion to Stay Proceedings (“Motion”), asserting that the instant appeal should be stayed pending the Commonwealth Court’s consideration of the PIAA’s Petition for Review in the Nature of a Complaint for Declaratory and Injunctive Relief, which was filed with the Commonwealth Court on December 18, 2020. On December 21, 2020, the OOR afforded the Requester the opportunity to respond to the PIAA’s Motion. On December 22, 2020, the Requester submitted his response to the PIAA’s Motion, stating that he objects to the Motion. Also, on December 22, 2020, the OOR informed the parties that the PIAA’s Motion was denied, and the OOR set forth deadlines for the parties to submit evidence in the appeal.

On December 30, 2020, the PIAA submitted a position statement reiterating its grounds for denial. The PIAA also contends that the PIAA is not subject to the RTKL and that application of the RTKL to the PIAA “constitutes unconstitutional special legislation.” The PIAA further argues that the RTKL violates the PIAA’s “equal protection rights under the United States and Pennsylvania Constitutions,” and that disclosure of certain banking information “would violate privacy rights.” The PIAA also submitted the affidavit, made under penalty of perjury, of Dr. Robert Lombardi (“Dr. Lombardi”), Executive Director and Open Records Officer of the PIAA.

On December 31, 2020, the Requester made a submission, requesting that the record in this matter remain open an additional two or three business days. On the same day, the PIAA made a submission, asserting that because the Requester “submitted no timely response ... addressing any of the issues identified in the denial letter, argument on those issues in a submission addressing assertedly newly raised issues would be untimely and should not be permitted.” Also, on December 31, 2020, the Requester submitted a reply to the PIAA’s submission, stating, in part, that the PIAA acted in bad faith. On the same day, the OOR notified the parties that the record would remain open through January 5, 2021.

On January 4, 2021, the Requester made a submission, indicating that he was “ask[ing the Pennsylvania Office of the Attorney General (“AG’s Office”)] to make sure the appropriate attorney from the AG’s [O]ffice asserts the Commonwealth’s direct interest into this appeal via Section 1101(c)(1) of the RTKL.” The Requester’s submission also included a letter to the AG’s Office.

On January 5, 2021, the PIAA submitted a supplemental position statement, asserting, in part, that “any submission by [the] Requester relating to responses presented in [the] PIAA’s letter of December 7, 2020 should be rejected as untimely.”<sup>1</sup> On the same day, the Requester submitted a supplemental position statement, stating, in part, that “[a]ny and all redaction arguments not raised thus far have similarly now been waived” and requesting that the OOR “issue an advisory opinion finding that [the] PIAA and its counsel acted in bad faith and in wanton disregard of [the] law.”

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<sup>1</sup> Of note, to develop the record in this matter, all submissions of both parties were considered. See 65 P.S. § 67.1102(b)(3) (stating that “the appeals officer shall rule on procedural matters on the basis of justice, fairness and the expeditious resolution of the dispute”).

## LEGAL ANALYSIS

“The objective of the Right to Know Law ... is to empower citizens by affording them access to information concerning the activities of their government.” *SWB Yankees L.L.C. v. Wintermantel*, 45 A.3d 1029, 1041 (Pa. 2012). Further, this important open-government law is “designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials and make public officials accountable for their actions.” *Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), *aff’d* 75 A.3d 453 (Pa. 2013).

The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. § 67.503(a). An appeals officer is required “to review all information filed relating to the request.” 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. The decision to hold a hearing is discretionary and non-appealable. *Id.* The law also states that an appeals officer may admit into evidence testimony, evidence and documents that the appeals officer believes to be reasonably probative and relevant to an issue in dispute. *Id.* Here, neither party requested a hearing; however, the OOR has the necessary information and evidence before it to properly adjudicate the matter.

The PIAA is a Commonwealth agency<sup>2</sup> subject to the RTKL that is required to disclose public records. 65 P.S. § 67.301. Records in the possession of a Commonwealth agency are presumed public unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. An agency bears the burden of proving the applicability of any cited exemptions. *See* 65 P.S. § 67.708(b).

