

June 14, 2022

**PACFILED**

Michael Krimmel, Esq.  
Prothonotary  
Commonwealth Court of Pennsylvania  
Pennsylvania Judicial Center  
601 Commonwealth Avenue, Suite 2100  
Harrisburg, PA 17106-2575

**RE: Submission of Record in:**  
***Pennsylvania Department of Health v. Nicholas Starinieri,***  
**No. 402 CD 2022**

Dear Mr. Krimmel:

We hereby submit the record in the above-referenced matter. Section 1303 of the Right-to-Know Law, 65 P.S. §§ 67.101, *et seq.*, (“RTKL”), defines the Record on Appeal as “the record before a court shall consist of the request, the agency’s response, the appeal filed under section 1101, the hearing transcript, if any, and the final written determination of the appeals officer.” Pursuant to *Department of Transportation v. Office of Open Records*, 7 A.3d 329 (Pa. Commw. Ct. 2010), this record includes all “evidence and documents admitted into evidence by the appeals officer pursuant to Section 1102(a)(2).” The record in this matter consists of the following:

**Office of Open Records Docket No. AP 2022-0103:**

1. The appeal filed by Nicholas Starinieri (“Requester”) to the Office of Open Records (“OOR”), received January 14, 2022.
2. Official Notice of Appeal dated January 14, 2022, sent to both parties by the OOR, advising them of the docket number and identifying the appeals officer for the matter.
3. Requester’s submission dated January 19, 2022.
4. TerrAscent Corporation’s email dated January 19, 2022.
5. Department of Health’s (“Department”) email dated January 26, 2022, stating they are not interest in pursuing mediation.
6. Requester emails dated January 26, 2022 and January 27, 2022 asking the Department to contact him.

7. Requester email dated January 27, 2022, asking the OOR to schedule a conference and to conduct an *In Camera* review.
8. TerrAscent Corporation email dated January 31, 2022.
9. Email chain dated February 2, 2022 wherein the OOR grants the Requester additional time to make a submission.
10. Requester submission dated February 16, 2022 but received February 17, 2022.
11. Department submission dated February 18, 2022.
12. Requester submission dated February 18, 2022.
13. OOR email dated March 17, 2022 asking the Department to provide additional information regarding their temporary regulations and establishing a submission deadline.
14. Department's supplemental submission dated March 18, 2022.
15. Requester supplemental submission dated March 18, 2022.
16. Final Determination issued by OOR, dated March 25, 2022.

The OOR has discretion to hold a hearing on appeals filed but chose not to do so in this matter. Therefore, there is no transcript to transmit. Certification of the record in this case is attached to this letter. Please feel free to contact us for any reason in connection with this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kyle Applegate".

Kyle Applegate  
Chief Counsel

cc: Nicholas J. Starinieri (Requester)  
Yvette M. Kostelac, Esq. (for Department)

# Commonwealth of Pennsylvania

**Agency Docket Number: AP 2022-0103**

**Appellate Court Docket Number: 402 CD 2022**

I, Elizabeth Wagenseller, certify that the accompanying electronically transmitted materials are true and correct copies of all materials filed in the Office of Open Records and constitute the record for :

Pennsylvania Department  
of Health,  
Petitioner

v.

Nicholas Starinieri (Office of  
Open Records),  
Respondent

\_\_\_\_\_  
/s/ Elizabeth Wagenseller

\_\_\_\_\_  
06/14/2022

Executive Director

Volumes:

Agency Record (2)

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PENNSYLVANIA DEPARTMENT  
OF HEALTH,

Petitioner

v.

NICHOLAS STARINIERI,

Respondent

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No. 402 CD 2022

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**CERTIFIED RECORD**

Kyle Applegate  
Chief Counsel  
Office of Open Records  
333 Market Street, 16<sup>th</sup> Floor  
Harrisburg, PA 17101-2234  
Phone: (717) 346-9903  
Fax: (717) 425-5343  
Email: [kyapplegat@pa.gov](mailto:kyapplegat@pa.gov)

June 14, 2022



IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PENNSYLVANIA DEPARTMENT  
OF HEALTH,

Petitioner

v.

NICHOLAS STARINIERI,  
Respondent

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No. 402 CD 2022

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CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the Certified Record upon the following by First Class Mail, pre-paid or by Email at the address or email listed below:

Nicholas J. Starinieri, Esq.  
DeFino Law Associates, P.P.  
2541 S. Broad Street  
Philadelphia, PA 19148  
[njs@definolawyers.com](mailto:njs@definolawyers.com)  
(via email only)

Shea M. Skinner, Esq.  
Kevin J. Hoffman, Esq.  
Yvette M. Kostelac, Esq.  
Pennsylvania Department of Health  
Rm 825 Health & Welfare Building  
625 Forster Street  
Harrisburg, PA 17120  
[sheskiner@pa.gov](mailto:sheskiner@pa.gov)  
[kjhoffman@pa.gov](mailto:kjhoffman@pa.gov)  
[ykostelac@pa.gov](mailto:ykostelac@pa.gov)  
(via email only)



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Faith Henry, Administrative Officer  
Office of Open Records  
333 Market Street, 16<sup>th</sup> Floor  
Harrisburg, PA 17101-2234  
Phone: (717) 346-9903  
Fax: (717) 425-5343  
Email: [fahenry@pa.gov](mailto:fahenry@pa.gov)

June 14, 2022

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PENNSYLVANIA DEPARTMENT	:	
OF HEALTH,	:	
Petitioner	:	
v.	:	
	:	
NICHOLAS STARINIERI,	:	No. 402 CD 2022
Respondent	:	
	:	

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TABLE OF CONTENTS  
RECORD

*Nicholas Starinieri v. Pennsylvania Department of Health,*  
OOR Dkt. AP 2022-0103

**Office of Open Records Docket No. AP 2022-0103:**

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16. Final Determination issued by OOR, dated March 25, 2022.

# 00R Exhibit 1

## DC, OpenRecords

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**From:** no-reply@openrecordspennsylvania.com  
**Sent:** Friday, January 14, 2022 1:48 PM  
**To:** njs@definolawyers.com  
**Subject:** [External] PA Office of Open Records - Appeal Confirmation

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



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

<b>Name:</b>	Nicholas Starinieri
<b>Company:</b>	DeFino Law Associates, P.C.
<b>Address 1:</b>	2541 S Broad Street
<b>Address 2:</b>	
<b>City:</b>	Philadelphia
<b>State:</b>	Pennsylvania
<b>Zip:</b>	19148
<b>Phone:</b>	215-551-9099
<b>Email:</b>	njs@definolawyers.com
<b>Agency (list):</b>	Pennsylvania Department of Health
<b>Agency Address 1:</b>	625 Forster Street
<b>Agency Address 2:</b>	825 Health and Welfare Building
<b>Agency City:</b>	Harrisburg
<b>Agency State:</b>	Pennsylvania
<b>Agency Zip:</b>	17120
<b>Agency Phone:</b>	717-783-2500
<b>Agency Email:</b>	sheskiner@pa.gov

<b>Records at Issue in this Appeal:</b>	Security camera video of the parking lot located at 2701 LINCOLN HWY E, THORNDALE PA, 19372 for 09/24/2021. My client was run down by a delivery truck in the parking lot.
<b>Request Submitted to Agency Via:</b>	e-mail
<b>Request Date:</b>	12/29/2021
<b>Response Date:</b>	01/07/2022
<b>Deemed Denied:</b>	No
<b>Agency Open Records Officer:</b>	Lisa M. Keefer
<b>Attached a copy of my request for records:</b>	Yes
<b>Attached a copy of all responses from the Agency regarding my request:</b>	Yes
<b>Attached any letters or notices extending the Agency's time to respond to my request:</b>	Yes
<b>Agree to permit the OOR additional time to issue a final determination:</b>	30 Days
<b>Interested in resolving this issue through OOR mediation:</b>	Yes
<b>Attachments:</b>	<ul style="list-style-type: none"> <li>• Romig_email_request_DOH.pdf</li> <li>• DOH-RTKL-MSC-264-2021 Starinieri Final Response.pdf</li> <li>• Romig_email_response_DOH.pdf</li> <li>• Romig_email_response_DOH_detailed.pdf</li> <li>• Romig_email_DOH_proposal.pdf</li> </ul>

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



Nicholas Starinieri <njs@definolawyers.com>

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**Re: PA DOH-RTKL-MS-264-2021**

1 message

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Nicholas Starinieri <njs@definolawyers.com>

Mon, Jan 10, 2022 at 5:52 PM

To: "Skinner, Shea" <sheskinner@pa.gov>

Cc: "LaMano, Anna" <alamano@pa.gov>, "Keefer, Lisa" <likeefer@pa.gov>, Nicole Russo <nrusso@definolawyers.com>

Ms. Skinner:

I appreciate your reply.

Regarding 28 Pa. Code §§ 1141.22(b)(3): I am not seeking any information concerning a patient or caregiver or both. My client was on her way to LapCorp, not the marijuana dispensary. There is no identifying information in the video I am seeking. The video is of my client being run down by a truck. It is my understanding that no one from the dispensary appears in the video when my client was being run down. If you have information to the contrary, I would appreciate it if you would provide it to me.

Regarding 28 Pa. Code §§ 1141.22(b)(8): The information that I am requesting (the exterior video) does not involve a patient, caregiver, practitioner or medical marijuana organization. The video involves a delivery truck and my client, who is a pedestrian in a parking lot. The video faces away from the building.

Regarding 28 Pa. Code §§ 1141.22(b)(9): I am not seeking any information regarding the **physical features of**, and security measures **installed in**, a facility. I am seeking exterior video of my client being run down in the parking lot. The physical features of the facility are of no relevance to me, nor should anything beyond the parking lot appear in the video. The camera is not installed in the facility; it is on the exterior of the building and pointed toward the parking lot.

While I understand my right to appeal your decision, I believe it is worthwhile for me to fully explain my position and the video I am seeking. If my appeal is unsuccessful, I realize that I will need to obtain a subpoena in order to secure the video. Suit has not been filed yet as the case is quite young. I am trying to avoid filing suit prematurely in my case in chief, and certainly wish to avoid involving the dispensary and DOH in that suit.

In addition to the appeal, I would like you to consider another alternative. Instead of providing a copy of the video, I ask that you permit me and a representative from Nationwide Insurance Company to merely view the video together with no one making any type of recording at that time.

Please let me know if my alternative would be acceptable to you.

Thank you.

On Mon, Jan 10, 2022 at 5:16 PM Skinner, Shea <sheskinner@pa.gov> wrote:

Good evening Attorney Starinieri,

I'm writing in response to your voicemail from last Friday concerning your recent Right-to-Know Law (RTKL) request, DOH-RTKL-MS-264-2021. To expound upon what was stated in the Department's Final Response (attached), the record you have requested is confidential pursuant to 28 Pa. Code §§ 1141.22(b)(3), (8), and (9), and is accordingly not subject to disclosure under the RTKL.

Sincerely,

**Shea M. Skinner** | Assistant Counsel

Pennsylvania Department of Health

Office of Legal Counsel



Nicholas Starinieri <njs@definolawyers.com>

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**PA DOH-RTKL-MSC-264-2021**

1 message

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**Skinner, Shea** <sheskiner@pa.gov>

Mon, Jan 10, 2022 at 5:16 PM

To: "njs@definolawyers.com" <njs@definolawyers.com>

Cc: "LaMano, Anna" <alamano@pa.gov>, "Keefer, Lisa" <likeefer@pa.gov>

Good evening Attorney Starinieri,

I'm writing in response to your voicemail from last Friday concerning your recent Right-to-Know Law (RTKL) request, DOH-RTKL-MSC-264-2021. To expound upon what was stated in the Department's Final Response (attached), the record you have requested is confidential pursuant to 28 Pa. Code §§ 1141.22(b)(3), (8), and (9), and is accordingly not subject to disclosure under the RTKL.

Sincerely,

**Shea M. Skinner** | Assistant Counsel

Pennsylvania Department of Health

Office of Legal Counsel

Room 825 | Health and Welfare Building

625 Forster Street | Harrisburg, PA 17120

Ph: 717-783-2500 | Fax: 717-705-6042

[www.health.pa.gov](http://www.health.pa.gov)

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*The information transmitted is intended only for the person or entity to whom it is addressed and may contain confidential and/or privileged material. Any use of this information other than by the intended recipient is prohibited. If you receive this message in error, please send a reply e-mail to the sender and delete the material from any and all computers. Unintended transmissions shall not constitute waiver of the attorney-client or any other privilege.*

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 **DOH-RTKL-MSC-264-2021 Starinieri Final Response.pdf**  
122K





Nicholas Starinieri <njs@definolawyers.com>

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**PA DOH-RTKL-MSC-264-2021 Starinieri Final Response**

1 message

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Keefer, Lisa <likeefer@pa.gov>

Fri, Jan 7, 2022 at 3:03 PM

To: "njs@definolawyers.com" <njs@definolawyers.com>

**Good Afternoon,**

**Attached is the Pennsylvania Department of Health's final response to your RTKL request. If you have any questions, please let me know.**

**Thanks!**

**Lisa M. Keefer | Legal Office Administrator 2**

**Pennsylvania Department of Health**

**Office of Legal Counsel**

**Room 825 | Health and Welfare Building**

**625 Forster Street | Harrisburg, PA 17120**

**Ph: 717-783-2500 | Fax: 717-705-6042**

**[www.health.pa.gov](http://www.health.pa.gov)**

**PRIVILEGED AND CONFIDENTIAL COMMUNICATION**

**The information transmitted is intended only for the person or entity to whom it is addressed and may contain confidential and/or privileged material. Any use of this information other than by the intended recipient is prohibited. If you received this message in error, please send a reply e-mail to the sender and delete the material from any and all computers. Unintended transmissions shall not constitute waiver of the attorney-client or any other privilege.**

January 7, 2022

Nicholas J. Starinieri, Esquire  
DeFino Law Associates, P.C.  
2541 S. Broad Street  
Philadelphia, PA 19148

[njs@definolawyers.com](mailto:njs@definolawyers.com)

**RE: Right to Know Law Request  
DOH-RTKL-MSC-264-2021**

Dear Mr. Starinieri:

This letter acknowledges receipt by the Pennsylvania Department of Health (Department) of your written requests for records under the Pennsylvania Right-to-Know Law (RTKL), 65 P.S. §§ 67.101-67.3104. The Department received your request on December 30, 2021. You requested:

I represent Cynthia Romig who was seriously injured when she was a pedestrian struck by a truck on 9/24/21 in the parking lot near the Apothecarium in Thorndale, PA. My client was on her way to LabCorp in the parking lot when she was struck. We have been informed that the Apothecarium has video of my client's accident. I have entered into a Confidentiality Agreement with counsel for the Apothecarium in order to obtain the video. Immediately before the video was to be released, counsel for the Apothecarium informed me that the video could not be released because of DOH regulations.

Can you please let me know with whom I can speak at DOH so that I may obtain the requested video or, at the very least, make arrangements to view it? My request does not violate 28 Pa. Code 1141.22(b). I have no interest in anyone that could be in the video, other than my client and the driver which struck her. Filing suit against the driver is premature as his insurance carrier is cooperating with the claim. Thus, there is no subpoena at this time.

