

COURT OF COMMON PLEAS OF BUCKS COUNTY, PENNSYLVANIA

BUCKS COUNTY

vs.

KATHLEEN GALLAGHER

NO. 2022-00717

**CIVIL COVER SHEET**

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

Name of Plaintiff/Appellant's Attorney: Daniel D. Grieser Esquire, Esq., ID: 325445

Self-Represented (Pro Se) Litigant ☐

Class Action Suit ☐ Yes ☒ No

MDJ Appeal ☐ Yes ☒ No

Money Damages Requested ☐

Commencement of Action:

Amount in Controversy:

Petition

**Case Type and Code**

Civil Appeals:

Statutory Appeal: Other

Other:

IN THE COURT OF COMMON PLEAS OF BUCKS COUNTY, PENNSYLVANIA

COUNTY OF BUCKS,	:	Civil Action – Appeal from State
Agency	:	
55 East Court Street	:	
Doylestown, PA 18901,	:	
	:	
Petitioner,	:	
	:	
v.	:	Docket No.
	:	
KATHLEEN GALLAGHER AND THE	:	
REPUBLIC NATIONAL	:	
COMMITTEE	:	
	:	
	:	
	:	
Respondent.	:	

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**NOTICE**

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

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

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

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

BUCKS COUNTY LAW DEPARTMENT  
Daniel D. Grieser, Assistant County Solicitor  
Attorney I.D. No. 325445  
55 East Court Street, Fifth Floor  
Doylestown, PA 18901  
(215) 348-6464

Attorneys for Petitioner

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**IN THE COURT OF COMMON PLEAS OF BUCKS COUNTY, PENNSYLVANIA**

COUNTY OF BUCKS,	:	Civil Action – Appeal from State Agency
55 East Court Street	:	
Doylestown, PA 18901,	:	
	:	
Petitioner,	:	
	:	
v.	:	Docket No.
	:	
Kathleen Gallagher and the	:	
Republican National Committee	:	
	:	
	:	
Respondent.	:	

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**PETITION FOR REVIEW OF THE  
JANUARY 14, 2022 FINAL DETERMINATION OF  
THE PENNSYLVANIA OFFICE OF OPEN RECORDS**

Petitioner, the County of Bucks, through its undersigned counsel, hereby submits this Petition for Review of the January 14, 2022 Final Determination of the Pennsylvania Office of Open Records concerning the October 27, 2021 request of Respondent, Republican National Committee, for the production of records pursuant to the Right-to-Know Law, 65 P.S. 67.101 *et seq.* In support of its Petition, the County of Bucks avers as follows:

**JURISDICTION**

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

## **PARTIES**

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

3. Respondent is Kathleen Gallagher (“Requester”), who submitted the at-issue Right-to-Know (“RTK”) request to the County in this matter. Respondent, Republican National Committee, joined Ms. Gallagher in the appeal to the OOR.

## **PROCEDURAL HISTORY AND RELEVANT BACKGROUND**

4. On October 27, 2021, the County received a RTK request from Requester. Therein, Requester sought records from the Bucks County Board of Elections regarding the following, *verbatim*:

1. Any and all communications from the Pennsylvania Department of State, Bureau of Elections, regarding the counting, processing, curing, or rejection of mail-in or absentee ballots for the 2020 General Election.

2. Any and all communications to the Pennsylvania Department of State, Bureau of Elections, regarding the counting, processing, curing, or rejection of mail-in or absentee ballots for the 2020 General Election.

3. Any and all communications from the Pennsylvania Department of State, Bureau of Elections, regarding training for poll workers and judges of elections for the 2020 General Election.

4. Any and all documents reviewed or utilized by the Bucks County Board of Elections regarding the counting, processing, curing, or rejection of mail-in or absentee ballots for the 2020 General Election.

5. Any and all documents regarding and/or relating to any training sessions regarding the procedures to be used in counting, processing, curing, or rejection of mail-in or absentee ballots for the 2020 General Election.

6. Any and all documents reflecting the procedure used to count, process, cure, or reject mail-in or absentee ballots for the 2020 General Election.

7. Any and all documents relied upon and/or referred to during the Canvass, as that term is described in the Pennsylvania Election Code.

8. Any and all communications to or from any employee or staff member of the Bucks County Board of Elections, including the administrator of mail-in elections regarding the counting, processing, curing, or rejection of mail-in or absentee ballots for the 2020 General Election.

9. Any plan, documents, training materials, or other materials created or used by the Bucks County Board of Elections, its employees, officers, or agents for creating the system used to process, count, cure, or reject mail-in or absentee ballots for the 2020 General Election.

The October 27, 2021 RTK request is attached as Exhibit A.

5. On November 4, 2021, this Office denied Ms. Gallagher's request, *inter alia*, pursuant Section 703 of the RTKL which states that "[a] written request should identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested." The November 4, 2021 response is attached as Exhibit B.