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<sup>2</sup> This is addressed in further detail in Section 1 of this Final Determination.

Section 708 of the RTKL places the burden of proof on the public body to demonstrate that a record is exempt. In pertinent part, Section 708(a) states: “(1) The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence.” 65 P.S. § 67.708(a). Preponderance of the evidence has been defined as “such proof as leads the fact-finder ... to find that the existence of a contested fact is more probable than its nonexistence.” *Pa. State Troopers Ass’n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Pa. Dep’t of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)). Likewise, “[t]he burden of proving a record does not exist ... is placed on the agency responding to the right-to-know request.” *Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

### **1. The PIAA is subject to the RTKL**

As a preliminary matter, the PIAA argues that because it is not a Commonwealth authority or entity, it is not subject to the requirements of the RTKL. Specifically, the PIAA contends that “[a]s [the] PIAA does not meet the definition of State-affiliated entity, nor is it included within the scope of the RTKL based on any other provision, the RTKL is not applicable to [the] PIAA and the OOR has no jurisdiction over requests for records made to [the] PIAA.”<sup>3</sup>

Under the RTKL, the term “State-affiliated entity” is defined as “[a] Commonwealth authority or Commonwealth entity. The term includes the ... *Pennsylvania Interscholastic Athletic Association*....” 65 P.S. § 67.102 (emphasis added). Additionally, the term “Commonwealth

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<sup>3</sup> Along these lines, the PIAA also maintains that application of the RTKL to the PIAA “constitutes unconstitutional special legislation” and that the RTKL violates the PIAA’s “equal protection rights under the United States and Pennsylvania Constitutions.” However, the PIAA also states that it “recognizes that the OOR does not have the authority to grant declaratory and/or equitable relief on a challenge to the constitutionality of a statute. *See Pa. Indep. Oil & Gas Ass’n v. [Pa.] Dep’t of Envtl. Prot.*, 135 A.3d 1118, 1129 (Pa. Commw. 2015).” Accordingly, these issues will not be addressed in this Final Determination.

agency” is defined to include “[a]ny office, department, authority, board, multistate agency or commission of the executive branch, an independent agency and a *State-affiliated entity*.” *Id.* (emphasis added). As such, under the RTKL, the PIAA is defined as a State-affiliated entity and is considered a Commonwealth agency. Pursuant to the clear language of the RTKL, “[a] Commonwealth agency shall provide public records in accordance with [the RTKL].” 65 P.S. § 67.301(a).

In light of the above statutory language, the OOR has repeatedly determined that the RTKL applies to the PIAA. *See, e.g., Scicchitano v. PIAA*, OOR Dkt. AP 2019-1504, 2019 PA O.O.R.D. LEXIS 1521; *Palattella v. PIAA*, OOR Dkt. AP 2018-0743, 2018 PA O.O.R.D. LEXIS 747. To hold otherwise would disregard the legislative intent behind the RTKL to promote government transparency and would also ignore the Legislature’s unambiguous directive that the RTKL applies to the PIAA.

## **2. Records responsive to Item 1 of the Request are subject to disclosure**

Item 1 of the Request seeks electronic copies of “all legal invoices that already exist in electronic form that were paid by [the] PIAA to any and all attorneys/law firms between the dates of January 1, 2012 and the present....” While the PIAA asserts that it “receives its legal invoices in paper format,” the PIAA further states that it “has requested electronic copies of the records from its law firms.” In support, Dr. Lombardi affirms, in part, as follows:

40. [The] PIAA has no responsive records in an electronic format.

41. [The] PIAA receives its legal invoices in a paper format.

42. I have requested electronic records from law firms which we have used but have not received them.

43. There are several thousand pages of such invoices.

44. Once the records arrive, they will need to be redacted.



45. It will take weeks to do so since none of those documents are ... currently in a redacted format and must be created by [the] PIAA.
46. Our standard redaction process involves going through entries on each printed invoice.
47. I had recently undertaken this task with the same requested records pursuant to an earlier request by another individual for the same documents, so I know how long the effort will take. However, those redacted records were destroyed once the requester informed [the] PIAA that he would not pay for the costs of reproduction. That destruction occurred prior to receiving [the R]equest. Consequently, I would need to replicate the process here.