Your request is denied. The records sought cannot be released absent a court order. 28 Pa. Code 1141.22(b).

If you choose to appeal under the RTKL, your appeal should be submitted in writing to: Executive Director, OOR, 333 Market Street, 16<sup>th</sup> Floor, Harrisburg, Pennsylvania 17101. If you choose to file an appeal you must do so within 15 business days of the mailing date of this response and send to the OOR:

- 1) This response;
- 2) Your request;
- 3) The reasons why you think the agency is wrong in denying access to the requested records.

Also, the OOR has an appeal form available on the OOR website at:

<https://www.openrecords.pa.gov/Appeals/AppealForm.cfm>.

Please be advised that this correspondence will serve to close this record with our office as permitted by law.

Sincerely,



Lisa M. Keefer  
Agency Open Records Officer  
Pennsylvania Department of Health  
625 Forster Street  
825 Health and Welfare Building  
Harrisburg, PA 17120-0701

Date of Mailing: 01/07/2022



Nicholas Starinieri <njs@definolawyers.com>

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## Exterior Video Request

1 message

Nicholas Starinieri <njs@definolawyers.com>

Wed, Dec 29, 2021 at 8:10 PM

To: PADOHRTK@pa.gov

Cc: Nicole Russo <nrusso@definolawyers.com>

Ms. Keefer:

I represent Cynthia Romig who was seriously injured when she was a pedestrian struck by a truck on 9/24/21 in the parking lot near the Apothecarium in Thorndale, PA. My client was on her way to LabCorp in the parking lot when she was struck. We have been informed that the Apothecarium has video of my client's accident. I have entered into a Confidentiality Agreement with counsel for the Apothecarium in order to obtain the video. Immediately before the video was to be released, counsel for the Apothecarium informed me that the video could not be released because of DOH regulations.

Can you please let me know with whom I can speak at DOH so that I may obtain the requested video or, at the very least, make arrangements to view it? My request does not violate 28 Pa. Code 1141.22(b). I have no interest in anyone that could be in the video, other than my client and the driver which struck her. Filing suit against the driver is premature as his insurance carrier is cooperating with the claim. Thus, there is no subpoena at this time.

Thank you in advance for your assistance.

--

Nicholas J. Starinieri, Esquire  
DeFino Law Associates, P.C.  
2541 S. Broad Street  
Philadelphia, PA 19148  
T - 215-551-9099 (Ext. 109)  
F - 215-551-4099  
[www.definolawyers.com](http://www.definolawyers.com)

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# 00R Exhibit 2

## **NOTICE OF DEADLINES**

The appeal has been docketed by the OOR and it has been assigned to an Appeals Officer. The docket number and the Appeals Officer's contact information are included in the attachments you received along with this notice.

The Final Determination is currently due on **March 28, 2022**.

**The timeline for this RTKL appeal may be extended by the OOR during the appeal.** This extension will allow the OOR the flexibility it requires to protect due process and to ensure that the agency and requester, along with any third parties, have a full and fair opportunity to meaningfully participate in the appeal.

Evidence, legal argument and general information to support your position must be submitted within seven (7) business days from the date of this letter, unless the Appeals Officer informs you otherwise. *Note: If the proceedings have been stayed for the parties to submit a completed mediation agreement, the record will remain open for seven (7) business days beyond the mediation agreement submission deadline.*

Submissions in this case are currently due on **February 4, 2022**.

**If you are unable to meaningfully participate in this appeal under the above deadlines, please notify the Appeals Officer as soon as possible.**

Due to delays in U.S. mail, we urge agencies and requesters to use email for all communications with the OOR to the extent possible.

Presently, the OOR is receiving postal mail on a limited basis. Accordingly, we urge agencies and requesters to use email for all communication with the OOR to the extent possible.

If you have any questions about this notice or the underlying appeal, please contact the Appeals Officer. The OOR is committed to working with agencies and requesters to ensure that the RTKL appeal process proceeds as fairly and as smoothly as possible.

January 14, 2022

**Via Email Only:**

Mr. Nicholas Starinieri  
DeFino Law Associates, P.C.  
2541 S Broad Street  
Philadelphia, PA 19148  
njs@definolawyers.com

**Via Email Only:**

Lisa M. Keefer  
Agency Open Records Officer  
Pennsylvania Department of Health  
625 Forster Street  
825 Health and Welfare Building  
Harrisburg, PA 17120  
PADOHRTK@pa.gov  
likeefer@pa.gov

-----  
**RE: OFFICIAL NOTICE OF APPEAL - Starinieri and DeFino Law Associates, P.C. v. Pennsylvania Department of Health OOR Dkt. AP 2022-0103**  
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Dear Parties:

**Review this information and all enclosures carefully as they affect your legal rights.**

The Office of Open Records (“OOR”) received this appeal under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101, et seq. on January 14, 2022. A binding Final Determination (“FD”) will be issued pursuant to the timeline required by the RTKL, **please see the attached information for more information about deadlines.**

**Notes for both parties (more information in the enclosed documents):**

- The docket number above must be included on all submissions related to this appeal.
- Any information provided to the OOR must be provided to all parties involved in this appeal. Information that is not shared with all parties will not be considered.
- All submissions to the OOR, other than *in camera* records, will be public records. Do not include any sensitive information- such as Social Security numbers.

-----  
If you have questions about this appeal, please contact the assigned Appeals Officer (contact information enclosed), providing a copy of any correspondence to all parties involved in this appeal.  
-----

Sincerely,



Elizabeth Wagenseller  
Executive Director

Enc.:     Description of RTKL appeal process  
          Assigned Appeals Officer contact information  
          Entire appeal as filed with OOR

# The Right-to-Know Law Appeal Process

**Please review this information carefully as it affects your legal rights.**

The Office of Open Records (“OOR”) has received the enclosed appeal, which was filed under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101, et seq. A binding Final Determination will be issued by the OOR pursuant to the statutory timeline, subject to the notice of deadlines enclosed herein. If you have any questions, please contact the Appeals Officer assigned to this case. Contact information is included on the enclosed documents.

---

## Submissions to the OOR

**Both parties may submit evidence, legal argument, and general information to support their positions to the assigned Appeals Officer.** Please contact the Appeals Officer as soon as possible.

**Any information provided to the OOR must be provided to all parties involved in this appeal.** Information submitted to the OOR will not be considered unless it is also shared with all parties.

**Include the docket number on all submissions.**

The agency may assert exemptions on appeal even if it did not assert them when the request was denied (*Levy v. Senate of Pa.*, 65 A.3d 361 (Pa. 2013)).

Generally, submissions to the OOR — other than *in camera* records — will be public records. Do not include sensitive or personal information, such as Social Security numbers, on any submissions.

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## Agency Must Notify Third Parties

If records affect a legal or security interest of a third party; contain confidential, proprietary or trademarked records; **or** are held by a contractor or vendor, **the agency must notify such parties of this appeal immediately and provide proof of that notice by the record closing date set forth above.**

Such notice must be made by: (1) Providing a copy of all documents included with this letter; **and** (2) Advising relevant third parties that interested persons may request to participate in this appeal by contacting the Appeals Officer assigned to this case (see 65 P.S. § 67.1101(c)).

The Commonwealth Court has held that “the burden [is] on third-party contractors... to prove by a preponderance of the evidence that the [requested] records are exempt.” (*Allegheny County Dep't of Admin. Servs. v. A Second Chance, Inc.*, 13 A.3d 1025, 1042 (Pa. Commw. Ct. 2011)).

**A third party's failure to participate in a RTKL appeal before the OOR may be construed as a waiver of objections regarding release of requested records.**

*NOTE TO AGENCIES: If you have questions about this requirement, please contact the Appeals Officer immediately.*

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## Statements of Fact & Burden of Proof

**Statements of fact must be supported by an affidavit or attestation made under penalty of perjury by a person with actual knowledge.** Statements of fact or allegations submitted without an affidavit may not be considered.

Under the RTKL, the agency has the burden of proving that records are exempt from public access (see 65 P.S. § 67.708(a)(1)). **To meet this burden, the agency must provide evidence to the OOR.**

The law requires the agency position to be supported by sufficient facts and citation to all relevant sections of the RTKL, case law, and OOR Final Determinations.

An affidavit or attestation is required to prove that records do not exist.

Sample affidavits are on the OOR website, [openrecords.pa.gov](http://openrecords.pa.gov).

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

---

## Preserving Responsive Records

**The agency must preserve all potentially responsive records during the RTKL appeal process**, including all proceedings before the OOR and any subsequent appeals to court.

Failure to properly preserve records may result in the agency being sanctioned by a court for acting in bad faith.

See *Lockwood v. City of Scranton*, 2019-CV-3668 (Lackawanna County Court of Common Pleas), holding that an agency had “a mandatory duty” to preserve records after receiving a RTKL request. Also see generally *Uniontown Newspapers, Inc. v. Pa. Dep’t of Corr.*, 185 A.3d 1161 (Pa. Commw. Ct. 2018), holding that “a fee award holds an agency accountable for its conduct during the RTKL process...”

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## Mediation

**The OOR offers a mediation program as an alternative to the standard appeal process.** To participate in the mediation program, both parties must agree in writing.

The agency must preserve all potentially responsive records during the RTKL appeal process. Mediation is a voluntary, informal process to help parties reach a mutually agreeable settlement. The OOR has had great success in mediating RTKL cases.

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

Either party can end mediation at any time.

If mediation is unsuccessful, both parties will be able to make submissions to the OOR as outlined on this document, and the OOR will have no less than 30 calendar days from the conclusion of the mediation process to issue a Final Determination.

Parties are encouraged to consider the OOR's mediation program as an alternative way to resolve disputes under the RTKL.

---



**APPEALS OFFICER:**

**Joshua Young, Esq.**

**CONTACT INFORMATION:**

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

**FACSIMILE:**

(717) 425-5343

**EMAIL:**

joshyoung@pa.gov

**Preferred method of contact and  
submission of information:**

EMAIL

**Please direct submissions and correspondence related to this appeal to the above Appeals Officer.  
Please include the case name and docket number on all submissions.**

**You must copy the other party on everything you submit to the OOR. The Appeals Officer cannot  
speak to parties individually without the participation of the other party.**

The OOR website, <https://openrecords.pa.gov>, is searchable and both parties are encouraged to review  
prior final determinations involving similar records and fees that may impact this appeal.

The OOR website also provides sample forms that may be helpful during the appeals process. OOR staff  
are also available to provide general information about the appeals process by calling (717) 346-9903.

## REQUEST TO PARTICIPATE BEFORE THE OOR

Please accept this as a Request to Participate in a currently pending appeal before the Office of Open Records. The statements made herein and in any attachments are true and correct to the best of my knowledge, information and belief. I understand this statement is made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities.

**NOTE: The requester filing the appeal with the OOR is a named party in the proceeding and is NOT required to complete this form.**

OOR Docket No: \_\_\_\_\_

Today's date: \_\_\_\_\_

Name: \_\_\_\_\_

**PUBLIC RECORD NOTICE: ALL FILINGS WITH THE OOR WILL BE PUBLIC RECORDS AND SUBJECT TO PUBLIC ACCESS WITH LIMITED EXCEPTION. IF YOU DO NOT WANT TO INCLUDE PERSONAL CONTACT INFORMATION IN A PUBLICLY ACCESSIBLE RECORD, PLEASE PROVIDE ALTERNATE CONTACT INFORMATION IN ORDER TO RECEIVE FUTURE CORRESPONDENCE RELATED TO THIS APPEAL.**

Address/City/State/Zip \_\_\_\_\_

E-mail \_\_\_\_\_

Fax Number: \_\_\_\_\_

**Name of Requester:** \_\_\_\_\_

Address/City/State/Zip \_\_\_\_\_

Telephone/Fax Number: \_\_\_\_\_ / \_\_\_\_\_

E-mail \_\_\_\_\_

**Name of Agency:** \_\_\_\_\_

Address/City/State/Zip \_\_\_\_\_

Telephone/Fax Number: \_\_\_\_\_ / \_\_\_\_\_

E-mail \_\_\_\_\_

**Record at issue:** \_\_\_\_\_

I have a direct interest in the record(s) at issue as (check all that apply):

- ☐ An employee of the agency
- ☐ The owner of a record containing confidential or proprietary information or trademarked records
- ☐ A contractor or vendor
- ☐ Other: (attach additional pages if necessary) \_\_\_\_\_

**I have attached a copy of all evidence and arguments I wish to submit in support of my position.**

Respectfully submitted, \_\_\_\_\_ (must be signed)

**Please submit this form to the Appeals Officer assigned to the appeal. Remember to copy all parties on this correspondence. The Office of Open Records will not consider direct interest filings submitted after a Final Determination has been issued in the appeal.**



## **MEDIATION NOTICE**

**Appeals before the Office of Open Records (OOR) are stayed for seven business days pending the parties' decision to participate in the OOR's Informal Mediation Program.**

**The Parties may agree to mediation.** To participate in mediation, the Parties must submit a completed copy of the attached Mediation Agreement. If both Parties agree to mediation, the appeal will be further stayed, and the Parties will be contacted by an OOR Mediator to begin the mediation process.

**The Parties may decline mediation.** If either Party declines to participate in mediation or fails to submit a signed Mediation Agreement within seven business days:

- The record will remain open for seven additional business days for the parties to submit evidence and argument in support of their positions; and
- The OOR will decide the appeal and issue a Final Determination by the date set forth in the attached Official Notice of Appeal.

Even if mediation is declined at this time, the Parties may agree to mediate the dispute at any time prior to a Final Determination being issued, and the appeal will be stayed pending mediation.

**Questions.** If the Parties have questions about mediation or what to expect during the mediation process, please email the assigned Appeals Officer or visit the OOR's website at <https://www.openrecords.pa.gov/Appeals/Mediation.cfm>.



## OOB MEDIATION AGREEMENT

OOB Dkt. No. 2022-0103

Requester Name: Starinieri, Nicholas

Agency Name: Pennsylvania Department of Health

The Requester and Agency (collectively, the "Parties") agree to participate in the OOR's Informal Mediation Program to resolve the matters at issue in this appeal.

The Parties agree to participate in the mediation process in good faith. If the Parties agree, there may be more than one session if the Mediator determines that the appeal could be resolved. The Parties acknowledge that mediation sessions are not open to the public and the content of discussions during mediation is confidential and not admissible as evidence in this appeal.

The Parties agree to extend the Final Determination deadline in this appeal for 30 calendar days beyond the conclusion of the mediation process or, if the Requester agreed to grant the OOR a 30-day extension on the appeal form initiating this appeal, the Final Determination deadline will include that extension. If the Requester does not withdraw the appeal, the Mediator will indicate the conclusion of the mediation process in writing if further mediation sessions are not likely to result in a resolution of the dispute. The Parties acknowledge that this Mediation Agreement, the Requester's withdrawal, and the OOR's withdrawal acknowledgement will be included in the OOR's administrative appeal file and subject to public access.