6. On November 19, 2021, Requester appealed the County's denial of her RTK request to the Pennsylvania Office of Open Records ("OOR"). Requester's appeal submission and the corresponding appeal documents submitted to the parties are attached as Exhibit C.

7. On December 3, 2021, the County submitted its response to Requester's appeal submission. Therein, the County reiterated its basis for the denial of the request. The County's response to Requester's appeal submission is attached as Exhibit D.

8. On January 14, 2022, Appeals Officer Blake Eilers, Esquire, of the OOR issued a Final Determination, granting in part and denying in part Requester's appeal and directing the County to provide items 1, 2, 3 and 8. Therein, Appeals Officer Eilers determined that the County failed to establish that the request was insufficiently specific.<sup>1</sup> The January 14, 2022 Final Determination is attached as Exhibit E.

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<sup>1</sup> The OOR determined that Sections 4, 5, 6, 7, and 9 of the Request were moot because responsive information could be found in an online election manual. The County had also asserted that these requests (1) were insufficiently specific and (2) were not governed by the RTKL but, instead, governed by the Pennsylvania Election Code. 65 P.S.

9. The instant Petition for Review now follows.

## THE COUNTY'S APPEAL TO THIS HONORABLE COURT

### Standard and Scope of Review

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

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

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

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

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

**The January 14, 2022 Final Determination should be reversed because the Request for items 1, 2, 3 and 8 was insufficiently specific under Section 703 of the RTKL**

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§ 67.3101 and 25 P.S. §§ 2622 and 2648. The County preserves these bases for denial in this Petition for Judicial Review.

15. Here, the County respectfully requests this Honorable Court to hold a hearing on this matter and reverse the January 14, 2022 Final Determination directing the County to produce records responsive to Items 1, 2, 3 and 8 to Requester. For the following reasons, the Request was insufficiently specific:

- a. it seeks any and all communications and fails to set any real limitations by identifying a specific transaction or activity,
- b. the request fails to limit the scope of the search as it fails to limit the number of people's communications searched and fails to name specific people's communications to be searched,
- c. and it fails to identify a finite period of time from which the records are sought.

16. Section 703 of the RTKL states that "[a] written request should identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested." 65 Pa. Stat. Ann. §67.703.

17. This office is unable to limit the scope of the search because the request seeks any and all communications and this creates too large of a universe of records to search.

18. Additionally, Ms. Gallagher's request fails to identify a specific transaction or activity in order to conduct a search for records because the phrase "relating to processing, curing, or rejection of mail-in or absentee ballots" is overly broad.

19. The request fails to limit the scope of the search as it fails to limit the number of people's communications and fails to name specific people's communications to be searched by failing to name any recipients or senders.

20. The Bucks County Board of Election currently has 15 employees which include one Director, one Assistant Director, one VR Office Supervisor, one Election Coordinator, one

Assistant Election Coordinator, one Executive Assistant, two Election Specialists, and seven Registrars.

21. During the November 2020 election approximately 35 additional employees were hired.

22. Additionally, the request seeks communication from Pennsylvania Department of State which, according to requester, includes any and all employees, agents, representatives or third-party vendors of the Pennsylvania Department of State.

23. Without knowing specific employees from the Pennsylvania Department of State, it is almost impossible to conduct a search for any communications from the Department of State.

24. For example, if we attempted a search for email communications, without specific people named from the Pennsylvania Department of State, this office could not conduct a search that is limited to only senders from the Department of State.

25. With few exceptions, any office, department, or agency within the government of the Commonwealth of Pennsylvania utilizes the “pa.gov” domain and there is no way to differentiate between an email sent from the “pa.gov” domain that originated within the Pennsylvania Department of State or the other approximately 86 offices, departments, and agencies that utilize the “pa.gov” domain.

26. While the OOR Determination limited the date range to the 2020 Election, this limitation does not define a specific length of time. Communications about the 2020 Election could reach back several years or continue to the current date. The lack of a definite time range renders the request insufficiently specific.

27. Ms. Gallagher’s requests are insufficiently specific as it seeks a large universe of records (i.e. “any and all communications), it lacks any limitations on senders and recipients, and



fails to identify a finite period of time for which the records are sought, therefore, this Office is unable to conduct a reasonable search for responsive records. The County respectfully submits that, in a *de novo* hearing before this Honorable Court, it shall meet its burden of establishing that the Request was insufficiently specific pursuant to the RTKL.

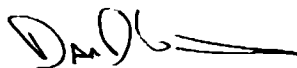
### **RELIEF SOUGHT**

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

- A. Reversing the January 14, 2022 Final Determination; and
- B. Declaring that the County is not required to take any further action on Requester's October 27, 2021 request for records.

