



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

:

**MATTHEW CORNETTI,
Requester**

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:

:

v.

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Docket No: AP 2021-2891

:

(CONSOLIDATED)

:

**BUTLER COUNTY,
Respondent**

:

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On December 8, 2021, Matthew Cornetti (“Requester”) submitted two requests (collectively, “Requests”) to Butler County (“County”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, the first Request seeking:

...all ballot images officially counted in the 2020 General Election for the Middlesex Twp South precinct.

The second Request seeking:

...all ballot images officially counted in the 2020 General Election for the Middlesex Twp North precinct.

On December 9, 2021, the County denied the Request, arguing that to the extent the Requests seek copies of ballots, the Voter Registration Act governs the accessibility of voter registration information and the RTKL does not apply.

On December 16, 2021, the Requester appealed to the Office of Open Records (“OOR”),¹ challenging the denial and stating grounds for disclosure. Specifically, the Requester argues that responsive records would not require inspection of the voting machines and would only require the County to download the information onto a USB drive. The OOR invited both parties to supplement the record and directed the County to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On January 6, 2022, the County submitted two position statements, arguing that the records are not accessible under the RTKL, but rather, accessibility is governed by the Pennsylvania Election Code (“Code”), 25 P.S. § 2648. In support of its position, the County submitted the affidavits of Maria Malloy, the County’s Open Records Officer.

Records in the possession of a local agency are presumed public unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. Section 708 of the RTKL places the burden of proof on the public body to demonstrate that a record is exempt. In pertinent part, Section 708(a) states: “(1) The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence.” 65 P.S. § 67.708(a)(1). Preponderance of the evidence has been defined as “such proof as leads the fact-finder ... to find that the existence of a contested fact is more probable than its nonexistence.” *Pa. State Troopers Ass’n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011)

¹ The Requester filed two appeals arising from the substantially similar Requests, docketed as OOR Dkt. AP 2021-2891 and OOR Dkt. AP 2021-2892. Because the appeals involved the same agency, requester, and similar requests, the appeals were consolidated into OOR Dkt. AP 2021-2891. *See* 65 P.S. § 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”).

(quoting *Pa. Dep't of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

In this case, the Requester argues that because “contents of voting machines” is not defined by statute, electronic copies of ballots or “ballot images” are not covered by statute and are therefore accessible because the information can be accessed by the County and provided to the Requester.

In response, the County provided the affidavit of Ms. Malloy, explaining that the Code governs access to records and specifically exempts the records sought here. The Election Code provides as follows:

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

25 P.S. § 2648 (emphasis added). Although the Requester argues that the Code does not define “contents of the ballot box and voting machines,” the Code explicitly provides that the contents of ballot boxes are not public records. Here, the Requests clearly seek the contents of the ballot box and/or voting machines because they seek “copies of ballot images,” whether those be physical or electronic copies of ballots, which are the contents of a ballot box. *See Jaquette v. Delaware Co.*, OOR Dkt. AP 2021-2808, 2022 PA O.O.R.D. LEXIS 25.

For the foregoing reasons, the appeal is **denied**, and the County is not required to take any further action. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to the Butler County Court of Common Pleas. 65 P.S. § 67.1302(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond as per Section 1303 of the RTKL. 65

P.S. § 67.1303. However, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.² This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: January 14, 2022

/s/ Ryan W. Liggitt

RYAN W. LIGGITT, ESQ.
APPEALS OFFICER

Sent via email to: Matthew Cornetti, Scott Cooper, Maria Malloy, AORO,
John H. Rushford, Esq.

² *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).