

IN THE COURT OF COMMON PLEAS OF YORK COUNTY, PENNSYLVANIA

DYLAN SEGELBAUM  
and THE YORK DAILY RECORD  
Respondents

v.

YORK COUNTY  
Petitioner

:  
: Docket  
: 2022-SU-000516  
:  
: Appeal from Final Determination of OOR  
:  
:  
: OOR Docket No. AP 2021-2943

Wed, Mar 2, 2022 1:01 PM

For Petitioner: Michelle Pokrifka, Esquire  
Attorney ID No. 66654  
Solicitor for York County  
York County Open Records Officer  
York County Solicitor's Office  
York County Administrative Center  
28 East Market Street, York, PA 17401  
(717) 771-4777  
[MPokrifka@YorkCountyPA.gov](mailto:MPokrifka@YorkCountyPA.gov)

For Respondents: Pro Se

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JUDICIAL CENTER  
YORK, PA

**NOTICE OF APPEAL AND PETITION FOR REVIEW**

Petitioner, the County of Court, through its Solicitor and Right to Know Officer file this Notice of Appeal and Petition for De Novo review of the Final Determination of the Pennsylvania Open Records Office dated January 31, 2022, as docketed above.

<b>DYLAN SEGELBAUM</b>	<b>: IN THE COURT OF COMMON PLEAS</b>
<b>and THE YORK DAILY RECORD</b>	<b>: OF YORK COUNTY, PENNSYLVANIA</b>
<b>Respondent</b>	<b>:</b>
	<b>:</b>
<b>V.</b>	<b>: No. 2022-SU-</b>
	<b>:</b>
<b>YORK COUNTY</b>	<b>:</b>
<b>Petitioner</b>	<b>: OOR Docket No. AP 2021-2943</b>

**PETITION FOR DE NOVO REVIEW OF FINAL DETERMINATION OF THE  
PENNSYLVANIA OFFICE OF OPEN RECORDS DATED JANUARY 31, 2022**

AND NOW, TO WIT, this 2nd day of March, 2022, comes the Petitioner, County of York and the York County Prison Board of Inspectors, by and through their attorney, Michéllé Pokrifka, Esquire, and Petition the court for a de novo review of the Final Determination of the Pennsylvania Office of Open Records and, in support thereof, aver as follows:

**PARTIES**

1. Petitioner County of York (“Petitioner”) is a third-class county of the Commonwealth of Pennsylvania with its principal office located at 28 East Market Street, Second, Floor, York, Pennsylvania 17401.

2. Respondents, Dylan Segelbaum and The York Daily Record (“Respondents”), are a reporter and newspaper located in York County at 1891 Loucks Road, York, PA 17408.

**JURISDICTION**

3. Jurisdiction is proper in this matter according to *65 P.S. §67.1302*.

4. The Office of Open Records (hereinafter OOR) of the Commonwealth of Pennsylvania is the governmental agency from which the County of York is appealing a Final Determination which was entered inappropriately on January 31, 2022.

5. The Office of Open Records entered an initial Final Determination on January 20, 2022, finding that the County of York failed to respond to the OOR appeal filed by Requester. The initial Final Determination is attached hereto as **Exhibit – A**.

6. The OOR rescinded the initial final determination when it realized that they had not properly served the County of York with the OOR appeal in the manner they had served all other appeals in the prior number of years. But in rescinding such final determination, it provided the County of York only five days, which fell over a weekend, to prepare the response to the appeal and to contact any third parties that may be affected by such determination.

7. The Final Determination under review is docketed by the OOR as 2021-2943 and was entered on January 31, 2022. A true and correct copy of the Final Determination is attached hereto as **Exhibit – B**.

8. 65 P.S. §§ 67.1301-1302 of the RTKL allow OOR decisions to be reviewed by the Court of Common Pleas upon a petition for review when the matter arises from a determination made by a local agency.

9. 65 P.S. § 67.1302(a) of the RTKL states that the review of a decision under the Right-to-Know Law is *de novo*.

10. The court is not bound by findings of fact made by the Office of Open Records.

#### **STANDARD AND SCOPE OF REVIEW**

11. The standard of review of a Final Determination of the OOR is *de novo*, and the scope of review is plenary. *Bowling v. Office of Open Records*, 75 A.3d 453, 477 (Pa. 2013).

## STATEMENT OF FACTS

12. On November 12, 2021, Respondent submitted a right-to-know request seeking records in the possession of a third-party contractor of the York County Prison Board of Inspectors. A true and correct copy of the request is attached hereto as **Exhibit – C**.