Upon receipt of this completed Mediation Agreement, a Mediator will contact the Parties to establish a mutually convenient date, time and location to conduct a joint mediation session.

Requester Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Agency Representative Signature: \_\_\_\_\_ Date: \_\_\_\_\_



**IN THE MATTER OF**

**NICHOLAS STARINIERI,  
Requester**

**v.**

**PENNSYLVANIA DEPARTMENT OF  
HEALTH,  
Respondent**

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**Docket No.: AP 2022-0103**

This correspondence confirms the above-referenced Requester's agreement to an additional thirty (30) day extension of time to issue a Final Determination in this matter as indicated in the Requester's appeal form. Accordingly, pursuant to 65 P.S. § 67.1101(b)(1), the Office of Open Records will now issue a Final Determination in the above-captioned matter on or before March 28, 2022.

# OOR Exhibit 3

**From:** [Nicholas Starinieri](#)  
**To:** [Young, Joshua](#)  
**Cc:** [Keefer, Lisa](#); [Joe Pangaro](#); [Nicole Russo](#)  
**Subject:** [External] Cynthia Romig - OOR Dkt. AP 2022-0103  
**Date:** Wednesday, January 19, 2022 3:12:14 PM  
**Attachments:** [Romig\\_Mediation\\_request.pdf](#)  
[Police Crash Report.pdf](#)

---

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

Mr. Young:

Attached please find the OOR Mediation Agreement which I have signed and dated today. Ms. Keefer is also copied. I certainly assume that she would agree to mediation. I have also copied Joe Pangaro on this email. Mr. Pangaro is house counsel for Transcend, the establishment which possesses the video I am trying to obtain.

I wholeheartedly believe that this is a perfect case for Mediation, and, in fact, should be settled promptly. I have invited Mr. Pangaro to participate in the Mediation, but he has informed me of there being no need as he has no problem whatsoever in providing me with the video, subject to DOH approval.

As I have conveyed several times in the past, it is my understanding that the video requested does not depict any individuals having anything to do with the dispensary. No one has provided me with any information to the contrary. Based on the contents of the video, there can be no violation of the applicable statute. This should be very easy for DOH to confirm as DOH has reviewed the video. It is worth noting that I have already executed a Confidentiality Agreement concerning the video which sits in limbo based on DOH's denial.

In the event that it was not previously supplied, I am enclosing a copy of the police report which will enable you to visualize the accident and the reason for my request for the video.

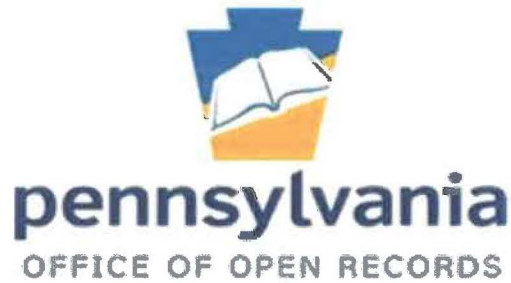
Thank you.

--

Nicholas J. Starinieri, Esquire  
DeFino Law Associates, P.C.  
2541 S. Broad Street  
Philadelphia, PA 19148  
T - 215-551-9099 (Ext. 109)  
F - 215-551-4099  
[www.definolawyers.com](http://www.definolawyers.com)

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## OOB MEDIATION AGREEMENT

OOB Dkt. No. 2022-0103

Requester Name: Starinieri, Nicholas

Agency Name: Pennsylvania Department of Health

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Upon receipt of this completed Mediation Agreement, a Mediator will contact the Parties to establish a mutually convenient date, time and location to conduct a joint mediation session.

Requester Signature: \_\_\_\_\_

Date: 1/19/2022

Agency Representative Signature: \_\_\_\_\_

Date: \_\_\_\_\_

<b>Police Agency</b>	Agency <b>Caln Township</b>	Patrol Zone	Dispatch Time <b>1251</b>	Arrival Time <b>1256</b>
	Investigator <b>CABRY</b>	Badge <b>38</b>	Precinct	Investigation Date <b>09-24-2021</b>
	Reviewer <b>NATHAN J MILLER</b>	Badge <b>S27</b>		Approval Date <b>09-30-2021</b>

Crash Data	County/Municipality <b>Chester/Caln Township</b>		Crash Date <b>09-24-2021</b>		Crash Time <b>1251</b>	Day of Week <b>FRIDAY</b>		
	Crash Description <b>Hit pedestrian</b>		Units <b>2</b>	People <b>2</b>	Injured <b>1</b>	Killed <b>0</b>	School Bus	School Zone
	Type of Intersection <b>Mid-block</b>	Special Location <b>Driveway/Parking Lot</b>	Intersection Related <b>No</b>		Secondary Crash <b>No</b>		PennDOT Property Damage <b>No</b>	
	Illumination <b>Daylight</b>		Road Surface Conditions <b>Dry</b>					
	Relation to Roadway <b>In parking lane</b>		Weather Conditions 1 <b>Clear</b>				Weather Conditions 2 <b>Clear</b>	

<b>Work Zone</b>	Work Zone <b>No</b>	Works Injured/Killed	Speed Limit	Work Zone Characteristics
	Work Zone Type		Workers Present	
	Where in Work Zone		Officer Present	

Location	Principal Road				
	Route Signing Other / Unknown		Route No.	Speed Limit 35 Mph	Travel Lanes 01
	Street LINCOLN		Street Ending Highway	Orientation East	House # 2705
	Landmark				
	Landmark 1 BARLEY SHEAF Road. Landmark 2 BARLEY STATION Lot. The distance from the crash scene to BARLEY SHEAF Road is 50 feet.				
	GPS Degrees Minutes:Seconds.Decimal				
	Latitude : Longitude : -				
	Traffic Control Device Not applicable		Traffic Control Functioning No controls		
	Lane Closed Not applicable	Lane Closure Direction	Traffic Detoured	Roadway Cleared	
	Accident Investigation Notification Issued? Yes		Property Damage No		

<b>Crash Events/Factors</b>	<b>First Harmful Event</b>		<b>Environmental/Roadway Potential Factor</b>	
	Unit: <b>1</b>	Event: <b>Hit unit 02</b>	<b>1</b>	<b>None</b>
	<b>Most Harmful Event</b>		<b>2</b>	
	Unit: <b>2</b>	Event: <b>Struck by unit 01</b>	<b>3</b>	
	Indicated Prime Factor Source <b>Driver</b>	Unit No. <b>01</b>	Prime Factor <b>Careless or illegal backing on roadway</b>	

Driver/Pedestrian Information	Unit No.	Name/Address						
	<b>1</b>	<b>DAVID P AIGELDINGER</b>						
	Commercial	<b>890 S YORK DR</b>			Class	License State		
	<b>N</b>	<b>DOWNINGTOWN PA 19335</b>			<b>C</b>	<b>Pennsylvania, US</b>		
	Type Unit				Owner/Driver			
	<b>Motor vehicle in transport</b>				<b>Private vehicle not owned/leased by driver</b>			
	Driver Presence		Driver or Pedestrian Physical Condition		Drug Test Type		Drug Test Result	
	<b>Driver operated vehicle</b>		<b>Apparently normal</b>					
	Alcohol/Drugs Suspected		Alcohol Test Type		Alcohol Test Results		Alcohol Interlock	
	<b>No</b>		<b>Test not given</b>		<b>Test not given</b>			
<b>Harmful Events</b>		<b>Side of Road</b>	<b>Most Harmful</b>	<b>Utility Pole #</b>	<b>Violations</b>			<b>Charged</b>
<b>1</b>	<b>Hit unit 02</b>		<b>Yes</b>		<b>1</b>	<b>3702 - Limitations on backing.</b>		<b>Y</b>
<b>2</b>					<b>2</b>	<b>None</b>		
<b>3</b>					<b>3</b>	<b>None</b>		
<b>4</b>					<b>4</b>	<b>None</b>		
Driver Action 1		Driver Action 2		Driver Action 3		Driver Action 4		
<b>Careless or illegal backing on roadway</b>								
Distracted by Action				Distracted by Source				

Vehicle Information	Name/Address/Phone				Insurance	Insurance Co.	Policy Number
	<b>DOUG UMBERGER FOODS INC</b>				<b>Yes</b>	<b>ALLIED INSURANCE</b>	<b>ACPBAL3048130539</b>
	<b>403 W LINCOLN HWY STE,1</b>						
	<b>EXTON PA 19341</b>						
	Vehicle Type		Vehicle Automation		Reg. State	Plate Number	Special Usage
	<b>Large truck</b>		<b>No Automation (00)</b>		<b>Pennsylvania, US</b>	<b>ZJH3815</b>	<b>Not applicable</b>
	Model Year	Vehicle Make	Vehicle Model		Vehicle Color	VIN	
	<b>2016</b>	<b>FORD</b>			<b>White</b>	<b>1FDRF3G67GEC26322</b>	
	Trailer#	Trl Tag State	Type Trailing Unit		Tag Number	Tag Year	Trailer VIN
Est. Speed	Towed	Towed By		Vehicle Movement		Vehicle Position	
<b>005</b>	<b>No</b>			<b>Backing up</b>		<b>Other</b>	
Travel Dir.	Gradient	Road Alignment		Initial Impact Point		Damage Indicator	
<b>East</b>	<b>Level roadway</b>	<b>Straight</b>		<b>5 O'clock</b>		<b>None</b>	
Possible Vehicle Failure 1				Possible Vehicle Failure 2			
<b>None</b>							

Driver/Pedestrian Information	Unit No.	Name/Address						
	<b>2</b>	<b>CYNTHIA ROMIG</b>						
	Commercial	<b>113 GATSON LANE</b>			Class	License Number	License State	
	<b>N</b>	<b>COATESVILLE PA 19320</b>						
	Type Unit				Owner/Driver			
	<b>Pedestrian</b>				<b>Not applicable</b>			
	Driver Presence	Driver or Pedestrian Physical Condition			Drug Test Type	Drug Test Result		
		<b>Apparently normal</b>			<b>None</b>			
	Alcohol/Drugs Suspected	Alcohol Test Type			Alcohol Test Results	Alcohol Interlock		
	<b>No</b>	<b>Test not given</b>			<b>Test not given</b>			
Harmful Events	Side of Road	Most Harmful	Utility Pole #	Violations			Charged	
<b>1 Struck by unit 01</b>		<b>Yes</b>		<b>1</b>				
<b>2</b>				<b>2</b>				
<b>3</b>				<b>3</b>				
<b>4</b>				<b>4</b>				
Driver Action 1	Driver Action 2			Driver Action 3		Driver Action 4		
Pedestrian Action	Pedestrian Signals			Pedestrian Clothing		Pedestrian Location		
<b>Walking, running, jogging or playing</b>	<b>No pedestrian signal</b>			<b>Light</b>		<b>Marked crosswalks at intersection</b>		

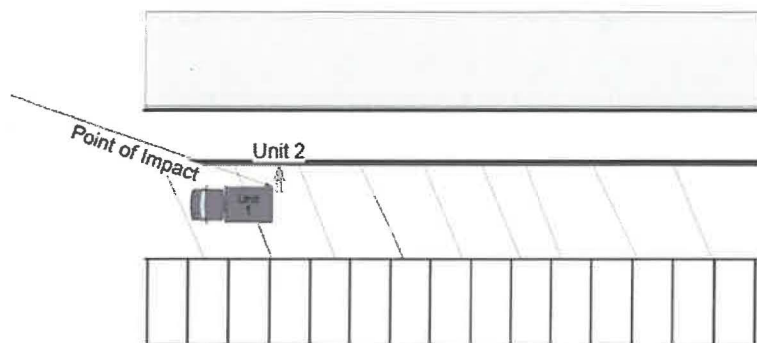
Vehicle Information	Name/Address/Phone			Insurance	Insurance Co.	Policy Number
	Vehicle Type		Vehicle Automation	Reg. State	Plate Number	Special Usage
	Model Year	Vehicle Make	Vehicle Model	Vehicle Color	VIN	
		<b>NONE</b>				
	Trailer#	Trl Tag State	Type Trailing Unit	Tag Number	Tag Year	Trailer VIN
Est. Speed	Towed	Towed By	Vehicle Movement		Vehicle Position	
Travel Dir.	Gradient	Road Alignment	Initial Impact Point		Damage Indicator	
Possible Vehicle Failure 1			Possible Vehicle Failure 2			
<b>None</b>						

<b>People Information</b>	Unit No. <b>01</b>	Name/Address <b>AIGELDINGER, DAVID P</b>		WZ Worker <b>No</b>	
	Person No. <b>01</b>	<b>890 S YORK DR DOWNTOWN PA 19335</b>		Person Type <b>Driver</b>	Sex <b>Male</b>
	Injury Severity <b>Not injured</b>		Seat Position <b>Driver - all vehicles</b>	Safety Equipment 1 <b>Lap and Shoulder Belt Used</b>	
	Safety Equipment 2 <b>None Used / Not Applicable</b>		Airbags Deployed (for this person) <b>Not Deployed</b>		
	Ejection <b>Not applicable</b>	Ejection Path <b>Not Ejected / Not Applicable</b>		Extrication <b>Not applicable</b>	
	EMS Transport <b>No</b>		EMS Agency		Medical Facility

<b>People Information</b>	Unit No. <b>02</b>	Name/Address <b>ROMIG, CYNTHIA</b>		WZ Worker <b>No</b>	
	Person No. <b>01</b>	<b>113 GATSON LANE COATESVILLE PA 19320</b>		Person Type <b>Pedestrian</b>	Sex <b>Female</b>
	Injury Severity <b>Suspected Minor Injury</b>		Seat Position <b>Not a passenger/occupant</b>	Safety Equipment 1 <b>None Used / Not Applicable</b>	
	Safety Equipment 2 <b>None Used / Not Applicable</b>		Airbags Deployed (for this person) <b>Not Applicable</b>		
	Ejection <b>Not applicable</b>	Ejection Path <b>Not Ejected / Not Applicable</b>		Extrication <b>Not applicable</b>	
	EMS Transport		EMS Agency <b>Thorndale VFC(15035 )</b>		Medical Facility <b>PAOLI HOSPITAL</b>

<b>Witness</b>	<b>1</b>	<b>2</b>
	Name <b>SARA SMITH</b>	Name
	Address <b>120 AMBER CIRCLE NEW HOLLAND PA 1711</b>	Address <b>PA</b>
	Phone Number	Phone Number

Diagram



Narrative

On 24 September 2021 at 1251 hours, I was dispatched to an accident involving a box truck and a pedestrian.

I arrived on scene and made contact with the pedestrian (Cynthia Romig) that was struck. Cynthia stated that the box truck was located in the parking/delivery lane. Cynthia entered the parking lane and the box truck was not moving. Once Cynthia entered the parking lane, the box truck began backing up. Cynthia could not get out of the way in time and the box truck struck Cynthia. Cynthia was located behind the box truck and had an apparent broken ankle. EMS arrived on scene and transported Cynthia to Paoli Hospital for her injuries.

Witness Sarah Smith was sitting next to Cynthia upon my arrival. Sarah stated that she watched Cynthia enter the parking/delivery lane. Once she entered the parking/delivery lane, Sarah stated that the truck began backing up and struck Cynthia causing her ankle injury and minor scrapping.