Respectfully submitted:

JOSEPH J. KHAN  
*County Solicitor*



Date: 2-14-2021

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Daniel D. Grieser, Esquire  
*Assistant County Solicitor*

# 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:** Bucks County Board of Elections (Attn: AORO)

Date of Request: October 27, 2021 Submitted via: ☒ Email ☐ U.S. Mail ☐ Fax ☐ In Person

**PERSON MAKING REQUEST:**

Name: Kathleen A. Gallagher, as counsel for RNC Company (if applicable): Gallagher Giancola LLC

Mailing Address: 3100 Koppers Building, 436 Seventh Avenue

City: Pittsburgh State: PA Zip: 15219 Email: kag@glawfirm.com

Telephone: (412) 717-1900 Fax: (412) 717-1901

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 "Attachment A" for Records Requested.

Please see "Attachment B" for Definitions and Instructions.

**DO YOU WANT COPIES?** ☐ Yes, printed copies (default if none are checked)  
☒ Yes, electronic copies preferred if available  
☐ No, in-person inspection of records preferred (may request copies later)

Do you want certified copies? ☐ Yes (may be subject to additional costs) ☐ No  
*RTKL requests may require payment or prepayment of fees. See the Official RTKL Fee Schedule for more details.*  
Please notify me if fees associated with this request will be more than ☐ \$100 (or) ☐ \$\_\_\_\_\_.

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

Tracking: 3416 Date Received: 10-27-21 Response Due (5 bus. days): 11-3-21

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

# ATTACHMENT A

**RECORDS REQUESTED (CONTINUED)**

1. Any and all communications from the Pennsylvania Department of State, Bureau of Elections, regarding the counting, processing, curing, or rejection of mail-in or absentee ballots for the 2020 General Election.
2. Any and all communications to the Pennsylvania Department of State, Bureau of Elections, regarding the counting, processing, curing, or rejection of mail-in or absentee ballots for the 2020 General Election.
3. Any and all communications from the Pennsylvania Department of State, Bureau of Elections, regarding training for poll workers and judges of elections for the 2020 General Election.
4. Any and all documents reviewed or utilized by the Bucks County Board of Elections regarding the counting, processing, curing, or rejection of mail-in or absentee ballots for the 2020 General Election.
5. Any and all documents regarding and/or relating to any training sessions regarding the procedures to be used in counting, processing, curing, or rejection of mail-in or absentee ballots for the 2020 General Election.
6. Any and all documents reflecting the procedure used to count, process, cure, or reject mail-in or absentee ballots for the 2020 General Election.
7. Any and all **documents relied upon and/or** referred to during the Canvass, as that term is described in the Pennsylvania Election Code.
8. Any and all communications to or from any employee or staff member of the Bucks County Board of Elections including the administrator of mail-in elections regarding the counting, processing, curing, or rejection of mail-in or absentee ballots for the 2020 General Election.
9. Any plan, documents, training materials, or other materials created or used by the Bucks County Board of Elections, its employees, officers, or agents for creating the system used to process, count, cure, or reject mail-in or absentee ballots for the 2020 General Election.

# ATTACHMENT A

**RECORDS REQUESTED (CONTINUED)**

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7. Any and all documents relied upon and/or referred to during the Canvass, as that term is described in the Pennsylvania Election Code.
8. Any and all communications to or from any employee or staff member of the Bucks County Board of Elections including the administrator of mail-in elections regarding the counting, processing, curing, or rejection of mail-in or absentee ballots for the 2020 General Election.
9. Any plan, documents, training materials, or other materials created or used by the Bucks County Board of Elections, its employees, officers, or agents for creating the system used to process, count, cure, or reject mail-in or absentee ballots for the 2020 General Election.

# ATTACHMENT B



### **DEFINITIONS AND INSTRUCTIONS:**

1. The term “Document” shall mean all communications, letters, emails, electronic files, ESI (defined below), correspondence, memoranda, notes, work papers, charts, reports, ledgers, drawings, plans spreadsheets, specifications, contracts, or photographs, and shall include but shall not be limited to, any written, printed, typed or other graphic matter of any kind or nature, all mechanical, magnetic, and electronic sound recordings or transcripts thereof, all microfilm, microfiche, or other reproductions, and all data, images, information or statistics contained within any data storage media (including hand-held personal digital assistant (PDA) devices, Dictaphones, tapes, disks, CDs, or other electronic storage devices), or other information retrieval storage systems (including computer-generated reports and printouts). It shall also mean all drafts and/or copies of documents by whatever means made.
2. The term “absentee ballot” shall be used in the same manner as provided for in the Pennsylvania Election Code at 25 P.S. § 3302.
3. The term “mail-in ballot” shall be used in the same manner as provided for in the Pennsylvania Election Code at 25 P.S. § 3150.12.
4. The terms “cure” or “curing” shall mean the ability or availability of a voter to correct an omission or error on their mail-in ballot or ballot envelope(s) after the voter returns their ballot, including any communications to impacted voters about this process.
5. The term “Pennsylvania Department of State, Bureau of Elections” shall include any and all employees, agents, representatives or third-party vendors of the Pennsylvania Department of State, Bureau of Elections.