Under the RTKL, a sworn affidavit is generally competent evidence to sustain an agency's burden of proof. *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). In the absence of any competent evidence that the PIAA acted in bad faith, "the averments in [the affidavit] should be accepted as true." *McGowan v. Pa. Dep't of Env'tl. Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014) (citing *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)).

Here, while the PIAA states that the relevant invoices "will need to be redacted," the PIAA presents no evidence in support of any redactions. Specifically, the PIAA's submissions fail to indicate what would need to be redacted and the basis for such redactions. Notably, although the PIAA states that it is waiting to receive the responsive invoices in electronic form from its attorneys, the PIAA acknowledges that it has in its possession the invoices in paper format. As such, the PIAA has had the opportunity to review the responsive invoices and determine any necessary redactions. Moreover, the fact that a request may entail retrieving a large number of documents does not relieve the agency's duty to comply with the RTKL. *See Pa. Dep't of Env'tl. Prot. v. Legere*, 50 A.3d 260, 265 (Pa. Commw. Ct. 2012); *see also Ruggiero v. Lackawanna County*, OOR Dkt. AP 2014-0043, 2014 PA O.O.R.D. LEXIS 157 ("[A] request involving the

detailed review of voluminous documents does not relieve the agency of its requirements to presume the records are open and available and [to] respond in accordance with the RTKL”); *Falcetta v. Grove City Area Sch. Dist.*, OOR Dkt. AP 2018-0908, 2018 PA O.O.R.D. LEXIS 908. Accordingly, to the extent the legal invoices currently exist in electronic format, they are subject to disclosure.<sup>4</sup> See 65 P.S. § 67.708(a)(1).

**3. Portions of the records responsive to Items 2, 3 and 4 of the Request are subject to disclosure**

Items 2, 3 and 4 of the Request seek various check images, bank statements and posted line-item transactions from the PIAA. The PIAA contends that “information on a check, including the account number, must be redacted to protect [the PIAA’s] privacy interests.” Section 708(b)(6) of the RTKL exempts from disclosure “personal financial information,” which the RTKL defines as “[a]n individual’s personal credit, charge or debit information; bank account information; bank, credit or financial statements; account or PIN numbers and other information relating to an individual’s personal finances.” 65 P.S. § 67.102; 65 P.S. § 67.708(b)(6). Because bank account numbers constitute “bank account information” of the PIAA, it is expressly exempt under Section 708(b)(6). See *Murray v. Pa. Dep’t of Health and GGNSC Lancaster, LLP d/b/a Golden Living Center-Lancaster*, OOR Dkt. AP 2017-0461, 2017 PA O.O.R.D. LEXIS 1361 (finding the bank account number of a nursing home the department contracts with to be exempt from disclosure pursuant to Section 708(b)(6)); *Berney v. Sch. Dist. of Phila.*, OOR Dkt. AP 2016-1390, 2016 PA O.O.R.D. LEXIS 1426 (finding the bank account number of a law firm that the district contracts with to be exempt from disclosure pursuant to Section 708(b)(6)). Therefore, the PIAA may redact its bank account numbers from the responsive records.

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<sup>4</sup> However, if the records only exist in hard copy, the PIAA is not required to convert those records into electronic copies. See 65 P.S. § 67.705.

With respect to the remaining portions of responsive records, Dr. Lombardi affirms, in part, as follows:

50. Recent years have shown the risk to corporations from hacks of their banking and other records. Disclosure of banking account information has been determined to considerably increase those risks.
51. Additionally, assembly and redaction of the requested records is not realistically feasible. There are many thousands of individual checks which must be reviewed and redacted.
52. [The] PIAA is divided into twelve administrative districts, each ... using separate banks, almost all using volunteer treasurers working with physical, not electronic records.
53. Assembling, redaction and production of the requested records would be extremely difficult.
54. Even at the headquarters level alone, [the] PIAA pays thousands of workers (officials, referees, ticket takers, security, maintenance staff, health officials, etc.) for each season.
55. As an example, the printout of just the records for a single season of [the] PIAA's basketball tournament is over 600 pages.
56. Multiply that by 22 sports and a number of years, and then multiply that by 12 separate districts, and it quickly becomes apparent that tens of thousands of records must be reviewed, potentially redacted, and then produced.
57. Just on these requests, I estimate that it would take a full-time employee three to four months to properly comply with the [R]equest.
58. This would significantly impact on the operations of [the] PIAA.

