

**COMMONWEALTH COURT OF PENNSYLVANIA
DOCKETING STATEMENT
NOTICE OF APPEAL**

Counsel for Appellants(s) must complete this form and file it with the Prothonotary of the Commonwealth Court within 10 days of the date of the Notice of Docketing.

Failure to file a docketing statement, with required attachments and proof of service, may result in dismissal of the appeal.

Attach additional sheets if needed.

Case Caption: *Craig McCoy, Joseph DiStefano and The Philadelphia Inquirer v PSERS*,
Commonwealth Court Docket No.10 CD 2022

Required Attachments:

- 1) Attach a copy of **all previous opinions, if any, and all pertinent orders in this case** (including, for example, the order and adjudication of the Zoning Hearing Board, or similar decision).
 - December 6, 2021 decision of the Office of Open Records on reconsideration
 - October 18, 2021 Final Determination of the Office of Open Records
- 2) Attach a **Statement of Issues** of no more than two pages in length, containing a summary sufficient to explain the case (see Order of September 15, 1999, 29 Pa. Bull. 5064, 210 Pa. Code § 69.501), and including the relief requested. **NOTE: Information in the Statement of Issues is used to screen cases for the Court's Mediation Program and does not bind appellant. Any issue omitted will not constitute a waiver of the issue on appeal.**
- 3) Attach a **proof of service** indicating service of the docketing statement, statement of issues, and all attachments on all other parties.
 - A. Timeliness of Appeal**
 - (1) Date of judgment, order, or decree appealed: December 6, 2021
 - (2) Date notice of appeal filed: January 5, 2022
 - B. Appealability of Order**
 - (1) Is the order appealed a final order? **YES**
 - (2) Is this matter disposed of as to all parties in the trial court? **YES**
 - (3) If the order is not a final order, pursuant to what Rule of Appellate Procedure in this order appealed, e.g. Pa.R.A.P.A. 311, 313, 341(c)?
Please explain
 - C.** Are there any related cases, including cross-appeals, pending in this Court or any other federal or state court? **NO**
 - D.** Was there a trial or hearing before the trial court? **NO**
If yes, have you made arrangements to have the testimony transcribed? **n/a**
 - E.** Have you paid the required deposit for the transcript? **n/a**

F. Are there any real parties in interest not appearing in the trial court caption? **NO**

G. Have there been any previous efforts to settle this matter? **NO**

If yes, please explain:

Are you aware of any conflict of interest that may exist with respect to any party, lawyer, or issue in this case that may suggest the need for recusal by any judge of this court? **NO**

CERTIFICATE OF COMPLIANCE

On this 17th day of February 2022, I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

Respectfully submitted,

/s/Paula Knudsen Burke

Paula Knudsen Burke

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STATEMENT OF ISSUES

The appellants are Craig McCoy and Joseph DiStefano, reporters for the *Philadelphia Inquirer* (collectively “Requesters”). On May 19, 2021, Requesters submitted an enumerated Right to Know Law request of seven items to the Public School Employees’ Retirement System (“PSERS”) seeking, among other things, written communications between PSERS staff and three consultants (ACA, AON and Buck Global) regarding fund investment performance, the “risk-sharing” calculation, and the acknowledgment of PSERS’s error in that calculation (collectively, the “Consultant Records”). Thereafter, on August 25, 2021, PSERS produced some items, denied some items, and asserted that a portion of the request was insufficiently specific. PSERS claimed that all the Consultant Records constituted “records relating to a criminal investigation” and “records relating to a noncriminal investigation,” and contended that the items were exempt from disclosure.

Requesters appealed to the Office of Open Records (“OOR”). On October 18, 2021, the OOR issued a final determination granting in part, denying in part, and dismissing as moot in part, the appeal. Among other findings, OOR noted that because PSERS failed to address its claim that the Consultant Records are “criminal” investigative records, OOR deemed the argument abandoned. Requesters then requested reconsideration from the OOR, which it granted. On December 6, 2021 the OOR issued a Final Determination that granted in part, denied in part and dismissed as moot in part the Requesters’ petition for reconsideration. The OOR determined that PSERS was required to perform a good faith search for written communications between PSERS and each the three firms related to the identification or discovery of the rate calculation error for the time period January 2020 to the date the summer 2020 investigation commenced

and provide all responsive records within thirty days. OOR allowed PSERS to redact Excel formula and trade secrets.

Requesters appealed to this Court on January 5, 2022, arguing that the OOR erred for several reasons, including its determination that the noncriminal investigative records exemption applied to communications with Aon and Buck following the commencement of the 2020 review of its investment performance.

Relief sought is reversal of the December 6, 2021 OOR determination and release of the requested records.

PROOF OF SERVICE

I hereby certify that I have served the docketing statement, statement of issues, and all attachments on all other parties, on the date and in the manner indicated below:

Notification by email:

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Dated: February 17, 2022

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