6. To the extent you seek to withhold or withhold production of any document on behalf of any claim of “privilege,” please identify the legal basis for the same and the identification of any documents so withheld.

# ATTACHMENT B

### **DEFINITIONS AND INSTRUCTIONS:**

1. The term “Document” shall mean all communications, letters, emails, electronic files, ESI (defined below), correspondence, memoranda, notes, work papers, charts, reports, ledgers, drawings, plans spreadsheets, specifications, contracts, or photographs, and shall include but shall not be limited to, any written, printed, typed or other graphic matter of any kind or nature, all mechanical, magnetic, and electronic sound recordings or transcripts thereof, all microfilm, microfiche, or other reproductions, and all data, images, information or statistics contained within any data storage media (including hand-held personal digital assistant (PDA) devices, Dictaphones, tapes, disks, CDs, or other electronic storage devices), or other information retrieval storage systems (including computer-generated reports and printouts). It shall also mean all drafts and/or copies of documents by whatever means made.
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5. The term “Pennsylvania Department of State, Bureau of Elections” shall include any and all employees, agents, representatives or third-party vendors of the Pennsylvania Department of State, Bureau of Elections.

6. To the extent you seek to withhold or withhold production of any document on behalf of any claim of “privilege,” please identify the legal basis for the same and the identification of any documents so withheld.

**From:** Cain, Robbie L.  
**To:** kag@glawfirm.com  
**Subject:** Right-to-know response # 3416  
**Date:** Thursday, November 4, 2021 6:00:00 PM

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Dear Requester Gallagher,

On October 27, 2021, the Bucks County Office of Open Records received the following Right-to-Know law request:

1. Any and all communications from the Pennsylvania Department of State, Bureau of Elections, regarding the counting, processing, curing, or rejection of mail-in or absentee ballots for the 2020 General Election.
2. Any and all communications to the Pennsylvania Department of State, Bureau of Elections, regarding the counting, processing, curing, or rejection of mail-in or absentee ballots for the 2020 General Election.
3. Any and all communications from the Pennsylvania Department of State, Bureau of Elections, regarding training for poll workers and judges of elections for the 2020 General Election.
4. Any and all documents reviewed or utilized by the Bucks County Board of Elections regarding the counting, processing, curing, or rejection of mail-in or absentee ballots for the 2020 General Election.
5. Any and all documents regarding and/or relating to any training sessions regarding the procedures to be used in counting, processing, curing, or rejection of mail-in or absentee ballots for the 2020 General Election.
6. Any and all documents reflecting the procedure used to count, process, cure, or reject mail-in or absentee ballots for the 2020 General Election.
7. Any and all documents relied upon and/or referred to during the Canvass, as that term is described in the Pennsylvania Election Code.
8. Any and all communications to or from any employee or staff member of the Bucks County Board of Elections including the administrator of mail-in elections regarding the counting, processing, curing, or rejection of mail-in or absentee ballots for the 2020 General Election.
9. Any plan, documents, training materials, or other materials created or used by the Bucks County Board of Elections, its employees, officers, or agents for creating the system used to process, count, cure, or reject mail-in or absentee ballots for the 2020 General Election.

In addition to your request, we received the following instructions:

1. The term "Document" shall mean all communications, letters, emails, electronic files, ESI (defined below), correspondence, memoranda, notes, work papers, charts, reports, ledgers, drawings, plans, spreadsheets, specifications, contracts, or photographs, and shall include but shall not be limited to, any written, printed, typed or other graphic matter of any kind or nature, all mechanical, magnetic, and electronic sound recordings or transcripts thereof, all microfilm, microfiche, or other reproductions, and all data, images, information or statistics contained within any data storage media (including hand-held personal digital assistant (PDA) devices, Dictaphones, tapes, disks, CDs, or other electronic storage devices), or other information retrieval storage systems (including computer-generated reports and printouts). It shall also mean all drafts and/or copies of documents by whatever means made.
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4. The terms "cure" or "curing" shall mean the ability or availability of a voter to correct an omission or error on their mail-in ballot or ballot envelope(s) after the voter returns their ballot, including any communications to impacted voters about this process.
5. The term "Pennsylvania Department of State, Bureau of Elections" shall include any and all employees, agents, representatives or third-party vendors of the Pennsylvania Department of State, Bureau of Elections.
6. To the extent you seek to withhold or withhold production of any document on behalf of any claim of "privilege," please identify the legal basis for the same and the identification of any documents so withheld.