As previously stated, the fact that a request may entail retrieving a large number of records does not relieve the agency's duty to comply with the RTKL. *See Legere*, 50 A.3d at 265. The OOR notes that an agency which does not have sufficient time to locate and review responsive records is entitled to apply to the OOR for additional time under the Commonwealth Court's decision in *Pa. State Sys. of Higher Educ. v. Ass'n of State Coll. & Univ. Faculties* ("APSCUF"), where the Commonwealth Court determined:

The agency making such a claim has to provide the OOR with a valid estimate of the number of documents being requested, the length of time that people charged with reviewing the request require to conduct this review, and if that request involves documents in electronic format the agency must explain any difficulties it faces when attempting to deliver the documents in that format. Based on the above information, the OOR can then grant any additional time warranted so that the agency can reasonably discern whether any exemptions apply.

142 A.3d 1023, 1032 (Pa. Commw. Ct. 2016).

In this instance, the PIAA did not seek any such extension under *APSCUF*. Rather, the PIAA argues that “[t]he appeal seeking these records should be rejected.” Because the PIAA did not set forth any basis for exemptions from public access, any records responsive to Items 2, 3 and 4 of the Request that currently exist in electronic format are subject to disclosure, subject to redactions of the PIAA’s bank account numbers, as directed above.

#### **4. Records responsive to Item 5 of the Request are subject to disclosure**

Item 5 of the Request seeks the PIAA’s “most recent three (3) years of independent audited financial statements that already exist in electronic form.” In response, the PIAA states that it agrees to provide the records to the Requester, once it receives them in electronic format from the PIAA’s auditors. Specifically, Dr. Lombardi affirms that the PIAA “receives its audited financial statements in hard copy format from its auditors. Upon receipt of the [R]equest, I asked our auditors for electronic copies if they exist. Once they are obtained, I will provide them to [the Requester].”

As the PIAA agrees to provide the responsive records and has not presented any argument in support of withholding the responsive records, 65 P.S. § 67.708(a)(1), to the extent that the PIAA’s auditors have the records responsive to Item 5 of the Request in electronic format, they are subject to public access.

**5. The PIAA provided electronic access to records responsive to Item 6 of the Request**

In response to Item 6 of the Request, which seeks the PIAA's "most recent Form 990 filing with the IRS that already exist in electronic form," the PIAA directed the Requester to the IRS's website, [www.irs.gov](http://www.irs.gov). The PIAA argues that its response to this portion of the Request "was correct and appropriate." Section 704(b) of the RTKL permits an agency to respond to a request for records "by notifying the requester that the record is available through publicly accessible electronic means[.]" 65 P.S. § 67.704(b)(1). If a requester is unwilling or unable to access the records electronically, the requester may "submit a written request to the agency to have the record converted...." 65 P.S. § 67.704(b)(2). If the requester does not timely do so, an agency has no further obligation under the RTKL relative to a requester's access to the particular requested record(s). An appeal to the OOR is not "a written request to the agency to have the record converted" such that it triggers an agency's responsibility to take further action pursuant to Section 704(b)(2) of the RTKL. *Borden v. Ridgebury Twp.*, OOR Dkt. AP 2011-1460, 2011 PA O.O.R.D. LEXIS 1223.