13. On December 14, 2021, the York County Office of Open Records denied the request indicating that no documents existed that were responsive to the request. This same request had been addressed in June 2021, docketed locally at No. 21-0159. This request was also denied, and was not appealed at that time. See original request attached hereto as **Exhibit – D**.

14. On January 20, 2022, the OOR issued an initial Final Determination indicating that the County had not responded to the appeal.

15. From a review of the record, it appears that an appeal was filed by Requester on December 27, 2021. The failure of the OOR to properly serve the County of York with the appeal resulted in the County not filing any responsive documents.

16. The County of York notified the OOR on January 20, 2022, of their error. As a result, the OOR withdrew its initial Final Determination, and provided the County five (5) calendar days until January 25, 2022, to respond to the request.

17. The OOR was abundantly aware that such matter involved the records of a third-party contractor, since the request was specifically for records of a vendor located out of Greenville, S.C., as was stated in the initial request.

18. Not only did the OOR not provide the equivalent period of time as would normally be provided to enable the County to involve the third-party contractor, but it essentially provided three business days to the County of York to properly mount a defense to the appeal. Such action by the OOR was wholly inappropriate and was prejudicial to the County of York as well as to the

third-party contractor. Such significantly reduced period of time is unreasonable and is violative of 65 P.S. §67.1102.

19. York County was unable to connect with the third-party contractor during the three-business day window provided by the OOR, and as a result, had to reply to the appeal without their involvement or assistance.

20. It should be noted that the OOR has been noticed and directed to send all appeal notices to the York County Open Records Office email, which they did not do in this instance, instead forwarding to the York County Solicitor's email address. In fact, all other 2020-2021 appeals had been forwarded to the correct Open Records Office mailbox, and further this specific appeals officer and his administrative assistant, have sent no less than four other appeals to the County email address since 2021. This appeal was not sent to the email address on file with the OOR, which they have directly used in other appeals in excess of two years.

21. As such a short period of time was provided for the County of York to respond to the Respondents' appeal, there was insufficient time to involve the necessary third parties, or to properly investigate the circumstances of the documents held by the third-party contractor.

22. The Courts have held that "private third parties have no adequate process under the Right-to-Know Law to assert exemptions to disclosure ..." and the OOR's failure to provide adequate time for the County and third parties to appropriately respond was a violation of fundamental due process and was prejudicial to the parties. *Allegheny County Dept of Administrative Services v. Parsons*, 61 A.3d 336, 348 (Cmwlth. Ct., 2013).

23. Not all information necessary to properly defend the appeal was able to be compiled due to the shortened period of time provided by the OOR in violation of 65 P.S. §67.1102.

24. As a result of the OOR not properly serving the Petitioner, the contractor did not have sufficient opportunity to become involved in the OOR appeals process.

25. Subsequently, on January 31, 2022, the Final Determination was issued granting the relief requested by Respondents.

26. A hearing was not held by the OOR regarding this matter and an in-camera review was not requested by the OOR.

27. Petitioner seeks review of the Final Determination for the following reasons:

a. The documents listed in the position statement being in the possession of the County are not public records because they were held by the Prison Board of Inspectors improperly in violation of the disclaimer and outside of the scope of the authority received by the County in relation to this information.

b. The documents were provided by the third-party contractor to the County in confidence and did not authorize the County to print, retain or disclose any of the confidential information after review by the representatives of the Prison Board of Inspectors. Such agreement and authorization were unintentionally violated by retention of the document after completion of the review. **See Exhibit E.**

c. The third-party contractor has taken appropriate steps to maintain the secrecy of this information, but for the County's inadvertent retention beyond the scope of the permission, in violation of the non-disclosure documents.

d. The disclosure of referral sources is exempted by the RTKL and such provision should reasonably be applicable to both employees and third-party contractors. 65 P.S. §67.708(b)(7)(i).

e. The documents are not public records pursuant to 65 P.S. §67.708(b)(11) as they are confidential proprietary information, which are privileged and confidential, and have been identified and protected as such by the third-party contractor. Release of such documents would cause substantial harm to the competitive position of the person that provided the information. 65 P.S. §67.103.

f. The documents are not public records pursuant to 65 P.S. §67.708(b)(11) as they are considered trade secrets pursuant to 65 P.S. §67.103 and the information contained therein is not generally known to other persons, including competitors, and such information is not readily ascertainable and could not otherwise be acquired.