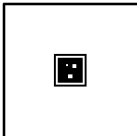
Your request is denied pursuant Section 703 of the RTKL which states that "[a] written request should identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested."

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

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

Best regards,  
Robbie

*Robbie Cain, Esq.*  
*Assistant County Solicitor*  
*Law Department – County of Bucks*  
*55 E. Court St., 5th Floor*  
*Doylestown, PA 18901*  
*215-348-6055*  
*[rlcain@buckscounty.org](mailto:rlcain@buckscounty.org)*



***"Openness builds trust in government. Transparency gives the public the ability to review government actions, to understand what government does, to see when government performs well, and when government should be held accountable." - Senator Pileggi***

## EXHIBIT B



## EXHIBIT C

## EXHIBIT D

## EXHIBIT E



# pennsylvania

## OFFICE OF OPEN RECORDS

### FINAL DETERMINATION

IN THE MATTER OF

KATHLEEN GALLAGHER AND THE  
REPUBLICAN NATIONAL COMMITTEE,  
Requester

v.

BUCKS COUNTY,  
Respondent

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Docket No: AP 2021-2528

### INTRODUCTION

Kathleen Gallagher, Esq., on behalf of the Republican National Committee (collectively “Requester”), submitted a request (“Request”) to Bucks County (“County”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking records related to the 2020 General Election. The County denied the Request, arguing that it is insufficiently specific, and 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, denied in part, and dismissed as moot in part**, and the County is required to take further action as directed.

### FACTUAL BACKGROUND

On October 27, 2021, the Request was filed, seeking:

1. Any and all communications from the Pennsylvania Department of State, Bureau of Elections, regarding the counting, processing, curing, or rejection of mail-in or absentee ballots for the 2020 General Election.

2. Any and all communications to the Pennsylvania Department of State, Bureau of Elections, regarding the counting, processing, curing, or rejection of mail-in or absentee ballots for the 2020 General Election.
3. Any and all communications from the Pennsylvania Department of State, Bureau of Elections, regarding training for poll workers and judges of elections for the 2020 General Election.
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8. Any and all communications to or from any employee or staff member of the Bucks County Board of Elections including the administrator of mail-in elections regarding the counting, processing, curing, or rejection of mail-in or absentee ballots for the 2020 General Election.
9. Any plan, documents, training materials, or other materials created or used by the Bucks County Board of Elections, its employees, officers, or agents for creating the system used to process, count, cure, or reject mail-in or absentee ballots for the 2020 General Election.

The Requester also submitted a six-part definitional section, which, among other things, provided examples of responsive documents, noted that the Request included communications sent by third-party vendors of the Department of State, and referenced the Pennsylvania Election Code, 25 P.S. §§ 2601 *et seq.*, with regard to the definitions of several terms used in the Request. When the County did not respond to the Request by November 3, 2021, it was deemed denied on that date. *See* 65 P.S. § 67.901. On November 4, 2021, the County purported to deny the Request, arguing that it is insufficiently specific to enable a response. *See* 65 P.S. § 67.703.

On November 19, 2021, the Requester appealed to the OOR, challenging the purported denial and stating grounds for disclosure.<sup>1</sup> The OOR invited both parties to supplement the record and directed the County to notify any third parties of their ability to participate in this appeal. *See* 65 P.S. § 67.1101(c).

On December 3, 2021, the County submitted a position statement, reiterating its argument that the Request is insufficiently specific and that access to records responsive to Items 4, 5, 6, 7, and 9 of the Request is governed by the Election Code, 25 P.S. § 2648, and not the RTKL. *See* 65 P.S. § 67.3101.1 (“[i]f the provisions of this act regarding access to records conflict with any other Federal or State law, the provisions of this act shall not apply.”). The County also submitted a statement made under the penalty of unsworn verification by Robbie Cain, Esq., the County’s Open Records Officer. The County also provided a link to the election manual that is available on its website.

### 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

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<sup>1</sup> The Requester provided the OOR with additional time to issue a final determination in this matter. *See* 65 P.S. § 67.1101(b)(1).

request” and may consider testimony, evidence, and documents that are reasonably probative and relevant to the matter at issue. 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. The decision to hold a hearing is discretionary and non-appealable. *Id.* Here, neither party requested a hearing.

The County is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.302. Records in the possession of a local agency are presumed public unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. Upon receipt of a request, an agency is required to assess whether a record requested is within its possession, custody or control and respond within five business days. 65 P.S. § 67.901. An agency bears the burden of proving the applicability of any cited exemptions. *See* 65 P.S. § 67.708(b).