I made contact with the driver of the box truck David Aigeldinger. David stated that he was making a delivery and while backing up did not see Cynthia. David only stopped backing up when he heard a yell.

Information was exchanged and the box truck did not suffer any damage.

NFI

BWC worn, No Covid concerns.

Incident No: 202109244839  
Reportable: Y

**Commonwealth of Pennsylvania**  
**Police Crash Report**

Report Number: W0856234  
Case Closed: Y

**Narrative**

David was cited for 3702(a)- limitations on backing

# OOOR Exhibit 4



**From:** [Joe Pangaro](#)  
**To:** [Nicholas Starinieri](#); [Young, Joshua](#)  
**Cc:** [Keefer, Lisa](#); [Nicole Russo](#)  
**Subject:** [External] RE: Cynthia Romig - OOR Dkt. AP 2022-0103  
**Date:** Wednesday, January 19, 2022 3:34:07 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)

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All:

To follow up on Mr. Starinieri's position below, TerrAscend has pulled the video and has no objection to providing a copy to Mr. Starinieri in this case. Mr. Starinieri has executed a confidentiality agreement for the production of the video, as he indicated, and it is of exterior footage for a limited period of time on the date of his client's accident. We will of course continue to comply with DOH instructions, and we are ready, willing, and able to release the footage if approved to do so by the DOH.



**Joe Pangaro**

TerrAscend Corp. | Assistant General Counsel, NJ  
[jpangaro@terrascend.com](mailto:jpangaro@terrascend.com) m: (848)-404-4080

[TerrAscend.com](http://TerrAscend.com) PO BOX 43125



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---

**From:** Nicholas Starinieri <njs@definolawyers.com>  
**Sent:** Wednesday, January 19, 2022 3:12 PM  
**To:** [joshyoung@pa.gov](mailto:joshyoung@pa.gov)  
**Cc:** Keefer, Lisa <[likeefer@pa.gov](mailto:likeefer@pa.gov)>; Joe Pangaro <[jpangaro@terrascend.com](mailto:jpangaro@terrascend.com)>; Nicole Russo <[nrusso@definolawyers.com](mailto:nrusso@definolawyers.com)>  
**Subject:** Cynthia Romig - OOR Dkt. AP 2022-0103

Mr. Young:

Attached please find the OOR Mediation Agreement which I have signed and dated today. Ms. Keefer is also copied. I certainly assume that she would agree to mediation. I have also copied Joe Pangaro on this email. Mr. Pangaro is house counsel for Transcend, the establishment which possesses the video I am trying to obtain.

I wholeheartedly believe that this is a perfect case for Mediation, and, in fact, should be settled promptly. I have invited Mr. Pangaro to participate in the Mediation, but he has informed me of there being no need as he has no problem whatsoever in providing me with the video, subject to DOH approval.

As I have conveyed several times in the past, it is my understanding that the video requested does not depict any individuals having anything to do with the dispensary. No one has provided me with any information to the contrary. Based on the contents of the video, there can be no violation of the applicable statute. This should be very easy for DOH to confirm as DOH has reviewed the video. It is worth noting that I have already executed a Confidentiality Agreement concerning the video which sits in limbo based on DOH's denial.

In the event that it was not previously supplied, I am enclosing a copy of the police report which will enable you to visualize the accident and the reason for my request for the video.

Thank you.

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Nicholas J. Starinieri, Esquire  
DeFino Law Associates, P.C.  
2541 S. Broad Street  
Philadelphia, PA 19148  
T - 215-551-9099 (Ext. 109)  
F - 215-551-4099

[https://link.edgepilot.com/s/8513802c/BpkmlITV6E6bYJnSJB Ae\\_w?u=http://www.definolawyers.com/](https://link.edgepilot.com/s/8513802c/BpkmlITV6E6bYJnSJB Ae_w?u=http://www.definolawyers.com/)

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**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

# 00R Exhibit 5

**From:** [Keefer, Lisa](#)  
**To:** [Nicholas Starinieri](#); [Young, Joshua](#)  
**Cc:** [Joe Pangaro](#); [Nicole Russo](#); [LaMano, Anna](#); [Skinner, Shea](#)  
**Subject:** Cynthia Romig - OOR Dkt. AP 2022-0103  
**Date:** Wednesday, January 26, 2022 10:10:03 AM

---

Good Morning Attorney Starinieri,

Counsel for the Department of Health would like for me to inform you that patients are visible entering and exiting the dispensary in the video and we cannot release it without a court order. There's nothing to mediate.

Thanks!

[Lisa M. Keefer | Legal Office Administrator 2](#)  
[Pennsylvania Department of Health](#)  
[Office of Legal Counsel](#)  
[Room 825 | Health and Welfare Building](#)  
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[www.health.pa.gov](http://www.health.pa.gov)

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---

**From:** Nicholas Starinieri <njs@definolawyers.com>  
**Sent:** Wednesday, January 19, 2022 3:12 PM  
**To:** Young, Joshua <joshyoung@pa.gov>  
**Cc:** Keefer, Lisa <likeefer@pa.gov>; Joe Pangaro <jpangaro@terrascend.com>; Nicole Russo <nrusso@definolawyers.com>  
**Subject:** [External] Cynthia Romig - OOR Dkt. AP 2022-0103

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Mr. Young:

# OOB Exhibit 6

**From:** [Nicholas Starinieri](#)  
**To:** [Keefer, Lisa](#)  
**Cc:** [Young, Joshua](#); [Joe Pangaro](#); [Nicole Russo](#); [LaMano, Anna](#); [Skinner, Shea](#)  
**Subject:** [External] Re: Cynthia Romig - OOR Dkt. AP 2022-0103  
**Date:** Thursday, January 27, 2022 3:39:15 PM

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Ms. Keefer:

I tried to reach you twice today, but you were unavailable both times. Your last email to me indicated that you were told by an unidentified attorney for DOH that "patients are visible entering and exiting the dispensary in the video." My response to that email from you asked the name of the attorney for DOH who made this statement to you. I have yet to receive that information. I have personally spoken to Joe Pangaro, counsel for the dispensary, who has assured me that no patients are seen in the video during the time my client is being struck by a truck. Clearly, someone is incorrect, and I do not believe that the incorrect party is Mr. Pangaro. For this reason, I believe that mediation is not only a good idea, but it is imperative to protect my client's rights.

Please contact me at 215-551-9099 at your earliest convenience.

Thank you.

On Wed, Jan 26, 2022 at 10:57 AM Nicholas Starinieri <[njs@definolawyers.com](mailto:njs@definolawyers.com)> wrote:

Ms. Keefer:

I confirmed with Joe Pangaro that there are no dispensary individuals visible in the footage that he personally viewed where my client is being struck by the truck. Have you confirmed something to the contrary with Mr. Pangaro?

Alternatively, I had requested to view the video with a representative from the involved insurance carrier where no one would be making any copy. As the video depicts the parking lot where no one could possibly have any expectation of privacy (even if they appeared in the video), I cannot fathom why you are refusing to mediate this. Which attorney from the Department of Health viewed the video and stated to you that individuals visiting the dispensary can be seen in the video in the footage that shows my client being struck by the truck? As I previously stated, I confirmed with Joe Pangaro no such individuals appear in the video.

I await your response.

On Wed, Jan 26, 2022 at 10:10 AM Keefer, Lisa <[likeefer@pa.gov](mailto:likeefer@pa.gov)> wrote:

**Good Morning Attorney Starinieri,**

**Counsel for the Department of Health would like for me to inform you that patients are visible entering and exiting the dispensary in the video and we cannot release it without a court order. There's nothing to mediate.**

**Thanks!**

**Lisa M. Keefer | Legal Office Administrator 2**

**Pennsylvania Department of Health**

**Office of Legal Counsel**

**Room 825 | Health and Welfare Building**

**625 Forster Street | Harrisburg, PA 17120**

**Ph: 717-783-2500 | Fax: 717-705-6042**

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**From:** Nicholas Starinieri <[njs@definolawyers.com](mailto:njs@definolawyers.com)>

**Sent:** Wednesday, January 19, 2022 3:12 PM

**To:** Young, Joshua <[joshyoung@pa.gov](mailto:joshyoung@pa.gov)>

**Cc:** Keefer, Lisa <[likeefer@pa.gov](mailto:likeefer@pa.gov)>; Joe Pangaro <[jpangaro@terrascend.com](mailto:jpangaro@terrascend.com)>; Nicole Russo <[nrusso@definolawyers.com](mailto:nrusso@definolawyers.com)>

**Subject:** [External] Cynthia Romig - OOR Dkt. AP 2022-0103

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Mr. Young:

Attached please find the OOR Mediation Agreement which I have signed and dated today. Ms. Keefer is also copied. I certainly assume that she would agree to mediation. I have also copied Joe Pangaro on this email. Mr. Pangaro is house counsel for Transcend, the establishment which possesses the video I am trying to obtain.

I wholeheartedly believe that this is a perfect case for Mediation, and, in fact, should be settled promptly. I have invited Mr. Pangaro to participate in the Mediation, but he has informed me of there being no need as he has no problem whatsoever in providing me with the video, subject to DOH approval.

As I have conveyed several times in the past, it is my understanding that the video requested does not depict any individuals having anything to do with the dispensary. No one has provided me with any information to the contrary. Based on the contents of the video, there can be no violation of the applicable statute. This should be very easy for DOH to confirm as DOH has reviewed the video. It is worth noting that I have already executed a Confidentiality Agreement concerning the video which sits in limbo based on DOH's denial.

In the event that it was not previously supplied, I am enclosing a copy of the police report which will enable you to visualize the accident and the reason for my request for the video.

Thank you.

--

Nicholas J. Starinieri, Esquire

DeFino Law Associates, P.C.

2541 S. Broad Street

Philadelphia, PA 19148

T - 215-551-9099 (Ext. 109)



F - 215-551-4099

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# OOR Exhibit 7

**From:** [Nicholas Starinieri](#)  
**To:** [Young, Joshua](#)  
**Cc:** [Keefer, Lisa](#); [LaMano, Anna](#); [Skinner, Shea](#); [Nicole Russo](#); [Joe Pangaro](#)  
**Subject:** [External] Cynthia Romig - OOR Dkt. AP 2022-0103  
**Date:** Friday, January 28, 2022 4:51:20 PM

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Mr. Young:

Although Ms. Keefer does not wish to mediate this matter, I ask that you require a conference with the parties to ascertain the name of the individual that claims dispensary patients are visible in the video footage that I have requested. Once that name is obtained, I can further investigate the claim that dispensary patients are visible in the requested footage. At this stage, I know only what I have been told by counsel for the dispensary - that he believes no patients are visible in the footage that I requested (which he was able to view) and, if any patients are seen, the video can be redacted/edited. You were previously included on the email from Mr. Pangaro, who has been a complete gentleman throughout this process, stating just that. My calls/messages to Ms. Keefer go unanswered, otherwise I would request the information from her directly. I have requested it via email to her, but I have not received a response.

While I understand that we are still going through the administrative process to deal with my appeal, I firmly believe that a form of *in camera* review by you of the footage I have requested could put this matter to rest expeditiously and without the need for the litigation that would follow any unsuccessful appeal. It is for this very reason that I hoped to mediate this matter with reliance on what was told to me by Mr. Pangaro.

While my request may be out of the ordinary, I ask that you consider it and inform the parties of your decision at your earliest convenience.

Thank you.

--

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# OOR Exhibit 8

**From:** [Joe Pangaro](#)  
**To:** [Nicholas Starinieri](#); [Young, Joshua](#)  
**Cc:** [Keefer, Lisa](#); [LaMano, Anna](#); [Skinner, Shea](#); [Nicole Russo](#)  
**Subject:** RE: [External] Cynthia Romig - OOR Dkt. AP 2022-0103  
**Date:** Monday, January 31, 2022 3:21:55 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)

---

All:

I would like to once again reiterate that TerrAscend takes no position on this dispute and will at all times comply with DOH directives. But we would be happy to provide the video or a smaller portion of the video to Mr. Starinieri or allow him to view the video, if the DOH allows.

Given the nature of this dispute and the emails going back and forth, I think it may be helpful if I clarify what security footage we pulled and what I observed in terms of pedestrians on the video. I endeavor to do that below, and remain willing to assist however it may be helpful for the DOH.

We originally pulled approx. 2 hours of security camera footage in order to be sure we captured footage of the alleged incident, which involved a delivery truck hitting a pedestrian in front of the Apothecarium. During the course of 2 hours of video, patients can be seen coming in and out of the Apothecarium, although I personally do not think I would be able to identify anyone individually, in large part because they are wearing protective face coverings.

Importantly, the alleged incident occurred, according to our timestamps, at approx. 1:49 pm. I just watched the video and details are below:

- From 1:48:05 pm until 1:51 pm, I did not see any individuals enter our store.
- At approx. 1:48:26, just before the alleged incident, an individual could be seen leaving the strip mall—I cannot be sure what store this person was leaving, but it is possible the person leaving the strip mall was leaving our facility. That person is completely off camera by 1:48:47.
- At 1:49:29 another person is seen leaving through the same door as the previous person, and at the same time the truck that was involved in the incident first comes into view.
- By 1:49:37 this second person is completely out of the view of the camera.
  - In the case of both persons captured on camera, at 1:48:05 and 1:49:26, the persons are walking away from the strip mall and cameras in the video. Aside from observing their general physical build, I could not see anything about these persons in the video—I would not be able to identify them based on this footage.
- **After** this person leaves the view of the camera, the truck then backs through the parking lot and hits a pedestrian at 1:50:02. At approximately 1:51, after the alleged incident occurred, another person can be seen exiting the strip mall, and I believe that person is exiting our facility.

There is a small window of time, from 1:49:37-1:51, where the entire accident occurred and no persons are visible entering or exiting any stores. If it would be helpful, we could edit our security

footage to this much more narrow window of time.



**Joe Pangaro**

TerrAscend Corp. | Assistant General Counsel, NJ

[jpangaro@terrascend.com](mailto:jpangaro@terrascend.com) m: (848)-404-4080

[TerrAscend.com](http://TerrAscend.com) PO BOX 43125



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---

**From:** Nicholas Starinieri <njs@definolawyers.com>

**Sent:** Monday, January 31, 2022 1:10 PM

**To:** Young, Joshua <joshyoung@pa.gov>

**Cc:** Keefer, Lisa <likeefer@pa.gov>; LaMano, Anna <alamano@pa.gov>; Skinner, Shea <sheskiner@pa.gov>; Nicole Russo <nrusso@definolawyers.com>; Joe Pangaro <jpangaro@terrascend.com>

**Subject:** Re: [External] Cynthia Romig - OOR Dkt. AP 2022-0103

What more can I submit to you other than the information that I have provided thus far and the emails from Joe Pangaro that justify my position? Have you been provided with the name of the individual from DOH that reviewed the video and determined that, in the particular footage that I requested, patients of the dispensary can be seen? If so, please provide me with the name of the individual. I have requested this information from Ms. Keefer, but I have received no response. If the identity of the individual has not been provided to you, DOH has no credible evidence to dispute my position or what Mr. Pangaro has said.