g. The County was provided limited access to such information, which expired 72 hours after it had been provided, and should not have retained possession of such information in violation of the non-disclosure agreement. The Courts have held that information used for business and marketing information are trade secrets, and trade secrets are exempt from disclosure pursuant to the RTKL. *Union Carbide Corp. v UGI Corp.*, 731 F.2d 1186, 1191 (5<sup>th</sup> Circ., 1984).

h. The documents are not public records pursuant to 65 P.S. 67.102 in that such records do not document a transaction or activity of the agency and that records in the rightful possession of a private contractor must relate directly to the government function performed by the contractor for such records to be subject to disclosure. 65 P.S. § 67.506(d).

i. The documents are not public records subject to access because they fall under *Article 1, Section 1 and 11 of the Pennsylvania Constitution's* protection of the inherent right to reputation such that Petitioner is prevented from disclosing information that would be used to harm the reputation of an individual.

28. The Office of Open Records has been served notice of this petition in accordance with 65 P.S. §67.1303 of the RTKL, but has not been named as a respondent because it is not an indispensable third party.

**WHEREFORE**, Petitioner, the County of York, on behalf of the Prison Board of Inspectors, respectfully requests that this Honorable Court schedule a de novo hearing and to reverse the Final Determination of the Office of Open Records.

Respectfully submitted,

COUNTY OF YORK, PENNSYLVANIA

By: s/Michéle Pokrifka

Michéle Pokrifka, Esquire  
Solicitor for the County of York, Pennsylvania  
Attorney ID 66654  
28 East Market Street  
York, PA 17401  
Phone: (717) 771-4777  
Email: [mpokrifka@yorkcountypa.gov](mailto:mpokrifka@yorkcountypa.gov)





**FINAL DETERMINATION**

DATE ISSUED AND MAILED: January 20, 2022

IN RE: *Dylan Segelbaum and The York Daily Record v. York County*;  
OOR Dkt. AP 2021-2943

Upon review of the appeal filed with the Office of Open Records (“OOR”) to the above-referenced docket number, it is determined that the appeal is **GRANTED** because:

On December 14, 2021, after extending its time to respond by thirty days, *see* 65 P.S. § 67.902(b)(2), York County (“County”) denied the Request,<sup>1</sup> stating that the requested record does not exist within the County’s possession, custody or control. Local agencies have the burden of proving that records are exempt from access. 65 P.S. § 67.708(a)(1). 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). Here, the County did not participate on appeal; therefore, the County did not submit evidence demonstrating that the record requested does not exist within the County’s possession or that the record is otherwise exempt from disclosure. *Id.*; *see also* 65 P.S. § 67.708(a).

For this reason, the County is required to provide the requested record to the Requester within thirty days, or, in the alternative, a written statement demonstrating that the requested record does not exist. Within thirty days of the mailing date of this Final Determination, either party may file an appeal or petition for review with the York 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 according to court rules as per 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.<sup>2</sup>

Issued by:

/s/ *Joshua T. Young*

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JOSHUA T. YOUNG  
DEPUTY CHIEF COUNSEL

Sent via email only to: Dylan Segelbaum;  
Michéle Pokrifka, Esq., AORO

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<sup>1</sup> The Request sought “[a] copy of the curriculum vitae (CV) for Joseph Garcia, the ‘senior team leader’ of CSAU-1 LLC....”

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



# pennsylvania

OFFICE OF OPEN RECORDS

## FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
DYLAN SEGELBAUM AND THE YORK	:	
DAILY RECORD,	:	
Requester	:	
	:	
v.	:	Docket No: AP 2021-2943
	:	
YORK COUNTY,	:	
Respondent	:	

### INTRODUCTION

Dylan Segelbaum and the York Daily Record (collectively, the “Requester”) submitted a request (“Request”) to York County (“County”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking the curriculum vitae of an individual. The County denied the Request, arguing, among other things, that it does not possess the record. The Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **granted**, and the County is required to take additional action as directed.

### FACTUAL BACKGROUND

On November 12, 2021, the Request was filed, seeking “[a] copy of the curriculum vitae (CV) for Joseph Garcia, the ‘senior team leader’ of CSAU-1 LLC....” On December 14, 2021, after extending its time to respond by thirty days, 65 P.S. § 67.902(b), the County denied the Request, stating that it does not possess any records responsive to the Request.

On December 22, 2021, the Requester filed an appeal with the Office of Open Records (“OOR”), challenging the 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.<sup>2</sup> 65 P.S. § 67.1101(c).