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

### **1. The appeal is moot in part**

As a preliminary matter, the OOR notes that the County has provided a link to its election manual, which it argues is responsive, at least in part, to Items 4, 5, 6, 7, and 9. *See* 65 P.S. §

67.704(b)(1) (“an agency may respond to a request by notifying the requester that the record is available through publicly accessible electronic means....”). Accordingly, insofar as it seeks that manual, the appeal is dismissed as moot. *See Kutztown Univ. of Pa. v. Bollinger*, 2019 Pa. Commw. Unpub. LEXIS 521, \*6 (holding that an appeal is properly dismissed as moot where no controversy remains).

## **2. The Request is sufficiently specific in part**

The County argues that the Request is insufficiently specific. *See* 65 P.S. § 67.703. In determining whether a particular request under the RTKL is sufficiently specific, the OOR applies a three-part balancing test set forth by the Commonwealth Court in *Pa. Dep’t of Educ. v. Pittsburgh Post-Gazette*, 119 A.3d 1121 (Pa. Commw. Ct. 2015), and *Carey v. Pa. Dep’t of Corr.*, 61 A.3d 367, 372 (Pa. Commw. Ct. 2013). The OOR examines to what extent the request identifies (1) the subject matter of the request; (2) the scope of documents sought; and (3) the timeframe for which records are sought. *Pa. Dep’t of Educ.*, 119 A.3d at 1125.

First, “[t]he subject matter of the request must identify the ‘transaction or activity’ of the agency for which the record is sought.” *Id.* The subject matter should provide a context to narrow the search. *Id.* (citing *Montgomery Cnty. v. Iverson*, 50 A.3d 281, 284 (Pa. Commw. Ct. 2012) (*en banc*)). Second, the scope of the request must identify a discrete group of documents (e.g., type or recipient). *Id.*

Finally, “[t]he timeframe of the request should identify a finite period of time for which records are sought.” *Id.* at 1126. “The timeframe prong is ... the most fluid of the three prongs, and whether or not the request’s timeframe is narrow enough is generally dependent upon the specificity of the request’s subject matter and scope.” *Id.* Failure to identify a finite timeframe will not render an otherwise sufficiently specific request overbroad. *See Pa. Hous. Fin. Agency v.*



*Ali*, 43 A.3d 532, 536 (Pa. Commw. 2012) (concluding request for proposals and sales agreements relating to two specific projects that did not specify timeframe was sufficiently specific). Similarly, an extremely short timeframe will not rescue an otherwise overbroad request. *Cf. Easton Area Sch. Dist. v. Baxter*, 35 A.3d 1259, 1265 (Pa. Commw. 2011) (finding request for all emails sent or received by any school board member in thirty-day period to be sufficiently specific because of short timeframe), *appeal denied*, 54 A.3d 350 (Pa. 2012).

Here, as far as subject matter, Items 1, 2, 4, 5, 6, 8, and 9 identify the agency activities of counting, processing, curing, or rejecting mail-in or absentee ballots; Items 3 and 5 mention training related to the election; and Item 7 mentions the canvass.<sup>2</sup> The scope for Items 1, 2, and 3 is communication between the County and the Department; Item 8 seeks communications to and from the County Board of Elections. While, as the County points out, the Request does not include a timeframe, its focus is the 2020 General Election; thus, the Request implies a limited timeframe. *See Iverson*, 50 A.3d at 284 (“[T]he specificity of a request must be construed in the request’s context, rather than envisioning everything the request might conceivably encompass.”) (internal citation omitted).

The County argues that the Items fail to identify a specific transaction or activity, as “relating to counting, processing, curing, or rejection of mail-in or absentee ballots” is overly broad. However, counting, processing, curing, or rejecting mail-in or absentee ballots are undoubtedly County activities; as such, they provide context to narrow the search. While burden may be a factor in determining that a request is insufficiently specific, the fact that a request is burdensome does not, in and of itself, deem it overbroad. *See Pa. Dep’t of Env’tl. Prot. v. Legere*, 50 A.3d 260, 265 (Pa. Commw. Ct. 2012).

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<sup>2</sup> “Canvass” is defined by the Election Code as “the gathering of ballots after the final pre-canvass meeting and the counting, computing and tallying of the votes reflected on the ballots.” 25 P.S. § 2602(a.1).

Recently, the OOR found that a request for “any and all electronic correspondence” between an agency and the Department of State about absentee ballot cure procedures over the span of nearly a year to be sufficiently specific, with one exception. *Snead v. Phila. Office of the City Commissioners*, OOR Dkt. AP 2021-0160, 2021 PA O.O.R.D. LEXIS 426 (“*Snead I*”); but see *Snead v. Montgomery Cnty.*, OOR Dkt. AP 2021-0157, 2021 PA O.O.R.D. LEXIS 409 (“*Snead I*”) (finding insufficiently specific a request that was nearly identical to the request in *Snead II* because the agency had attempted a search for responsive record that returned over 50,000 results). In *Snead II*, the agency argued that Department employees do not have a unique domain name that could limit the scope of that request. The OOR found this argument unavailing, holding that a limited subject matter may counteract a broad scope.