Here, Dr. Lombardi affirms that "[a]s those records already exist in electronic format on the IRS website, I referred him to those documents." Under the RTKL, a sworn affidavit may serve as sufficient evidentiary support. *See Sherry*, 20 A.3d at 520-21; *Moore*, 992 A.2d at 909. The OOR has previously held that directing a requester to an internet website for the responsive records satisfies an agency's obligations under Section 704 of the RTKL. *See Rowbottom v. Dauphin County*, OOR Dkt. AP 2019-0472, 2019 PA O.O.R.D. LEXIS 542; *Citizens for Pennsylvania's Future v. Pa. Turnpike Comm'n*, OOR Dkt. AP 2015-0726, 2015 PA O.O.R.D. LEXIS 856. As such, the PIAA's response regarding Item 6 of the Request satisfies the requirements under Section 704 of the RTKL.

**6. The PIAA has demonstrated that records responsive to Item 7 of the Request do not exist**

In response to Item 7 of the Request, the PIAA contends that there are no responsive records. In support, Dr. Lombardi affirms, in part, as follows:

30. [Item] 7 of [the Request] sought copies of all written communications between [the] PIAA officials, including legal counsel between January 1, 2020 and the date of [the Request] “that discuss the topic of [the] PIAA being improperly included in the RTKL.”
31. I conducted a thorough search of all [the] PIAA records relating to that topic and found no responsive records.
32. I am also aware that any communications on that subject would be limited to me and legal counsel as no other PIAA official was involved in 2020 in discussion of that issue as of the date of the [R]equest.
33. I am also aware that all communications between me and legal counsel on that topic in 2020 were oral. There were no 2020 written communications on that subject prior to submission of the [R]equest.

Under the RTKL, a sworn affidavit may serve as sufficient evidentiary support for the nonexistence of records. *See Sherry*, 20 A.3d at 520-21; *Moore*, 992 A.2d at 909. Based on the evidence provided—the affidavit of the PIAA’s Executive Director and Open Records Officer, who would have the capacity to search for responsive records—the PIAA has demonstrated that it conducted a good faith search for responsive records. *See Hays v. Pa. State Police*, OOR Dkt. AP 2015-0193, 2015 PA O.O.R.D. LEXIS 294 (finding that an agency conducted a good faith search by “contact[ing] the Bureau most likely to possess responsive records, and ... explain[ing] why that Bureau is most likely to possess those records”); *Yakim v. Municipality of Monroeville*, OOR Dkt. AP 2017-1946, 2017 PA O.O.R.D. LEXIS 1685. Accordingly, the PIAA has met its burden of proof that it does not possess records responsive to Item 7 of the Request. *See Hodges*, 29 A.3d at 1192.

**7. The PIAA has failed to demonstrate that records responsive to Item 8 do not exist**

The PIAA asserts that records responsive to Item 8 of the Request, which seeks a “screenshot image showing ... the name of the software program/s in [the] PIAA’s possession, custody or control that can perform electronic redactions on PDF files and/or other electronic file types,” does not exist. In support, Dr. Lombard affirms that he “conducted a search of the PIAA records and did not locate any existing screen shot responsive to the [R]equest.”

In response to a request for records, “an agency shall make a good faith effort to determine if ... the agency has possession, custody or control of the record[.]” 65 P.S. § 67.901. While the RTKL does not define the term “good faith effort,” in *Uniontown Newspapers, Inc. v. Pa. Dep’t of Corr.*, the Commonwealth Court concluded that:

As part of a good faith search, the open records officer has a duty to advise all custodians of potentially responsive records about the request, and to obtain all potentially responsive records from those in possession.... When records are not in an agency’s physical possession, an open records officer has a duty to contact agents within its control, including third-party contractors.... After obtaining potentially responsive records, an agency has the duty to review the record and assess their public nature under ... the RTKL.

185 A.3d 1161, 1171-72 (Pa. Commw. Ct. 2013) (internal citations omitted); *see also Rowles v. Rice Twp.*, OOR Dkt. AP 2014-0729, 2014 PA O.O.R.D. LEXIS 602 (citing *Judicial Watch, Inc. v. United States Dep’t of Homeland Sec.*, 857 F.Supp.2d 129, 138-39 (D.D.C. 2012)). Additionally, the Commonwealth Court has held that an open records officer’s inquiry of agency members may constitute a “good faith effort” to locate records, stating that open records officers have:

a duty to inquire of [agency personnel] as to whether he or she was in the possession, custody or control of any of the ... requested emails that could be deemed public and, if so, whether the emails were, in fact, public and subject to disclosure or exemption from access by [r]equest[e]r.