On January 25, 2022, the County submitted a position statement, explaining that it possesses a 128-page document, comprised of “42 photos of C-SAU trainings that have been marked ‘Classified’; ... 41 letters of reference; and 42 copies of certificates that are all marked as ‘Classified,’” attached to a cover page titled “Verified CV of STL Garcia.[.]” However, the County argues that this document could not be considered a “curriculum vitae or CV” because “[t]here were no documents prepared by or on behalf of Mr. Garcia listing his prior employment, qualifications or experience, which would be considered a CV or resume.” In addition, the County argues that the document contains records that would be exempt from disclosure as confidential proprietary information or trade secrets, 65 P.S. § 67.708(b)(11), and as letters of reference, 65 P.S. § 67.708(b)(7)(i). Finally, the County asserts that the OOR previously determined, in *Segelbaum v. York County*, OOR Dkt. AP 2021-1181, 2021 PA O.O.R.D. LEXIS 1388 (“*Segelbaum I*”), that training materials provided to the County by C-SAU were exempt from

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<sup>1</sup> On January 20, 2022, the OOR issued a Final Determination granting the above-referenced appeal because the County failed to submit evidence in support of its assertion that the records do not exist. On the same day, the County informed the OOR that it never received the OOR’s Notice of Appeal packet. To ensure that both parties had a meaningful opportunity to participate in the appeal, the OOR vacated the initial Final Determination and reopened the record, until January 25, 2022, for the parties to make submissions. Additionally, the Requester granted the OOR until January 31, 2022 to reissue its Final Determination. *See* 65 P.S. § 67.1101(b)(1).

<sup>2</sup> As further explained below, despite claiming that disclosure of certain records could potentially reveal the trade secrets or confidential proprietary information of a third party, the County states that it has not notified the third party of the instant appeal. Notwithstanding the County’s assertions regarding the appeal, it is unclear if the County complied with Section 707(b) of the RTKL concerning requests for alleged trade secrets or confidential proprietary information. *See* 65 P.S. § 67.707(b) (“An agency shall notify a third party of a request for a record if the third party provided the record and included a written statement signed by a representative of the third party that the record contains a trade secret or confidential proprietary information”).

disclosure. In support of its arguments, the County submitted the attestation, made under the penalty of perjury, of Michéle Pokrifka, Esq., the County's Solicitor and Open Records Officer.

On January 26, 2022, the Requester submitted a position statement, arguing that the records identified by the County do constitute a curriculum vitae or "CV" and that the County has failed to meet its burden of proving that the records are exempt from disclosure.

Also on January 26, 2022, the OOR inquired whether the Requester intended to challenge the County's withholding of the photographs and, if so, to explain why he believed the photographs were different than the training materials adjudicated in *Segelbaum I*. On the same day, the Requester confirmed that he was seeking the photographs and argued that he had insufficient information to determine whether the photographs were at issue in *Segelbaum I*.

On January 27, 2022, the OOR directed the County to provide additional information, in the form of a supplemental sworn affidavit or statement, made under the penalty of perjury, relating to records the County suggests were previously adjudicated to be exempt from disclosure.<sup>3</sup>

On January 31, 2022, the County, through Attorney Pokrifka, submitted an unsworn and untimely email responding to the OOR's inquiry. The County also now suggests that Mr. Garcia should be notified about the appeal. On the same day, the Requester objected to any further delay in the adjudication of the appeal.

### 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,

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<sup>3</sup> Because the Final Determination was due to be issued on Monday, January 31, 2022, the County was granted until the end of the day on Friday, January 28, 2022 to submit its supplemental evidence.

scrutinize the actions of public officials and make public officials accountable for their actions.” *Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), *aff’d* 75 A.3d 453 (Pa. 2013).

The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. § 67.503(a). An appeals officer is required “to review all information filed relating to the request” and may consider testimony, evidence and documents that are reasonably probative and relevant to the matter at issue. 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing 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)). 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 County’s interpretation of the Request was unreasonable**

The County denied the Request, stating that it does not possess a responsive curriculum vitae or CV. In her attestation, Attorney Pokrifka attests that a search was conducted, including contacting the Warden of the York County Prison, and that no responsive records exist in the County’s possession, custody or control. See Pokrifka Attestation, ¶ 5. However, Attorney Pokrifka further attests as follows:

I requested to review the documents in the possession of the Office of Intelligence and Security [at the York County Prison] and did review the documents. Although a cover page titled “Verified CV of STL Garcia” was provided, the documents attached to such title page are not a curriculum vitae or CV.

A review of the attached documents evidenced 41 letters of reference, 42 photos marked classified, which depict training activities of C-SAU, and 42 pages of certificates of varying dates.