The County raises a nearly identical argument in the instant matter; while the Request seeks records related to counting, processing, and rejection of mail-in or absentee ballots in addition to absentee ballot cure procedures, the fact remains that the Request does identify County activities. Therefore, difficulty distinguishing Department employees by domain name does not render the Request insufficiently specific.

The County also argues that, in the absence of the identification of specific individuals in the Department, it cannot conduct a reasonable search; however, the request in *Snead II* did not identify individuals and that agency employed 140 individuals with 60 email accounts. Here, the County Board of Elections currently has 15 employees and an additional 35 employees were hired during the election. Cain Aff. ¶¶ 13-14. Consequently, while the subject matter in the instant Request is broader than that in *Snead II*, the universe of potentially responsive records is much more limited. See *Legere*, 50 A.3d at 264-65 (holding that, because a request delineated “a clearly-defined universe of documents[,]” there was no need to make judgment calls as to whether any

records were related to the request). Further, unlike the agency in *Snead I*, the County provides no evidence that it has attempted a search. Therefore, since Items 1, 2, 3, and 8 identify County activities, are limited in scope and contain an implied timeframe, they are sufficiently specific to guide the County's search for responsive records.

However, Items 4, 5, 6, and 7 seek "any and all documents" "reviewed or utilized" (Item 4), "regarding and/or relating to" (Item 5), "reflecting" (Item 6), and "relied upon and/or referred to" (Item 7) the identified activities. Similarly, Item 9 seeks "any plan, documents, training materials, or other materials." Furthermore, the definitional section accompanying the Request devotes a half-page expounding upon the inclusivity of "document." Such expansive language does not meaningfully limit the Request. *See Pa. State Police v. Office of Open Records*, 995 A.2d 515, 517 (Pa. Commw. Ct. 2010) (holding that the portion of a request seeking "any and all records, files or communications" related to vehicle stops, searches, and seizures was insufficiently specific, but that the portion of the request seeking manuals was sufficiently specific.); *see also Snead II* (finding that the portion of the request seeking "any variation" of the provided key words was insufficiently specific).

These Items of the Request would require the County to make judgments as to whether a given record was "reviewed or utilized," "regard[s] and/or relat[es] to," or was "relied upon and/or referred to." The OOR has repeatedly held that a request that requires an agency to make judgments as to whether each potentially responsive record is properly "related to" a request is insufficiently specific. *See, e.g., Brown v. Office of the Governor*, OOR Dkt. AP 2017-1118, 2017 PA O.O.R.D. LEXIS 996. Therefore, Items 4, 5, 6, 7, and 9 are insufficiently specific to enable the County to locate responsive records.<sup>3</sup>

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<sup>3</sup> The County also argues that the Election Code establishes the procedure to access records responsive to these Items. The Election Code makes many records in the custody of the Election Board subject to public inspection by qualified

## CONCLUSION

For the foregoing reasons, the Requester's appeal is **granted in part, denied in part, and dismissed as moot in part**, and the County is required to produce records responsive to Items 1, 2, 3, and 8 within thirty days. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to the Bucks County Court of Common Pleas. 65 P.S. § 67.1302(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond as per Section 1303 of the RTKL. 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>4</sup> This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: January 14, 2022**

/s/ Blake Eilers  
Blake Eilers, Esq.  
Appeals Officer

Sent via email to: Kathleen Gallagher; Robbie Cain, Esq.

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electors. See 25 P.S. § 2648; *Obernier v. Crawford Cnty.*, OOR Dkt. AP 2017-2107, 2018 PA O.O.R.D. LEXIS 110 (analyzing that section of the Election Code and noting that it “creates a separate process for obtaining these records and conditions public inspection and copying.”). Because the records are not unconditionally public under the Election Code, the OOR must examine any exemptions from disclosure under the RTKL that are asserted by an agency. See *Pa. Dep't of Labor & Indus. v. Heltzel*, 90 A.3d 823, 833 (Pa. Commw. Ct. 2014). Because the County only argues that the Election Code applies to the Items that are insufficiently specific, the OOR need not address the issue.

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

BUCKS COUNTY LAW DEPARTMENT  
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(215) 348-6464

Attorneys for Petitioner

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**IN THE COURT OF COMMON PLEAS OF BUCKS COUNTY, PENNSYLVANIA**

COUNTY OF BUCKS,	:	Civil Action – Appeal from State Agency
55 East Court Street	:	
Doylestown, PA 18901,	:	
	:	
Petitioner,	:	
	:	
v.	:	Docket No.
	:	
Kathleen Gallagher and the	:	
Republican National Committee	:	
	:	
	:	
Respondent.	:	

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**PRAECIPE FOR ENTRY OF APPEARANCE**

**TO THE PROTHONOTARY:**

Kindly enter my appearance on behalf of the Petitioner, Bucks County, in the above-captioned matter. Papers can be served at the address listed below.