On Mon, Jan 31, 2022 at 9:39 AM Young, Joshua <[joshyoung@pa.gov](mailto:joshyoung@pa.gov)> wrote:

Dear Attorney Starinieri:

Thank you for your email. While I am certainly amenable to the parties holding a conference in an effort to resolve the appeal, I do not intend to order such a conference. In the event the OOR has any questions following the submission of argument and evidence, I will reach out. However, please let me know if you reach an agreement.

Sincerely,



**Joshua T. Young**

Deputy Chief Counsel

Office of Open Records

333 Market St., 16th Floor

Harrisburg, PA 17101-2234

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---

**From:** Nicholas Starinieri <[njs@definolawyers.com](mailto:njs@definolawyers.com)>

**Sent:** Friday, January 28, 2022 4:51 PM

**To:** Young, Joshua <[joshyoung@pa.gov](mailto:joshyoung@pa.gov)>

**Cc:** Keefer, Lisa <[likeefer@pa.gov](mailto:likeefer@pa.gov)>; LaMano, Anna <[alamano@pa.gov](mailto:alamano@pa.gov)>; Skinner, Shea <[sheskinner@pa.gov](mailto:sheskinner@pa.gov)>; Nicole Russo <[nrusso@definolawyers.com](mailto:nrusso@definolawyers.com)>; Joe Pangaro <[jpangaro@terrascend.com](mailto:jpangaro@terrascend.com)>

**Subject:** [External] Cynthia Romig - OOR Dkt. AP 2022-0103

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Mr. Young:

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While I understand that we are still going through the administrative process to deal with my appeal, I firmly believe that a form of *in camera* review by you of the footage I have requested could put this matter to rest expeditiously and without the need for the litigation that would follow any unsuccessful appeal. It is for this very reason that I hoped to mediate this matter with reliance on what was told to me by Mr. Pangaro.

While my request may be out of the ordinary, I ask that you consider it and inform the parties of your decision at your earliest convenience.

Thank you.

--

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Philadelphia, PA 19148  
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# OOR Exhibit 9

**From:** [Nicholas Starinieri](#)  
**To:** [Young, Joshua](#)  
**Cc:** [Keefer, Lisa](#); [Joe Pangaro](#); [Nicole Russo](#)  
**Subject:** Re: [External] Cynthia Romig - OOR Dkt. AP 2022-0103  
**Date:** Wednesday, February 2, 2022 11:47:24 AM

---

Thank you.

On Wed, Feb 2, 2022 at 11:35 AM Young, Joshua <[joshyoung@pa.gov](mailto:joshyoung@pa.gov)> wrote:

Dear Attorney Starinieri:

Your request for an extension of the submission deadline in the above-referenced Right-to-Know appeal is **granted**, and the record in this matter will remain open until the end of the day (11:59:59 p.m.) on **February 18, 2022**.

Sincerely,



**Joshua T. Young**

Deputy Chief Counsel

Office of Open Records  
333 Market St., 16th Floor

Harrisburg, PA 17101-2234

(717) 346-9903 | <http://openrecords.pa.gov>

[joshyoung@pa.gov](mailto:joshyoung@pa.gov) | [@OpenRecordsPA](#)

---

**From:** Nicholas Starinieri <[njs@definolawyers.com](mailto:njs@definolawyers.com)>  
**Sent:** Wednesday, February 2, 2022 11:17 AM  
**To:** Young, Joshua <[joshyoung@pa.gov](mailto:joshyoung@pa.gov)>  
**Cc:** Keefer, Lisa <[likeefer@pa.gov](mailto:likeefer@pa.gov)>; Joe Pangaro <[jpangaro@terrascend.com](mailto:jpangaro@terrascend.com)>  
**Subject:** [External] Cynthia Romig - OOR Dkt. AP 2022-0103

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attachment to [CWOPA\\_SPAM@pa.gov](mailto:CWOPA_SPAM@pa.gov).

Mr. Young:

I am attempting to obtain an Affidavit from the appropriate individual at TerraScend, but I have been informed that Joe Pangaro, current counsel, is leaving the company this week. Please let me know if I can have additional time to obtain such an Affidavit once the appropriate individual has been identified to me. If possible, I would appreciate an extension of two (2) weeks. Ms. Keefer is copied on this email so that she may either agree or object to this request.

Thank you.

--

Nicholas J. Starinieri, Esquire

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**From:** [Young, Joshua](#)  
**To:** [Nicholas Starinieri](#)  
**Cc:** [Keefer, Lisa](#); [Joe Pangaro](#)  
**Subject:** RE: [External] Cynthia Romig - OOR Dkt. AP 2022-0103  
**Date:** Wednesday, February 2, 2022 11:35:00 AM

---

Dear Attorney Starinieri:

Your request for an extension of the submission deadline in the above-referenced Right-to-Know appeal is **granted**, and the record in this matter will remain open until the end of the day (**11:59:59 p.m.**) on **February 18, 2022**.

Sincerely,



**Joshua T. Young**

Deputy Chief Counsel  
Office of Open Records  
333 Market St., 16th Floor  
Harrisburg, PA 17101-2234  
(717) 346-9903 | <http://openrecords.pa.gov>  
[joshyoung@pa.gov](mailto:joshyoung@pa.gov) | [@OpenRecordsPA](#)

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**To:** Young, Joshua <joshyoung@pa.gov>  
**Cc:** Keefer, Lisa <likeefer@pa.gov>; Joe Pangaro <jpangaro@terrascend.com>  
**Subject:** [External] Cynthia Romig - OOR Dkt. AP 2022-0103

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Mr. Young:

I am attempting to obtain an Affidavit from the appropriate individual at TerraScend, but I have been informed that Joe Pangaro, current counsel, is leaving the company this week. Please let me know if I can have additional time to obtain such an Affidavit once the appropriate individual has been identified to me. If possible, I would appreciate an extension of two (2) weeks. Ms. Keefer is copied on this email so that she may either agree or object to this request.

Thank you.

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**From:** [Nicholas Starinieri](#)  
**To:** [Young, Joshua](#)  
**Cc:** [Keefer, Lisa](#); [Joe Pangaro](#)  
**Subject:** [External] Cynthia Romig - OOR Dkt. AP 2022-0103  
**Date:** Wednesday, February 2, 2022 11:17:06 AM

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Mr. Young:

I am attempting to obtain an Affidavit from the appropriate individual at TerraScend, but I have been informed that Joe Pangaro, current counsel, is leaving the company this week. Please let me know if I can have additional time to obtain such an Affidavit once the appropriate individual has been identified to me. If possible, I would appreciate an extension of two (2) weeks. Ms. Keefer is copied on this email so that she may either agree or object to this request.

Thank you.

--

Nicholas J. Starinieri, Esquire  
DeFino Law Associates, P.C.  
2541 S. Broad Street  
Philadelphia, PA 19148  
T - 215-551-9099 (Ext. 109)  
F - 215-551-4099  
[www.definolawyers.com](http://www.definolawyers.com)

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# OOR Exhibit 10



**From:** [Nicholas Starinieri](#)  
**To:** [Young, Joshua](#)  
**Cc:** [Keefer, Lisa](#); [LaMano, Anna](#); [Skinner, Shea](#); [Nicole Russo](#); [Jake Thornton](#)  
**Subject:** [External] Cynthia Romig - OOR Dkt. AP 2022-0103  
**Date:** Thursday, February 17, 2022 4:07:52 PM  
**Attachments:** [appeal infolet\\_young.pdf](#)  
[Romig\\_ConfidAgr\\_signed.pdf](#)  
[Signed Affidavit.pdf](#)

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Mr. Young:

Attached please find a letter-brief with exhibits regarding this appeal.

Thank you.

--

Nicholas J. Starinieri, Esquire  
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# DE FINO LAW ASSOCIATES, P.C.

2541 S. Broad Street  
Philadelphia, PA 19148

Tel: (215) 551-9099  
Fax: (215) 551-4099  
www.definolawyers.com

Michael Anthony DeFino  
Vincent Anthony DeFino

In memoriam  
Hon. Anthony J. DeFino (Ret.)  
(1927 - 2013)

Nicholas J. Starinieri\*  
Nicholas L. Palazzo\*  
Benjamin J. Simmons  
Chanté N. DePersia

\*Also Member NJ Bar

Of Counsel  
Vincent N. Melchiorre

February 16, 2022

Joshua T. Young  
Deputy Chief Counsel  
Office of Open Records  
333 Market St., 16<sup>th</sup> Floor  
Harrisburg, PA 17101-2234

**RE: Cynthia Romig - OOR Dkt. AP 2022-0103**

***VIA E-MAIL***

Dear Mr. Young:

Enclosed please find a notarized Affidavit which has been executed by Victoria Simonetti, General Manager of TranScend, regarding the specific video footage I had requested. Also attached is the signed Confidentiality Agreement which was executed prior to the DOH issue arising. Kindly accept this Affidavit and Confidentiality Agreement as evidence to be evaluated in the appeal process.

As to legal argument, I reiterate what I had stated in a previous email. I am seeking a very limited amount of video footage which, to my knowledge obtained from the custodian of such footage, does not depict any patients nor employees of the facility. The following is a more specific analysis of the specific statute sections upon which DOH's denial was based:

Regarding 28 Pa. Code §1141.22(b)(3): I am not seeking any information concerning a patient or caregiver or both. My client was on her way to LabCorp, not the marijuana dispensary. There is no identifying information of any patient nor employee of the dispensary in the video I am seeking. The video is of my client being run down by a truck. It is my understanding that no patient nor employee from the dispensary appears in the video when my client was being run down. I have requested information to the contrary from DOH, but none has been forthcoming as to the specific footage I have requested.

**JOSHUA T. YOUNG**  
**DEPUTY CHIEF COUNSEL**  
**FEBRUARY 16, 2022**  
**PAGE TWO**

Regarding 28 Pa. Code §1141.22(b)(8): The information that I am requesting (the exterior video) does not involve a patient, caregiver, practitioner or medical marijuana organization. The video involves a delivery truck and my client, who is a pedestrian in a parking lot. The video faces away from the building.

Regarding 28 Pa. Code §1141.22(b)(9): I am not seeking any information regarding the physical features of, and security measures installed in, a facility. I am seeking exterior video of my client being run down in the parking lot. The physical features of the facility are of no relevance to me, nor should anything beyond the parking lot appear in the video. The camera is not installed in the facility; it is on the exterior of the building and pointed toward the parking lot.

The Affidavit of Ms. Simonetti is quite clear in explaining the limited footage requested and everything that is depicted in that footage - none of which identifies patients/employees of the dispensary. None of the Code sections given as specific reasons for the denial would be violated if the specific video footage was disclosed to me. Furthermore, the Confidentiality Agreement that has already been executed would further limit the use of the footage.

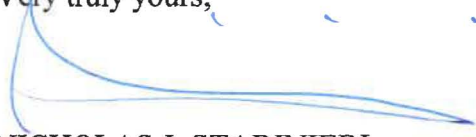
While Ms. Simonetti's Affidavit establishes no violations of 28 Pa. Code §1141.22(b)(3), nor 28 Pa. Code §1141.22(b)(8), 28 Pa. Code §1141.22(b)(9)[the facility security exemption] is a bit more nebulous. While a blanket statement could be put forth that the video depicts exterior portions of the facility and admits to an exterior camera being present, and that somehow that, incredulously, violates that subsection, such a statement would be wholly without merit. In *McKelvey v. Pa. Dep't of Health*, 255 A.3d 385, the Supreme Court looked at the facility security exemption as pertaining to records regarding "building plans or infrastructure records that expose or create vulnerability through disclosure of the location, configuration or security of critical systems, including public utility systems, structural elements, technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage and gas systems." Referencing the earlier Commonwealth Court opinion, it further explained that, for this exemption to apply, the act of disclosing the records, rather than the records themselves, "must create a reasonable likelihood of endangerment to the safety or physical security of certain structures." Exterior video footage taken by an exterior video camera, in plain sight, does not come close to the type of security protections that are contemplated and covered by 28 Pa. Code §1141.22(b)(9).

**JOSHUA T. YOUNG**  
**DEPUTY CHIEF COUNSEL**  
**FEBRUARY 16, 2022**  
**PAGE THREE**

To the extent that either 28 Pa. Code §1141.22(b)(3) or 28 Pa. Code §1141.22(b)(8) would be asserted, even when faced with Ms. Simonetti's Affidavit, one must take into consideration that the requested video footage is in a public place (specifically, a parking lot), not inside the dispensary, where, under Pennsylvania law, there would be no reasonable expectation of privacy. *Harris v. Easton Pub. Co.*, 335 Pa. Super. 141.

For the forgoing reasons, I verily believe that the limited video footage that I requested be released. Should DOH submit an Affidavit that somehow contradicts Ms. Simonetti's Affidavit, I ask that you perform an *in camera* review of the video so as to establish the accuracy of any competing Affidavits before rendering a final decision.

Very truly yours,



NICHOLAS J. STARINIERI

NJS/ms  
Encl.

cc: All interested DOH employees via email (w/encl.)

## CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement and Protective Order ("Agreement") is made and entered into this 21<sup>st</sup> day of December, 2021 between TerrAscend Corp ("TerrAscend") and Cynthia Romig, by and through their undersigned counsel to preserve and maintain the confidentiality of documents and other materials produced by TerrAscend, and/or any documents produced by any other party that pertains to TerrAscend, in response to any discovery requests, or at any pre-litigation stage be designated as "CONFIDENTIAL," it is hereby agreed by all undersigned parties to the Claim and potential Litigation of Cynthia Romig against Doug Umberger Wholesale Foods, Inc., and David Aigeldinger, et al., ("Claim/Litigation") that all such designated documents shall be given confidential treatment as set forth below.

1. Any person or entity involved in the representation of any party to the Claim/Litigation, their respective insurers, investigators, experts, employees and agents (hereinafter "Parties") shall not disseminate or make copies of CONFIDENTIAL documents except for purposes directly related to the prosecution of claims or defenses at issue in this Claim/Litigation. The Parties shall be subject to all restrictions on dissemination set forth in this Agreement. As used in this Agreement, the term dissemination applies to copying, transcribing, retyping, or reprinting protected materials manually, scanning, photocopying, or any other electronic or computerized means of reproduction.

2. Prior to designating materials as "Confidential," TerrAscend shall make a good faith determination that the material(s) incorporate or constitute a trade secret or other confidential research, development or commercially sensitive information, the dissemination of which would potentially damage TerrAscend's commercial interests, position in other Claim/Litigation, reputation, or interest in the CONFIDENTIAL material itself.