While the County argues that the records reviewed by Attorney Pokrifka do not constitute a curriculum vitae, and may, arguably, qualify as a non-traditional form of a curriculum vitae, the documents were submitted by Mr. Garcia attached to a cover page entitled “Verified CV of STL Garcia,” as evidenced by Exhibit B of the County’s submission. The County has provided no basis for its narrow interpretation of the term “curriculum vitae,” which, as acknowledged by the County in its position statement, is commonly defined as “a short account of one’s career and qualifications prepared typically by an applicant for a position.” MERRIAM-WEBSTER.COM DICTIONARY, <https://www.merriam-webster.com/dictionary/curriculum%20vitae> (last accessed January 26, 2022). Consistent with this definition, documents such as photographs depicting previous training

activities, certificates, and letters of reference, could reasonably be interpreted as components of a curriculum vitae. See *UnitedHealthcare of Pa., Inc. v. Pa. Dep't of Human Servs.*, 189 A.3d 41, 2018 Pa. Commw. Unpub. LEXIS 296 (Pa. Commw. Ct. 2018) (concluding that the Court must consider the plain language of a RTKL request as compared to an agency's interpretation of the request). Accordingly, based upon the statements made in Attorney Pokrifka's attestation, as well as Exhibit B of the County's submission, which Mr. Garcia labeled as his "Verified CV," the County's interpretation of the Request was unreasonably narrow. As a result, the County failed to meet its burden of proving that it does not possess records responsive to the Request. See *Hodges v. Pa. Dep't of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

**2. The County has not proven that the reference letters are exempt from disclosure under Section 708(b)(7)**

The County also argues that the reference letters submitted as part of Mr. Garcia's "Verified CV" may be withheld under Section 708(b)(7) of the RTKL, which exempts from disclosure certain "records relating to an agency employee[.]" including "[a] letter of reference or recommendation [pertaining to the character or qualifications of an identifiable individual....]" 65 P.S. § 67.708(b)(7)(i). However, Section 708(b)(7) applies to "records relating to an agency employee[.]" and there has been no evidence presented to suggest that Mr. Garcia was or sought to be an employee of the County when he submitted the reference letters. See *Mission Pa., LLC v. McKelvey*, 212 A.3d 119, 129 (Pa. Commw. Ct. 2019), *appeal den'd* 223 A3d 675 (Pa. 2020) ("A preponderance of the evidence may be the lowest burden of proof, but it still requires evidence unless the facts are uncontested or clear from the face of the RTKL request or the exemption"). Therefore, the County has not proven that the reference letters are exempt from disclosure under this exemption.

**3. The County has not proven that the photographs and certificates are exempt from disclosure under Section 708(b)(11)**

Next, the County argues that the photographs and certificates were identified as “Classified” and may be exempt from disclosure under Section 708(b)(11) of the RTKL. 65 P.S. § 67.708(b)(11). More specifically, the County states that “Mr. Garcia marked information ... as classified and has indicated to the County that the information, specifically the photos and certificates are proprietary and confidential” and their disclosure would reveal trade secrets and confidential proprietary information.<sup>4</sup> However, the County has not submitted sufficient evidence to support this argument, as Attorney Pokrifka’s attestation is silent about Section 708(b)(11). *See Office of the Governor v. Davis*, 122 A.3d 1185, 1193 (Pa. Commw. Ct. 2015) (*en banc*) (“Position statements are akin to briefs or proposed findings of fact, which, while part of the record, are distinguishable from the evidentiary record”); *see also Office of the Dist. Atty. of Phila. v. Bagwell*, 155 A.3d 1119, 1130 (Pa. Commw. Ct. 2017) (“Relevant and credible testimonial affidavits may provide sufficient evidence in support of a claimed exemption; however, conclusory affidavits, standing alone, will not satisfy the burden of proof an agency must sustain to show that a requester may be denied access to records under the RTKL”).

Furthermore, in its untimely response to the OOR’s request for additional information, the County suggests that the OOR must advise Mr. Garcia of the appeal because the County did not do so when receiving the OOR’s Notice of Appeal. However, the OOR’s Notice of Appeal clearly states that it is the responsibility of the agency to notify third parties of appeals regarding which the third parties may have an interest. Additionally, while the County asserts that it did not receive the OOR’s initial transmission of the Notice of Appeal, the County does not explain why it failed

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<sup>4</sup> Notably, in her attestation, Attorney Pokrifka states that “42 photos marked classified, which depict training activities of C-SAU[,]” but does not reference the certificates as being similarly marked.



to notify Mr. Garcia of the appeal when it received the Notice on January 20, 2022. In fact, the County, which, as far as the undersigned Appeals Officer can surmise, is the only party possessing the current contact information for Mr. Garcia, failed to include Mr. Garcia on the very email in which the County asserts Mr. Garcia should be advised of the appeal. However, because the County first advised the OOR that it failed to notify Mr. Garcia of the appeal on January 31, 2022, the day on which the Final Determination is due, and the Requester has objected to any further delay in the issuance of the Final Determination, the OOR is constrained to base its ruling on the argument and evidence already in the record and find that the County has failed to prove that disclosure of the records would reveal trade secrets or confidential proprietary information.