BUCKS COUNTY LAW DEPARTMENT

BY: 

Daniel D. Grieser, Esquire  
Assistant County Solicitor  
Attorney I.D. No. 325445  
55 East Court Street, Fifth Floor  
Doylestown, PA 18901  
(215) 348-6464

Dated: February 14, 2022

BUCKS COUNTY LAW DEPARTMENT  
Daniel D. Grieser, Assistant County Solicitor  
Attorney I.D. No. 325445  
55 East Court Street, Fifth Floor  
Doylestown, PA 18901  
(215) 348-6464

Attorneys for Petitioner

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**IN THE COURT OF COMMON PLEAS OF BUCKS COUNTY, PENNSYLVANIA**

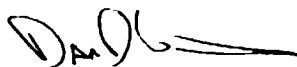
COUNTY OF BUCKS,	:	Civil Action – Appeal from State Agency
55 East Court Street	:	
Doylestown, PA 18901,	:	
	:	
Petitioner,	:	
	:	
v.	:	Docket No.
	:	
Kathleen Gallagher and the	:	
Republican National Committee	:	
	:	
	:	
Respondent.	:	

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**NOTICE OF APPEAL**

Appellant, Bucks County, hereby appeals the Final Determination of the Pennsylvania Office of Open Records (“OOR”) dated January 14, 2022, docketed at AP 2021-2528, a copy of which is attached hereto as Exhibit “A.”

Respectfully submitted:



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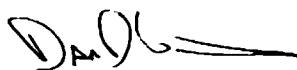
BUCKS COUNTY LAW DEPARTMENT  
DANIEL D. GRIESER, ESQUIRE  
*Solicitor for Bucks County*

Dated: February 14, 2022

## **VERIFICATION**

I, Daniel D. Grieser, Esquire, am the Solicitor of Bucks County, and I verify that the facts set forth in the foregoing Notice to Appeal are true and correct to the best of my knowledge, information, and belief.

I understand that false statements herein made are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsifications to authorities.



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DANIEL D. GRIESER, ESQUIRE  
*Assistant County Solicitor for Bucks County*

Dated: February 14, 2022

BUCKS COUNTY LAW DEPARTMENT  
Daniel D. Grieser, Assistant County Solicitor  
Attorney I.D. No. 325445  
55 East Court Street, Fifth Floor  
Doylestown, PA 18901  
(215) 348-6464

Attorneys for Petitioner

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**IN THE COURT OF COMMON PLEAS OF BUCKS COUNTY, PENNSYLVANIA**

COUNTY OF BUCKS,	:	Civil Action – Appeal from State Agency
55 East Court Street	:	
Doylestown, PA 18901,	:	
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	:	
v.	:	Docket No.
	:	
Kathleen Gallagher and the	:	
Republican National Committee	:	
	:	
	:	
Respondent.	:	

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**CERTIFICATE OF SERVICE**

I, Daniel D. Grieser, Esquire, Solicitor for Bucks County, hereby certify that a true and correct copy of the within Notice of Appeal of Bucks County was forwarded via e-mail and via U.S. First Class Mail to:

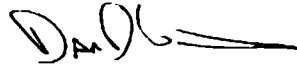
Kathleen A. Gallagher  
Pa. I.D. No. 37950

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Blake Eilers, Esquire  
Appeals Officer  
Office of Open Records  
333 Market Street, 16<sup>th</sup> Floor  
Harrisburg, PA 17101-2234  
(beilers@pa.gov)





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BUCKS COUNTY LAW DEPARTMENT  
DANIEL D. GRIESER, ESQUIRE  
*Solicitor for Bucks County*

Dated: February 14, 2022

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**IN THE COURT OF COMMON PLEAS OF BUCKS COUNTY, PENNSYLVANIA**

COUNTY OF BUCKS,	:	Civil Action – Appeal from State Agency
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Petitioner,	:	
	:	
v.	:	Docket No.
	:	
Kathleen Gallagher and the	:	
Republican National Committee	:	
	:	
	:	
Respondent.	:	:

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**ORDER**

AND NOW, this                      day of                      , 2022, upon consideration of Bucks County’s Notice of Appeal, it is ORDERED and DECREED that the Final Determination dated January 14, 2022, by Appeals Officer Blake Eilers, Esquire, of the Pennsylvania Office of Open Records is hereby REVERSED. The Appeal of Bucks County in the above-captioned matter is GRANTED and that Bucks County is not required to take any further action.

BY THE COURT:

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, J.