3. CONFIDENTIAL documents and all information contained therein shall be treated as confidential. Except with the prior written consent of counsel for TerrAscend, or upon order of the court, CONFIDENTIAL documents or information contained therein may be shown, disseminated or disclosed only to the following persons for use restricted exclusively to this case:

- a. Attorneys of record for the Parties, including members of their respective law firms or any other attorney specifically associated to assist in the prosecution or defense of any claim related to the claim/lawsuit described above;
- b. Employees of the Parties' counsel assisting in the Claim/Litigation of the claim/lawsuit described above;
- c. Experts and consultants retained by the Parties for the preparation of any claim or defense relevant to the claim/lawsuit described above- provided that no disclosure shall be made to any expert or consultant who is employed by a competitor of TerrAscend;
- d. The insurance carriers for any parties to the Claim/Litigation.

e. The court in which the case may be filed, subject to redaction to the extent possible.

4. Before being given access to any of the CONFIDENTIAL documents or the information contained therein, each person described in Paragraph 3 above shall be fully informed of the terms of the Agreement, shall be given a copy, and shall agree in writing, using a standard form, to be bound by all terms of the Agreement.

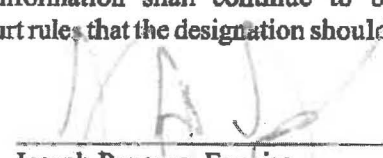
5. Upon resolution of the claim/lawsuit described above, counsel for any party receiving CONFIDENTIAL documents shall be responsible for returning to TerrAscend the original and all copies of the CONFIDENTIAL documents provided to them. Alternatively, counsel may provide an affidavit certifying that all such documents and copies have been destroyed.

6. To the extent CONFIDENTIAL documents or information contained therein are used in the taking of depositions, the CONFIDENTIAL document or information shall remain subject to the provisions of this Agreement, unless the court expressly rules otherwise, and shall be marked as CONFIDENTIAL on the transcript of any such deposition. The same procedure shall apply to the extent CONFIDENTIAL documents or information are utilized in pretrial motion practice, and to the extent practicable, any such motion shall be filed as CONFIDENTIAL. Where CONFIDENTIAL documents or information is used in depositions or pretrial motion practice, it shall be redacted to the extent possible.

7. Admission into evidence of CONFIDENTIAL documents or testimony at trial or pretrial proceedings of the claim/lawsuit described above shall not serve as a waiver or abrogation of the terms of this Agreement, unless a court expressly rules otherwise.

8. As indicated in Paragraph 2, above, TerrAscend will make a good faith determination of necessity prior to designating any document or information as CONFIDENTIAL. In the event any party to this agreement disagrees with this determination, nothing contained herein shall prevent such party from filing a request with the court that such designation be removed. However, in the event such a request is made, the documents and information shall continue to be treated as CONFIDENTIAL unless and until such time as a court rules that the designation should be removed.

Date: 12/21/21

  
\_\_\_\_\_  
Joseph Pangaro, Esquire  
TerrAscend Corp.  
Assistant General Counsel

Date: 12/21/2024

  
\_\_\_\_\_  
Nicholas J. Starinieri, Esquire  
Attorney for Cynthia Romig

# AFFIDAVIT

RE: Cynthia Romig - OOR Dkt. AP 2022-0103

The undersigned does hereby depose and say that:

I have reviewed the security camera footage requested related to the incident in question on 09/24/2021. The following is a detailed description, in chronological order, of what was captured by the front door entrance camera that covers the front of the building at our Apothecarium Dispensary located at 2701 Lincoln Hwy E., Thorndale, PA 19372.

- At 13:49:32 - The Apothecarium front camera confirmed a white box truck vehicle was pulling into the parking lot. The truck is identified as a white, Ford Box Truck.
- At 13:49:32 - A person is exiting their vehicle parked in the 6th parking spot. Counting the parking spaces from right to left, the first is a handicapped parking spot.
- At 13:49:37 - The Apothecarium front door camera reveals the same white box truck beginning to back up from the right towards the left, passing in front of the Apothecarium entrance and exit doors.
- At 13:49:51 - The person exiting the vehicle parked in the 6th spot is beginning to cross the street and is walking North toward the Labcorp front door. The individual walking appears to be wearing a white sweater and has white hair with a bag/purse in her right arm, with what seems to be shorts or skirt on.
- At 13:49:56 - The white box truck is continuing to back up still.
- At 13:50:02 - The white box truck continues to back up until it hits the person described in the 13:49:51 entry.
- A woman exiting the Labcorp appears on camera simultaneously as the white box truck hits the individual described moments before they can reach the sidewalk.
- At 13:50:09 - The individual struck by the vehicle is on the ground, and two women immediately attend to the individual on the ground who was hit by the white box truck.
- At 13:50:19 - The driver of the white box truck exits the truck and begins to walk to the back of the truck.
- At 13:50:22 - A male comes out of the Labcorp door in a lab coat.
- At 13:50:55 - The first woman that provided assistance and witnessed the accident sat on the ground with the individual hit by the white box truck and appeared to comfort them.
- At 13:58:10 - A police officer appears on camera at the back of the white box truck where the individual is still on the ground.
- At 13:58:32 - More police officers appear on camera, entering the camera view from the South parking area.
- At 13:59:30 - A paramedic vehicle appears on camera parking to the right of the Apothecarium entrance.
- At 13:49:43 - Another police officer arrives, walking from around the right side of the building.
- At 14:00:18 - The paramedic arrives at the individual struck by the white box truck still on the ground to attend to their needs.
- Between 13:49:32 and 14:00:18 (the video footage requested by Ms. Romig's counsel), no employees of Apothecarium can be seen and no patients of Apothecarium could be identified.

  
VICTORIA SIMONETTI, General Manager  
Apothecarium

SWORN TO AND SUBSCRIBED  
BEFORE ME THIS 16 DAY  
OF February, 2022.

  
NOTARY

Commonwealth of Pennsylvania - Notary Seal  
John Sloan, Notary Public  
Chester County  
My commission expires November 21, 2023  
Commission number 1153977  
Member, Pennsylvania Association of Notaries



## CONFIDENTIALITY AGREEMENT

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- b. Employees of the Parties' counsel assisting in the Claim/Litigation of the claim/lawsuit described above;
- c. Experts and consultants retained by the Parties for the preparation of any claim or defense relevant to the claim/lawsuit described above- provided that no disclosure shall be made to any expert or consultant who is employed by a competitor of TerrAscend;
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Date:

12/21/21

Joseph Pangaro, Esquire  
TerrAscend Corp.  
Assistant General Counsel

Date:

12/21/2021

Nicholas J. Starinieri, Esquire  
Attorney for Cynthia Romig

# AFFIDAVIT

RE: Cynthia Romig - OOR Dkt. AP 2022-0103

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VICTORIA SIMONETTI, General Manager  
Apothecarium

SWORN TO AND SUBSCRIBED  
BEFORE ME THIS 16 DAY  
OF February, 2022.

  
NOTARY

Commonwealth of Pennsylvania - Notary Seal  
John Sloan, Notary Public  
Chester County  
My commission expires November 21, 2023  
Commission number 1153977  
Member, Pennsylvania Association of Notaries

# OOB Exhibit 11

**From:** [Skinner, Shea](#)  
**To:** [Nicholas Starinieri](#); [Young, Joshua](#)  
**Cc:** [Keefer, Lisa](#); [LaMano, Anna](#); [Nicole Russo](#); [Jake Thornton](#)  
**Subject:** Starinieri v. DOH, AP 2022-0103  
**Date:** Friday, February 18, 2022 2:37:58 PM  
**Attachments:** [OOR Response.pdf](#)  
[Bosack Affidavit Starinieri.pdf](#)  
[Azar Affidavit Starinieri.pdf](#)

---

Good afternoon Attorneys Young and Starinieri,

Attached are the Department's response and supporting affidavits in the above-captioned appeal. Please let us know if you have any questions regarding the same. Thank you.

**Shea M. Skinner** | Assistant Counsel  
Office of Legal Counsel  
Pennsylvania Department of Health  
Norristown Field Office  
1937 New Hope St., 2<sup>nd</sup> Floor  
Norristown, PA 19401  
[www.health.pa.gov](http://www.health.pa.gov)

**PRIVILEGED AND CONFIDENTIAL COMMUNICATION**

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---

**From:** Nicholas Starinieri <njs@definolawyers.com>  
**Sent:** Thursday, February 17, 2022 4:07 PM  
**To:** Young, Joshua <joshyoung@pa.gov>  
**Cc:** Keefer, Lisa <likeefer@pa.gov>; LaMano, Anna <alamano@pa.gov>; Skinner, Shea <sheskinner@pa.gov>; Nicole Russo <nrusso@definolawyers.com>; Jake Thornton <jthornton@terrascend.com>  
**Subject:** [External] Cynthia Romig - OOR Dkt. AP 2022-0103

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Mr. Young:

Attached please find a letter-brief with exhibits regarding this appeal.

Thank you.

--

Nicholas J. Starinieri, Esquire  
DeFino Law Associates, P.C.  
2541 S. Broad Street  
Philadelphia, PA 19148  
T - 215-551-9099 (Ext. 109)  
F - 215-551-4099  
[www.definolawyers.com](http://www.definolawyers.com)

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copying, dissemination, distribution or use of any of the information contained in, or attached to this e-mail transmission is STRICTLY PROHIBITED. If you have received this transmission in error, please immediately notify via email or by telephone at (215) 551-9099 and then delete the message and its attachments from your computer.

**COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF OPEN RECORDS**

**NICHOLAS STARINIERI *et al.*,  
Requester,**

**v.**

**PENNSYLVANIA DEPARTMENT  
OF HEALTH,  
Respondent.**

**Docket No. AP 2022-0103**

---

**DEPARTMENT OF HEALTH’S RESPONSE AND LEGAL ARGUMENT  
IN SUPPORT OF ITS DENIAL OF NICHOLAS STARINIERI’S RIGHT-  
TO-KNOW LAW REQUEST**

---

Pursuant to the Office of Open Records’ (OOR) January 14, 2022 letter, February 2, 2022 email correspondence, sections 1101 and 1102 of the Right-to-Know Law (RTKL), 65 P.S. §§ 67.1101-67.1102, and OOR’s *Appeal Process – Interim Guidelines*, the Department of Health (Department) files this Brief in Support of its Final Response to the RTKL Request of Nicholas Starinieri (Starinieri) with or on behalf of DeFino Law Associates, P.C.

**Procedural and Factual History**

This appeal arises from the Department’s response to Starinieri’s request for records under the RTKL, 65 P.S. § 67.101, *et seq.* The Department received request number DOH-RTKL-MS-264-2021 on December 30, 2021. Starinieri requested the release of video footage from a medical marijuana facility permitted by the

Department's Office of Medical Marijuana. Specifically, Starinieri sought the following:

I represent Cynthia Romig who was seriously injured when she was a pedestrian struck by a truck on 9/24/21 in the parking lot near the Apothecarium in Thorndale, PA. My client was on her way to LabCorp in the parking lot when she was struck. We have been informed that the Apothecarium has video of my client's accident. I have entered into a Confidentiality Agreement with counsel for the Apothecarium in order to obtain the video. Immediately before the video was to be released, counsel for the Apothecarium informed me that the video could not be released because of DOH regulations.

Can you please let me know with whom I can speak at DOH so that I may obtain the requested video or, at the very least, make arrangements to view it? My request does not violate 28 Pa. Code 1141.22(b). I have no interest in anyone that could be in the video, other than my client and the driver which struck her. Filing suit against the driver is premature as his insurance carrier is cooperating with the claim. Thus, there is no subpoena at this time.

On January 7, 2022, the Department's Agency Open Records Officer (AORO) mailed Starinieri the Department's Final Response (Final Response) denying the Request pursuant to the Department's temporary regulations, specifically 28 Pa. Code § 1141.22(b). By the instant appeal, Starinieri asserts that the requested record is not confidential pursuant to Section 1141.22(b) and adamantly urges for its release. For the reasons that follow, the requested security footage is confidential pursuant to both Section 1141.22(b) and Section 302(a) of the Medical Marijuana

Act and is not subject to disclosure under the RTKL or otherwise, unless pursuant to a court order. Accordingly, the OOR should deny the instant appeal.

### **The Withheld Record is Not a Public Record**

Although the RTKL presumes that records in the possession of a Commonwealth agency are “public records” subject to disclosure, this presumption “*shall not apply* if . . . the record is exempt from disclosure under any other Federal or State law or regulation or judicial order or decree.” 65 P.S. § 67.305. Records which are exempt from disclosure under another law or regulation are categorically excluded from the RTKL’s definition of “public record.” 65 P.S. § 67.102; *see also Energy Transfer v. Friedman & Pa. Public Utility Comm’n v. Friedman*, Nos. 24 and 25 MAP 2021, 2021 WL 6058770, --- A.3d ---- (Pa., decided December 22, 2021). Further, the RTKL does not purport to “supersede or modify the public or nonpublic nature of a record or document established in Federal or State law . . .” 65 P.S. § 67.306; *see also* 65 P.S. § 67.3101.1 (“If 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*.”) (emphasis added).

#### **1. The Requested Record is Confidential Pursuant to 35 P.S. § 10231.302 and 28 Pa. Code § 1141.22(b)**

Here, the requested record consists of video footage from the security surveillance system installed in a medical marijuana dispensary facility permitted by



the Department’s Office of Medical Marijuana, pursuant to the Medical Marijuana Act (the “Act”), 35 P.S. §§ 10231.101 *et seq.* See Affidavits of Michael Azar and Tabbitha Bosack, dated February 18, 2022. Section 302 of the Act broadly prescribes that “[a]ll information obtained by the department relating to patients, caregivers and other applicants shall be confidential and not subject to public disclosure, including . . . . [i]ndividual identifying information about patients and caregivers.” 35 P.S. § 10231.302(a)(2). Further, Section 1141.22(b) of the Department’s temporary regulations promulgated pursuant to the Act provides the following:

(b) The following information is considered confidential, is not subject to the Right-to-Know Law and will not otherwise be released to a person unless pursuant to court order:

\*\*\*

(3) Individual identifying information concerning a patient or caregiver, or both.

\*\*\*

(8) Other information regarding a patient, caregiver, practitioner or medical marijuana organization not listed in subsection (a) that falls within an exception to the Right-to-Know Law, or is otherwise considered to be confidential proprietary information by other law.

(9) Information regarding the physical features of, and security measures installed in, a facility.

28 Pa. Code § 1141.22(b).

Prior to the Department's receipt of the instant request, Michael Azar, Safety Inspection Supervisor for the Department's Office of Medical Marijuana, received email correspondence from counsel for the dispensary facility whose records are the subject of the instant request. *See* Affidavit of Michael Azar, dated February 18, 2022. Counsel for the dispensary provided a link to the security footage at issue and sought clarification as to whether the Department's regulations permitted the release of the footage to Requester. *Id.* Review of the footage revealed that individuals appearing to be medical marijuana patients or caregivers are visible walking up to the front door of the facility, presenting identification cards, and entering and exiting the facility. *Id.* Additionally, several individuals presumed to be medical marijuana patients or caregivers are visible entering and exiting the facility right after a pedestrian is seen being struck by a truck in front of the dispensary exit. *See* Affidavit of Tabbitha Bosack, dated February 18, 2022.