**4. The County has not proven that the photographs were previously found to be exempt from disclosure by the OOR**

Finally, the County asserts that “[t]raining information which includes photographs of training activities would be exempt from disclosure if requested pursuant to the Final Determination” in *Segelbaum I*. However, in her supplemental correspondence, Attorney Pokrifka states that she could not “provide an attestation indicating that these photos were or were not part of the training materials previously provided” and acknowledges that she “did not compare them” and that she “doubt[s] that all 42 pages of photos were included in the training documents but indicated that the photos are of training conducted by C-SAU.” The Requester also states that he has sufficient evidence to determine whether the photographs at issue in the instant appeal are the same “training materials” that were found to be exempt in *Segelbaum I*. Without this information, and in the absence of the County raising and supporting with evidence the exemptions adjudicated

in *Segelbaum I*,<sup>5</sup> the County has failed to prove that the photographs at issue in the instant appeal are the same records found to be exempt in *Segelbaum I*.

### CONCLUSION

For the foregoing reasons, the appeal is **granted**, and the County is required to provide all responsive records, including the documents submitted to the County under the cover page titled “Verified CV of STL Garcia,” 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 York 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.<sup>6</sup> This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: 31 January 2022**

*/s/ Joshua T. Young*

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JOSHUA T. YOUNG  
DEPUTY CHIEF COUNSEL

Sent to: Dylan Segelbaum (via email only);  
Michéle Pokrifka, Esq., AORO (via email only)

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<sup>5</sup> The OOR determined that the training materials, which appear to consist of primarily a training manual, were exempt from disclosure under Sections 708(b)(1) and 708(b)(2) of the RTKL. 65 P.S. §§ 67.708(b)(ii)-(2).

<sup>6</sup> *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).



# pennsylvania

OFFICE OF OPEN RECORDS

## STANDARD RIGHT-TO-KNOW REQUEST FORM

DATE REQUESTED: Nov. 12, 2021

REQUEST SUBMITTED BY: ☒ E-MAIL ☐ U.S. MAIL ☐ FAX ☐ IN-PERSON

REQUEST SUBMITTED TO (Agency name & address): 3400 Concord Road, York, PA 17402

NAME OF REQUESTER: Dylan Segelbaum

STREET ADDRESS: 1891 Loucks Road, Suite 100

CITY/STATE/COUNTY/ZIP(Required): York, PA 17408

TELEPHONE (Optional): (717) 916-3981 (cell) EMAIL (optional): dsegelbaum@ydr.com.

RECORDS REQUESTED: *\*Provide as much specific detail as possible so the agency can identify the information.  
Please use additional sheets if necessary*

I am requesting the following records:

- A copy of the curriculum vitae (CV) for Joseph Garcia, the "senior team leader" of CSAU-1 LLC, a "corrections special operations" organization based in Greenville, South Carolina.

I can be reached with any questions at (717) 916-3981 (cell) or at dsegelbaum@ydr.com.

DO YOU WANT COPIES? ☒ YES ☐ NO

DO YOU WANT TO INSPECT THE RECORDS? ☐ YES ☒ NO

DO YOU WANT CERTIFIED COPIES OF RECORDS? ☐ YES ☒ NO

DO YOU WANT TO BE NOTIFIED IN ADVANCE IF THE COST EXCEEDS \$25? ☒ YES ☐ NO

**\*\* PLEASE NOTE: RETAIN A COPY OF THIS REQUEST FOR YOUR FILES \*\***  
**\*\* IT IS A REQUIRED DOCUMENT IF YOU WOULD NEED TO FILE AN APPEAL \*\***

---

### FOR AGENCY USE ONLY

OPEN-RECORDS OFFICER:

☐ I have provided notice to appropriate third parties and given them an opportunity to object to this request

DATE RECEIVED BY THE AGENCY:

AGENCY FIVE (5) BUSINESS DAY RESPONSE DUE:

**EXHIBIT - C**



**pennsylvania**  
OFFICE OF OPEN RECORDS

21-0159

**STANDARD RIGHT-TO-KNOW REQUEST FORM**

DATE REQUESTED: June 16, 2021

REQUEST SUBMITTED BY: ☒ E-MAIL ☐ U.S. MAIL ☐ FAX ☐ IN-PERSON

REQUEST SUBMITTED TO (Agency name & address): York County Prison, 3400 Concord Road, York, PA 17402.