*Mollick v. Twp. of Worcester*, 32 A.3d 859, 875 (Pa. Commw. Ct. 2011); *see also In re Silberstein*, 11 A.3d 629, 634 (Pa. Commw. Ct. 2011) (holding that it is “the open-records officer’s duty and responsibility” to both send an inquiry to agency personnel concerning a request and to determine whether to deny access).

In this instance, although Dr. Lombardi affirms that he conducted a search for responsive records, Dr. Lombardi does not provide any additional information regarding the search he conducted, including what steps he took in conducting his search. Notably, Dr. Lombardi’s affidavit does not indicate if he inquired of other relevant personnel, such as the PIAA’s IT Department, to determine if there were any applicable software programs. Accordingly, the evidence submitted by the PIAA fails to demonstrate that the PIAA does not possess records responsive to Item 8 of the Request. Therefore, the PIAA has not proven that it conducted a good faith search in response to Item 8 of the Request. *See Mollick v. Worcester Twp.*, OOR Dkt. AP 2018-2153, 2019 PA O.O.R.D. LEXIS 90 (finding that “[w]ithout identifying the potentially responsive emails possessed by the [t]ownship’s Supervisors and providing them to [the township’s Open Records Officer], the [t]ownship is unable to prove that it conducted a good faith search...”).

The OOR is mindful that an agency cannot produce records that do not exist within its “possession, custody or control” and, accordingly, is not ordering the creation of any records. Absent the PIAA providing a sufficient evidentiary basis that no responsive records exist, the OOR will order disclosure of responsive public records. *See Sindaco v. City of Pittston*, OOR Dkt. AP 2010-0778, 2010 PA O.O.R.D. LEXIS 755; *Schell v. Delaware County*, OOR Dkt. AP 2012-0598, 2012 PA O.O.R.D. LEXIS 641.



## **8. The OOR declines to make a finding of bad faith**

The Requester asks that the OOR make a finding of bad faith. Specifically, the Requester maintains that “[o]ther than writing *something* to me in a timely manner I cannot find any aspect of the RTKL that has been complied with.” (emphasis in original). While the OOR may make findings of bad faith, only the courts have the authority to impose sanctions on agencies. *See generally* 65 P.S. § 67.1304(a) (noting that a court “may award reasonable attorney fees and costs of litigation ... if the court finds ... the agency receiving the ... request willfully or with wanton disregard deprived the requester of access to a public record ... or otherwise acted in bad faith....”); 65 P.S. § 67.1305(a) (“A court may impose a civil penalty of not more than \$1,500 if an agency denied access to a public record in bad faith”).

In this instance, the PIAA properly extended its time to respond to the Request by thirty days, 65 P.S. § 67.902(b)(2), and, ultimately, issued its response in a timely manner. Moreover, while the OOR disagrees with the PIAA’s legal arguments regarding whether it is subject to the RTKL, the OOR declines to make a finding of bad faith on that basis. Likewise, the PIAA’s assertion that certain records do not exist, or that responding to portions of the Request “would significantly impact on the operations of [the] PIAA” does not rise to the level of bad faith.

## **CONCLUSION**

For the foregoing reasons, the Requester’s appeal is **granted in part** and **denied in part**, and the PIAA is required to provide responsive records, as directed above, within thirty days. Within thirty days of the mailing date of this Final Determination, any party may appeal to the Commonwealth Court. 65 P.S. § 67.1301(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond as per Section 1303 of the RTKL. However, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a

proper party to any appeal and should not be named as a party.<sup>5</sup> This Final Determination shall be placed on the OOR website at: <https://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: January 13, 2021**

*/s/ Magdalene C. Zeppos-Brown*

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MAGDALENE C. ZEPPOS-BROWN, ESQ.  
APPEALS OFFICER

Sent to: Simon Campbell (via email only);  
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Dr. Robert Lombardi, AORO (via email only)

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