Because the video footage at issue shows individuals appearing to be medical marijuana patients or caregivers entering and exiting a secure dispensary facility, the requested record is expressly confidential under Section 302(a) of the Act and Section 1141.22(b)(3) and (b)(8) of the Department's temporary regulations. 35 P.S. § 10231.302(a); 28 Pa. Code §§ 1141.22(b)(3) and (b)(8). As Section 1141.22(b) provides that this information is confidential and not subject to disclosure unless

pursuant to a court order,<sup>1</sup> the requested footage is not subject to release, and no further analysis under the RTKL is warranted.<sup>2</sup> See 65 P.S. §§ 67.102, 305, 306, 708(d), 3101.1; see also *Energy Transfer, supra*, at \*11; *Feldman v. Pa. Comm’n on Crime and Delinquency*, 208 A.3d 167, 175 (Pa. Cmwlth. 2019).

Even assuming, *arguendo*, that medical marijuana patients or caregivers were not visible in the security footage, it would still be confidential pursuant to Section 1141.22(b)(9), as it exists as part of a dispensary facility’s security surveillance system, and very plainly constitutes “[i]nformation regarding the physical features of, and security measures installed in, a facility.” 28 Pa. Code § 1141.22(b)(9); Affidavits of Michael Azar and Tabbitha Bosack, dated February 18, 2022. Accordingly, the requested record is confidential pursuant to Section 1141.22(b), and is not subject to disclosure under the RTKL or otherwise, unless pursuant to a court order. 28 Pa. Code § 1141.22(b); see also *Mission Pennsylvania, LLC v. McKelvey*, 212 A.3d 119, 135 (Pa. Cmwlth. 2019), *aff’d in part*, 255 A.3d 385, 407-408 (Pa. 2021) (“Based on the risks inherent in this cash-based industry, disclosure

---

<sup>1</sup> Although the Medical Marijuana Act and the Department’s temporary regulations control access to the records at issue here and the RTKL does not apply, Requester is not without recourse, as Section 1141.22(b) provides for their release pursuant to court order. 28 Pa. Code § 1141.22(b).

<sup>2</sup> The Department notes, however, that even under RTKL analysis, the record would also be exempt under Section 708(b)(5) of the RTKL. See 65 P.S. § 67.708(b)(5) (exempting records of an individual’s medical history or status and related information that would disclose individually identifiable health information).

of security measures and locations of surveillance systems presents a credible threat to physical security of facilities that amounts to more than speculation.”).

### **Conclusion**

For the reasons stated above, and in consideration of the Affidavits of Affidavits of Michael Azar and Tabbitha Bosack, the Department has established, by a preponderance of the evidence,<sup>3</sup> that the requested record is confidential pursuant to Section 302(a) of the Medical Marijuana Act and Section 1141.22(b) of the Department’s temporary regulations, and the OOR should deny the instant appeal.

Respectfully submitted,

/s/ Anna LaMano

---

Anna LaMano  
Assistant Counsel  
Attorney I.D. 90308

/s/ Shea M. Skinner

---

Shea M. Skinner  
Assistant Counsel  
Attorney I.D. 326121

---

<sup>3</sup> Agencies subject to the RTKL shall bear the burden of proving the nonpublic nature of responsive records by a preponderance of the evidence. *See* 65 P.S. § 67.708(a)(1); *Delaware County v. Schaefer ex rel. Phila. Inquirer*, 45 A.3d 1149 (Pa. Cmwlth. 2012) (“A preponderance of the evidence standard, the lowest evidentiary standard, is tantamount to a more likely than not inquiry.”).

Office of Legal Counsel  
Department of Health  
825 Health and Welfare Building  
625 Forster Street  
Harrisburg, PA 17120  
Phone: (717) 783-2500

Date: February 18, 2022

**COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF OPEN RECORDS**

**NICHOLAS STARINIERI *et al.*,  
Requester,**

**v.**

**PENNSYLVANIA DEPARTMENT  
OF HEALTH,  
Respondent.**

**Docket No. AP 2022-0103**

---

**DEPARTMENT OF HEALTH’S AFFIDAVIT OF TABBITHA BOSACK,  
COMPLIANCE MANAGER, OFFICE OF MEDICAL MARIJUANA,  
PENNSYLVANIA DEPARTMENT OF HEALTH**

---

I, Tabbitha Bosack, under penalty of perjury, pursuant to 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities, do hereby affirm and state that all factual averments made in the Department’s response to the above-captioned appeal and, specifically, the following averments, are true and correct to the best of my knowledge, information and belief:

1. I serve as Compliance Manager for Office of Medical Marijuana within the Pennsylvania Department of Health (the “Department”).
2. In this capacity, I am familiar with the records in the possession, custody and/or control of the Office of Medical Marijuana of the Department of Health.
3. I was provided with the Right-to-Know Law (“RTKL”) Request (“Request”) submitted by Nicholas Starinieri (“Requester”) in this matter, received on December 30, 2021, which sought the following:

I represent Cynthia Romig who was seriously injured when she was a pedestrian struck by a truck on 9/24/21 in the parking lot near the Apothecarium in Thorndale, PA. My client was on her way to LabCorp in the parking lot when she was struck. We have been informed that the

Apothecarium has video of my client's accident. I have entered into a Confidentiality Agreement with counsel for the Apothecarium in order to obtain the video. Immediately before the video was to be released, counsel for the Apothecarium informed me that the video could not be released because of DOH regulations.

Can you please let me know with whom I can speak at DOH so that I may obtain the requested video or, at the very least, make arrangements to view it? My request does not violate 28 Pa. Code 1141.22(b). I have no interest in anyone that could be in the video, other than my client and the driver which struck her. Filing suit against the driver is premature as his insurance carrier is cooperating with the claim. Thus, there is no subpoena at this time.

4. The video footage at issue exists as part of the security surveillance system installed in a medical marijuana dispensary facility permitted by the Pennsylvania Department of Health.
5. While viewing the security footage, I observed what appeared to be medical marijuana patients or caregivers walking up to the front door of the dispensary, presenting identification cards, and entering and exiting the dispensary.
6. Additionally, I observed a truck striking a pedestrian in front of the dispensary exit, and an individual walking up to assist the fallen pedestrian.
7. Right after the accident occurred and while the fallen pedestrian was receiving assistance, I observed what appears to be two patients or caregivers leave the dispensary, and an additional two apparent patients or caregivers enter the dispensary.
8. Based on this observation, I believed that the footage may be confidential pursuant to the Department's temporary regulations, and I was copied on an email from Mike Azar, relaying what he and I saw on the video to the Department's Office of Legal Counsel and seeking advice on whether to release the video.
9. Counsel advised that the security footage should not be released without a court order. *See* 28 Pa. Code §§ 1141.22(b)(3), (8), and (9).

Date: February 18, 2022

/s/ Tabbitha Bosack  
Tabbitha Bosack  
Compliance Manager  
Office of Medical Marijuana  
Pennsylvania Department of Health

**COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF OPEN RECORDS**

**NICHOLAS STARINIERI *et al.*,  
Requester,**

**v.**

**PENNSYLVANIA DEPARTMENT  
OF HEALTH,  
Respondent.**

**Docket No. AP 2022-0103**

---

**DEPARTMENT OF HEALTH’S AFFIDAVIT OF MICHAEL AZAR,  
SAFETY INSPECTION SUPERVISOR, OFFICE OF MEDICAL  
MARIJUANA,  
PENNSYLVANIA DEPARTMENT OF HEALTH**

---

I, Michael Azar, under penalty of perjury, pursuant to 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities, do hereby affirm and state that all factual averments made in the Department’s response to the above-captioned appeal and, specifically, the following averments, are true and correct to the best of my knowledge, information and belief:

1. I serve as Safety Inspection Supervisor for Office of Medical Marijuana within the Pennsylvania Department of Health (the “Department”).
2. In this capacity, I am familiar with the records in the possession, custody and/or control of the Office of Medical Marijuana of the Department of Health.
3. I was provided with the Right-to-Know Law (“RTKL”) Request (“Request”) submitted by Nicholas Starinieri (“Requester”) in this matter, received on December 30, 2021, which sought the following:

I represent Cynthia Romig who was seriously injured when she was a pedestrian struck by a truck on 9/24/21 in the parking lot near the Apothecarium in Thorndale, PA. My client was on her way to LabCorp in



the parking lot when she was struck. We have been informed that the Apothecarium has video of my client's accident. I have entered into a Confidentiality Agreement with counsel for the Apothecarium in order to obtain the video. Immediately before the video was to be released, counsel for the Apothecarium informed me that the video could not be released because of DOH regulations.

Can you please let me know with whom I can speak at DOH so that I may obtain the requested video or, at the very least, make arrangements to view it? My request does not violate 28 Pa. Code 1141.22(b). I have no interest in anyone that could be in the video, other than my client and the driver which struck her. Filing suit against the driver is premature as his insurance carrier is cooperating with the claim. Thus, there is no subpoena at this time.

4. Prior to the Department's receipt of the above request, I received email correspondence from counsel for the dispensary facility whose records are the subject of the instant request, who provided a link to the security footage at issue and sought clarification as to whether the Department's regulations permitted the release of the footage to Requester.
5. The video footage at issue exists as part of the security surveillance system installed in a medical marijuana dispensary facility permitted by the Pennsylvania Department of Health.
6. While viewing the security footage, I observed what appeared to be medical marijuana patients or caregivers walking up to the front door of the dispensary, presenting identification cards, and entering and exiting the dispensary.
7. Based on this observation, I believed that the footage may be confidential pursuant to the Department's temporary regulations, and I relayed what I saw on the video to the Department's Office of Legal Counsel and sought advice on whether to release the video.
8. Counsel advised that the security footage should not be released without a court order. *See* 28 Pa. Code §§ 1141.22(b)(3), (8), and (9).

Date: February 18, 2022

Michael Azar /s/

Michael Azar  
Safety Inspection Supervisor  
Office of Medical Marijuana  
Pennsylvania Department of Health

# OOR Exhibit 12

**From:** [Nicholas Starinieri](#)  
**To:** [Skinner, Shea](#)  
**Cc:** [Young, Joshua](#); [Keefer, Lisa](#); [LaMano, Anna](#); [Nicole Russo](#); [Jake Thornton](#)  
**Subject:** [External] Re: Starinieri v. DOH, AP 2022-0103  
**Date:** Friday, February 18, 2022 3:20:53 PM

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Thank you for providing the Affidavits. Unlike the Affidavit from Ms. Simonetti, I note that neither of your witnesses' Affidavits is specific as to time stamps and neither contradicts Ms. Simonetti in her assertion that no dispensary employees are in the requested footage and that no patients of the dispensary can be identified. Unlike your witnesses, Ms. Simonetti actually knows the dispensary's employees and would be able to identify any of the dispensary's patients. Statements such as "what appears to be two patients" and "may be confidential" are beyond speculative. Additionally, without any timestamps referenced, it is quite obvious that Mr. Azar and Ms. Bozack have reviewed video footage outside of the timeframe I requested, as Ms. Simonetti's Affidavit covers a timeframe without anyone coming to the dispensary door.

On Fri, Feb 18, 2022 at 2:37 PM Skinner, Shea <[sheskinner@pa.gov](mailto:sheskinner@pa.gov)> wrote:

Good afternoon Attorneys Young and Starinieri,

Attached are the Department's response and supporting affidavits in the above-captioned appeal. Please let us know if you have any questions regarding the same. Thank you.

**Shea M. Skinner** | Assistant Counsel

Office of Legal Counsel  
Pennsylvania Department of Health

Norristown Field Office

1937 New Hope St., 2<sup>nd</sup> Floor

Norristown, PA 19401

[www.health.pa.gov](http://www.health.pa.gov)

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---

**From:** Nicholas Starinieri <[njs@definolawyers.com](mailto:njs@definolawyers.com)>  
**Sent:** Thursday, February 17, 2022 4:07 PM  
**To:** Young, Joshua <[joshyoung@pa.gov](mailto:joshyoung@pa.gov)>  
**Cc:** Keefer, Lisa <[likeefer@pa.gov](mailto:likeefer@pa.gov)>; LaMano, Anna <[alamano@pa.gov](mailto:alamano@pa.gov)>; Skinner, Shea <[sheskinner@pa.gov](mailto:sheskinner@pa.gov)>; Nicole Russo <[nrusso@definolawyers.com](mailto:nrusso@definolawyers.com)>; Jake Thornton <[jthornton@terrascend.com](mailto:jthornton@terrascend.com)>  
**Subject:** [External] Cynthia Romig - OOR Dkt. AP 2022-0103

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Mr. Young:

Attached please find a letter-brief with exhibits regarding this appeal.

Thank you.

--

Nicholas J. Starinieri, Esquire

DeFino Law Associates, P.C.

2541 S. Broad Street

Philadelphia, PA 19148

T - 215-551-9099 (Ext. 109)

F - 215-551-4099

[www.definolawyers.com](http://www.definolawyers.com)

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Nicholas J. Starinieri, Esquire  
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Philadelphia, PA 19148  
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# 00R Exhibit 13

**From:** [Young, Joshua](#)  
**To:** [Skinner, Shea](#)  
**Cc:** [Keefer, Lisa](#); [LaMano, Anna](#); [Nicole Russo](#); [Jake Thornton](#); [Nicholas Starinieri](#); [Joe Pangaro](#)  
**Subject:** RE: Starinieri v. DOH; OOR Dkt. AP 2022-0103  
**Date:** Thursday, March 17, 2022 11:50:00 AM

---

Dear Attorney Skinner:

I write regarding the above-referenced Right-to-Know appeal. In its position statement, the Department relies heavily upon several provisions of its temporary regulations to support withholding the requested video footage. At your earliest convenience, but no later than the end of the day (**11:59:59 p.m.**) on **Monday, March 21, 2022**, please provide a supplemental submission explaining how the Department's temporary regulations, which, according to documentation located on the Department's website, appear to have expired on November 20, 2021, continue to have the force and effect of law.

Sincerely,



**Joshua T. Young**

Deputy Chief Counsel  
Office of Open Records  
333 Market St., 16th Floor  
Harrisburg, PA 17101-2234  
(717) 346-9903 | <http://openrecords.pa.gov>  
[joshyoung@pa.gov](mailto:joshyoung@pa.gov) | [@OpenRecordsPA](#)

---

**From:** Skinner, Shea <sheskinner@pa.gov>  
**Sent:** Friday, February 18, 2022 2:38 PM  
**To:** Nicholas Starinieri <njs@definolawyers.com>; Young, Joshua <joshyoung@pa.gov>  
**Cc:** Keefer, Lisa <likeefer@pa.gov>; LaMano, Anna <alamano@pa.gov>; Nicole Russo <nrusso@definolawyers.com>; Jake Thornton <jthornton@terrascend.com>  
**Subject:** Starinieri v. DOH, AP 2022-0103

Good afternoon Attorneys Young and Starinieri,

Attached are the Department's response and supporting affidavits in the above-captioned appeal. Please let us know if you have any questions regarding the same. Thank you.