NAME OF REQUESTER: Dylan Segelbaum

STREET ADDRESS: 1891 Loucks Road, Suite 100

CITY/STATE/COUNTY/ZIP(Required): York, PA 17408

TELEPHONE (Optional): (717) 916-3981 (cell) EMAIL (optional): dsegelbaum@ydr.com.

RECORDS REQUESTED: *\*Provide as much specific detail as possible so the agency can identify the information. Please use additional sheets if necessary*

I am requesting the following records:

- C-SAU "Senior Team Leader" Joseph Garcia's resume, curriculum vitae and references.
- Copies of all documents memorializing use of force at York County Prison that occurred on May 31, 2021.
- Documents that memorialize how many and which corrections officers have been C-SAU certified, and a copy of the certifications.
- York County Prison's current use of force policy, and the policy that proceeded the latest revision.

DO YOU WANT COPIES? ☒ YES ☐ NO

DO YOU WANT TO INSPECT THE RECORDS? ☐ YES ☒ NO

DO YOU WANT CERTIFIED COPIES OF RECORDS? ☐ YES ☒ NO

DO YOU WANT TO BE NOTIFIED IN ADVANCE IF THE COST EXCEEDS \$25? ☒ YES ☐ NO

RECEIVED

JUN 17 2021

**\*\* PLEASE NOTE: RETAIN A COPY OF THIS REQUEST FOR YOUR FILES \*\***  
**\*\* IT IS A REQUIRED DOCUMENT IF YOU WOULD NEED TO FILE AN APPEAL \*\***

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**FOR AGENCY USE ONLY**

OPEN-RECORDS OFFICER:

☐ I have provided notice to appropriate third parties and given them an opportunity to object to this request

DATE RECEIVED BY THE AGENCY: 6/17/2021 30-day - 7/26/2021

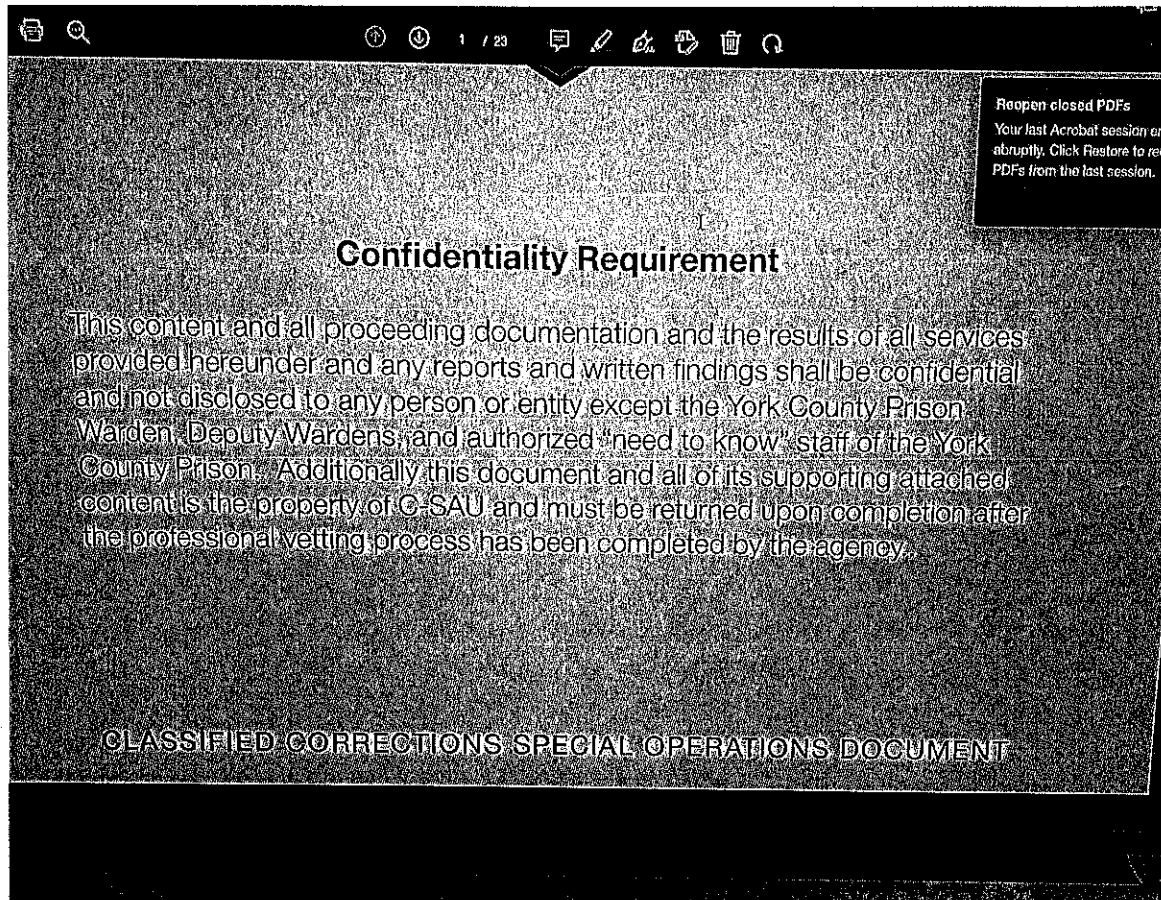
AGENCY FIVE (5) BUSINESS DAY RESPONSE DUE: 6/24/2021

**EXHIBIT - D**

From: Joseph Garcia  
Sent: Thursday, February 3, 2022 3:05 AM  
To: Patricia, Michele  
Subject: Re: Segalbaum and the York Daily Record v. York County: GCR Bk. AP 2021-2943

Michele

This statement is on the front of our proposal and all of our documents. This statement was on the cover sheet the documents binders proposal for work.



STJ, Joseph Garcia  
STJ-IC

Corrections Special Applications Unit

SAVE PAPER - THINK BEFORE YOU PRINT  
Supporting Paperless Office Concept

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### VERIFICATION

I, Mich  lle Pokrifka, Esquire, Solicitor for York County, hereby affirm that the facts contained in the foregoing Petition for Review are true and correct to the best of my knowledge, information, and belief. I hereby acknowledge that the averments of fact set forth in the Brief are made subject to the penalties of 18 Pa.C.S. Section 4904, relating to unsworn falsification to authorities.

Respectfully submitted,

Dated: March 2, 2022

s/ Mich  lle Pokrifka  
Mich  lle Pokrifka, Esquire  
Solicitor for County of York, Pennsylvania

DYLAN SEGELBAUM  
and THE YORK DAILY RECORD  
Respondent

: IN THE COURT OF COMMON PLEAS  
: OF YORK COUNTY, PENNSYLVANIA

V.

:  
:  
: No. 2022-SU-

YORK COUNTY

Petitioner

:  
:  
: OOR Docket No. AP 2021-2943

**CERTIFICATE OF COMPLIANCE WITH PUBLIC ACCESS POLICY**

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.

Submitted by: Michéllle Pokrifka, Esquire

Signature: s/ Michéllle Pokrifka  
Attorney ID: 66654

**DYLAN SEGELBAUM**  
**and THE YORK DAILY RECORD**  
**Respondent**

**V.**

**YORK COUNTY**

**Petitioner**

**: IN THE COURT OF COMMON PLEAS**  
**: OF YORK COUNTY, PENNSYLVANIA**  
**:**  
**:**  
**: No. 2022-SU-**  
**:**  
**:**  
**: OOR Docket No. AP 2021-2943**

**CERTIFICATE OF SERVICE**

I hereby certify that on this date a copy of the foregoing Petition for Review of the Final Determination of the Office of Open Records Dated January 31, 2022, was served on the following individuals by electronic mail:

Dylan Segelbaum  
1891 Loucks Rd  
York, PA 17404  
[dsegelbaum@ydr.com](mailto:dsegelbaum@ydr.com)

The York Daily Record  
1891 Loucks Rd  
York, PA 17404

Joshua T. Young, Esquire  
Deputy Chief Counsel  
Office of Open Records  
333 Market Street, 16th Floor  
Harrisburg, PA 17101-2234  
[joshyoung@pa.gov](mailto:joshyoung@pa.gov)

Dated: March 2, 2022

COUNTY OF YORK, PENNSYLVANIA

By: s/ Michelle Pokrifka

Michéllé Pokrifka, Esquire  
Solicitor for the County of York, Pennsylvania  
Attorney ID 66654  
28 East Market Street  
York, PA 17401  
Phone: (717) 771-4777  
Email: [mpokrifka@yorkcountypa.gov](mailto:mpokrifka@yorkcountypa.gov)