**Shea M. Skinner** | Assistant Counsel  
Office of Legal Counsel  
Pennsylvania Department of Health  
Norristown Field Office  
1937 New Hope St., 2<sup>nd</sup> Floor  
Norristown, PA 19401  
[www.health.pa.gov](http://www.health.pa.gov)

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---

**From:** Nicholas Starinieri <[njs@definolawyers.com](mailto:njs@definolawyers.com)>

**Sent:** Thursday, February 17, 2022 4:07 PM

**To:** Young, Joshua <[joshyoung@pa.gov](mailto:joshyoung@pa.gov)>

**Cc:** Keefer, Lisa <[likeefer@pa.gov](mailto:likeefer@pa.gov)>; LaMano, Anna <[alamano@pa.gov](mailto:alamano@pa.gov)>; Skinner, Shea <[sheskinner@pa.gov](mailto:sheskinner@pa.gov)>; Nicole Russo <[nrusso@definolawyers.com](mailto:nrusso@definolawyers.com)>; Jake Thornton <[jthornton@terrascend.com](mailto:jthornton@terrascend.com)>

**Subject:** [External] Cynthia Romig - OOR Dkt. AP 2022-0103

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Mr. Young:

Attached please find a letter-brief with exhibits regarding this appeal.

Thank you.

--

Nicholas J. Starinieri, Esquire  
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T - 215-551-9099 (Ext. 109)  
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[www.definolawyers.com](http://www.definolawyers.com)

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# OOR Exhibit 14

**From:** [Skinner, Shea](#)  
**To:** [Young, Joshua](#); [Nicholas Starinieri](#)  
**Cc:** [Keefer, Lisa](#); [LaMano, Anna](#); [Nicole Russo](#); [Jake Thornton](#); [jpangaro@terrascend.com](mailto:jpangaro@terrascend.com)  
**Subject:** RE: Starinieri v. DOH; OOR Dkt. AP 2022-0103  
**Date:** Friday, March 18, 2022 1:41:15 PM  
**Attachments:** [Supplemental OOR Response.pdf](#)

---

Good afternoon Attorney Young,

Attached please find the Department's response to the OOR's request for additional information.

Sincerely,

**Shea M. Skinner** | Assistant Counsel  
Office of Legal Counsel  
Pennsylvania Department of Health  
Norristown Field Office  
1937 New Hope St., 2<sup>nd</sup> Floor  
Norristown, PA 19401  
[www.health.pa.gov](http://www.health.pa.gov)

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---

**From:** Young, Joshua <joshyoung@pa.gov>  
**Sent:** Thursday, March 17, 2022 11:51 AM  
**To:** Skinner, Shea <sheskinner@pa.gov>  
**Cc:** Keefer, Lisa <likeefer@pa.gov>; LaMano, Anna <alamano@pa.gov>; Nicole Russo <nrusso@definolawyers.com>; Jake Thornton <jthornton@terrascend.com>; Nicholas Starinieri <njs@definolawyers.com>; Joe Pangaro <jpangaro@terrascend.com>  
**Subject:** RE: Starinieri v. DOH; OOR Dkt. AP 2022-0103

Dear Attorney Skinner:

I write regarding the above-referenced Right-to-Know appeal. In its position statement, the Department relies heavily upon several provisions of its temporary regulations to support withholding the requested video footage. At your earliest convenience, but no later than the end of the day (**11:59:59 p.m.**) on **Monday, March 21, 2022**, please provide a supplemental submission explaining how the Department's temporary regulations, which, according to documentation located on the Department's website, appear to have expired on November 20, 2021, continue to have the force and effect of law.

Sincerely,

**Joshua T. Young**

**COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF OPEN RECORDS**

**NICHOLAS STARINIERI *et al.*,  
Requester,**

**v.**

**PENNSYLVANIA DEPARTMENT  
OF HEALTH,  
Respondent.**

**Docket No. AP 2022-0103**

---

**DEPARTMENT OF HEALTH’S SUPPLEMENTAL LEGAL ARGUMENT  
IN SUPPORT OF ITS DENIAL OF NICHOLAS STARINIERI’S RIGHT-  
TO-KNOW LAW REQUEST**

---

Pursuant to the March 17, 2022 email correspondence from Office of Open Records (OOR) Appeals Officer assigned to the instant matter, the Department submits this supplemental legal argument in support of its Final Response to the Right-to-Know Law (RTKL) Request of Nicholas Starinieri (Starinieri) with or on behalf of DeFino Law Associates, P.C.

By its March 17, 2022 email correspondence, the OOR requests the following information:

In its position statement, the Department relies heavily upon several provisions of its temporary regulations to support withholding the requested video footage. . . [P]lease provide a supplemental submission explaining how the Department’s temporary regulations, which, according to documentation located on the Department’s website, appear to have expired on November 20, 2021, continue to have the force and effect of law.

Initially, the Department reiterates that its temporary regulations, specifically 28 Pa. Code § 1141.22(b), are not the only legal basis for deeming the requested footage confidential. As stated in the Department’s prior submission, Section 302 of the Medical Marijuana Act broadly prescribes that “[a]ll information obtained by the department relating to patients, caregivers and other applicants shall be confidential and not subject to public disclosure, including . . . . [i]ndividual identifying information about patients and caregivers.” 35 P.S. § 10231.302(a)(2).

In addition to the statutory confidentiality provision prohibiting the release of the requested record, the Department cited to the temporary regulations promulgated pursuant to the Department’s regulatory authority over the Commonwealth’s Medical Marijuana Program. *See* 28 Pa. Code §§ 1141.22(b)(3), (8), and (9); *see generally* 35 P.S. §§ 10231.301(a)(3).

By way of background, the Medical Marijuana Act, 35 P.S. §§ 10231.101, *et. seq.* (“the Act”), signed into law in April, 2016, established the Commonwealth’s Medical Marijuana Program. Section 1107 of the Act authorizes the Department to promulgate temporary regulations, which were originally set to expire no later than two years after publication. *See* 35. P.S. § 10231.1107. This expiration date has been impacted by subsequent legislation, including Act 10 of 2020.

Section 1736-A.1 of Act 10 of 2020 extended the initial expiration date of the Department's temporary regulations beyond June of 2020.<sup>1</sup> Specifically, Section 1736-A.1 states:

Notwithstanding any other provision of law, the temporary regulations authorized and published under sections 1107 and 2004 of the act of April 17, 2016 (P.L.84, No.16), known as the Medical Marijuana Act, shall remain in effect and shall not expire until November 20, 2021, or upon the publication of the final-form regulations by the Department of Health, whichever is sooner.

Act of March 27, 2020, P.L. 30, No. 10. Before the November 20, 2021 expiration date arrived, Act 44 of 2021 extended the Department's authority to draft temporary regulations through May of 2022.<sup>2</sup> Section 1107, as amended, provides, “[n]otwithstanding any other provision of law, the department's authority to adopt temporary regulations under subsection (a) shall expire May 31, 2022. Regulations adopted after this period shall be promulgated as provided by law.” 35 P.S. § 10231.1107.

Pursuant to Act 44 of 2021 and Section 1107 of the Act, the Department republished its temporary regulations in the Pennsylvania Bulletin on January 15,

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<sup>1</sup> On June 22, 2018 the General Assembly amended Chapter 20 of the Medical Marijuana Act (35 P.S. §§ 10131.2000-10231-2004) and provided that the Department may issue new temporary regulations to implement the revised Chapter 20, which regulations were set to expire two years from the publication of Amended Chapter 20, or June 22, 2020. Revised temporary regulations were published on August 18, 2018 (48 Pa. Bull. 5072) and on December 22, 2018 (48 Pa. Bull. 7778).

<sup>2</sup> P.L. 210, No. 44, Sec. 6. June 30, 2021.

2022. *See* 52 Pa. Bull. 359; *see also* 35 P.S. § 10231.1107. In so doing, the Department extended the expiration date of the Department's temporary regulations, including those found in Chapter 1141 (relating to general provisions). *Id.*, 28 Pa. Code. §1141.21. In sum, the Department's temporary regulations continue to have the force and effect of law, including the confidentiality provisions found at Section 1141.22(b). Accordingly, the requested record is confidential pursuant to both Section 302(a) of the Act and 28 Pa. Code §§ 1141.22(b)(3), (8), and (9) and is therefore not subject to disclosure under the RTKL. *See* 65 P.S. §§ 67.102, 67.305, 67.306, and 67.3101.1.

Respectfully submitted,

/s/ Anna LaMano

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Anna LaMano  
Assistant Counsel  
Attorney I.D. 90308

/s/ Shea M. Skinner

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Shea M. Skinner  
Assistant Counsel  
Attorney I.D. 326121

Office of Legal Counsel  
Department of Health  
825 Health and Welfare Building  
625 Forster Street  
Harrisburg, PA 17120  
Phone: (717) 783-2500

Date: March 18, 2022

# 00R Exhibit 15

**From:** [Nicholas Starinieri](#)  
**To:** [Skinner, Shea](#)  
**Cc:** [Young, Joshua](#); [Keefer, Lisa](#); [LaMano, Anna](#); [Nicole Russo](#); [Jake Thornton](#); [jpangaro@terrascend.com](mailto:jpangaro@terrascend.com)  
**Subject:** [External] Re: Starinieri v. DOH; OOR Dkt. AP 2022-0103  
**Date:** Friday, March 18, 2022 2:44:35 PM

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

Mr. Young:

Regarding the Supplemental Legal Argument from DOH, whether or not the regulations have been extended in time is irrelevant to my request. The Affidavits from DOH are completely lacking in any substance as to why the information sought is confidential. The Bosack Affidavit states: "... I observed **what appears to be** two patients or caregivers leave the dispensary, and an additional two **apparent** patients or caregivers enter the dispensary." "... which **may** be confidential." The Azar Affidavit states: "... I observed what **appeared** to be medical marijuana patients or caregivers walking up to the front door of the dispensary, presenting identification cards, and entering and exiting the dispensary." "... which **may** be confidential." There is, by the very words of the Affidavits, no certainty as to the status of the individuals in the video. There are no time references in the DOH Affidavits. Unlike the DOH Affidavits from Azar and Bosack, the Apothecarium Affidavit, by Victoria Simonetti, has time references throughout and states, with absolute specificity and certainty that: "Between 13:49:32 and 14:00:18 (the video footage requested by Ms. Romig's counsel), no employees of the Apothecarium can be seen and no patients of Apothecarium could be identified." Neither Azar nor Bosack are familiar with the patients and employees of Apothecarium, unlike Ms. Simonetti who is the General Manager of the Apothecarium. Additionally, neither Azar nor Bosack have stated that the reviewed video footage was limited to the specific footage that I requested. Despite having the Simonetti Affidavit to review for 2 days prior to issuing their respective Affidavits, neither Azar nor Boasck refute the contents of the Simonetti Affidavit. The Simonetti Affidavit completely refutes the contents of the Bosack and Azar Affidavits.

Consequently, regardless of whether the temporary regulations have been extended, the specific footage that I have requested is not confidential as no patients nor employees of the dispensary appear in the footage that I have requested. Whatever **appears** to exist in the minds of Azar and Bosack when viewing the video has no evidentiary value whatsoever as it is absolute speculation. To the contrary, the Affidavit of Ms. Simonetti is clear, concise, time-marked and very specific as to the fact, not appearance, that **"Between 13:49:32 and 14:00:18 (the video footage requested by Ms. Romig's counsel), no employees of the Apothecarium can be seen and no patients of Apothecarium could be identified."**

Even with a strict application of the law, and acceptance of the extension of the time limits of same, there are no actual facts upon which DOH can claim confidentiality. The specificity and certainly of the Simonetti Affidavit nullifies the completely speculative Bosack and Azar Affidavits.

Thank you.



# OOR Exhibit 16

**From:** [Young, Joshua](#)  
**To:** [Nicholas Starinieri](#); [Skinner, Shea](#)  
**Cc:** [Keefer, Lisa](#); [LaMano, Anna](#)  
**Subject:** re: Starinieri v. Pa. Dep't of Health; OOR Dkt. AP 2022-0103  
**Date:** Friday, March 25, 2022 2:09:00 PM  
**Attachments:** [2022-0103 Starinieri DOH FD.pdf](#)

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Dear Parties:

Attached please find the Final Determination issued in the above-referenced Right-to-Know appeal.

Sincerely,



**Joshua T. Young**

Deputy Chief Counsel  
Office of Open Records  
333 Market St., 16th Floor  
Harrisburg, PA 17101-2234  
[\(717\) 346-9903](tel:(717)346-9903) | <http://openrecords.pa.gov>  
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### FINAL DETERMINATION

IN THE MATTER OF

NICHOLAS STARINIERI,  
Requester

v.

PENNSYLVANIA DEPARTMENT OF  
HEALTH,  
Respondent

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Docket No: AP 2022-0103

### INTRODUCTION

Nicholas Starinieri, Esq. (“Requester”) submitted a request (“Request”) to the Pennsylvania Department of Health (“Department”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking security camera video footage. The Department denied the Request, arguing that the footage can only be released pursuant to a court order. 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 Department is required to take additional action as directed.

### FACTUAL BACKGROUND

On December 30, 2021, the Request was filed, stating as follows:

I represent Cynthia Romig<sup>1</sup> who was seriously injured when she was a pedestrian struck by a truck on 9/24/21 in the parking lot near the Apothecarium in Thorndale,

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<sup>1</sup> As further described in the Request, Ms. Romig is the Requester’s client.

PA. My client was on her way to LabCorp in the parking lot when she was struck. We have been informed that the Apothecarium has video of my client's accident.... Can you please let me know with whom I can speak at [the Department] so that I may obtain the requested video or, at the very least, make arrangements to view it? My request does not violate 28 Pa. Code 1141.22(b). I have no interest in anyone that could be in the video, other than my client and the driver which struck her....

On January 7, 2022, the Department denied the Request, arguing that "[t]he records sought cannot be release absent a court order" and citing 28 Pa. Code § 1141.22(b).

On January 14, 2022, the Requester appealed to the OOR, challenging the denial and stating grounds for disclosure. The OOR invited both parties to supplement the record and directed the Department to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On January 19, 2022, the OOR received correspondence from Joe Pangaro, Esq., Assistant General Counsel<sup>2</sup> for TerrAscend Corp. ("TerrAscend"), the establishment that possesses the requested video footage. Attorney Pangaro stated that TerrAscend had no objection to providing the footage to the Requester; however, Attorney Pangaro further noted that it would comply with the Department's directives relating to the footage. Thereafter, additional correspondence was exchanged between the parties and the OOR regarding, among other things, the contents of the footage.

On February 17, 2022, the Requester submitted a position statement, asserting that 28 Pa. Code § 1141.22(b) does not apply to the video requested because the limited footage sought by the Requester does not identify patients or employees of the dispensary and would not undermine the security of the facility. The Requester also provided a sworn affidavit from Victoria Simonetti, General Manager of the Apothecarium, and a Confidentiality Agreement executed by the Requester.

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<sup>2</sup> Attorney Pangaro is no longer employed by TerrAscend.

On February 18, 2022, the Department submitted a position statement, reiterating the argument above and further arguing that the records are exempt as “records of an individual’s medical history or status and related information that would disclose individually identifiable health information.” 65 P.S. § 67.708(b)(5). More specifically, the Department argues that disclosure of the video footage could identify medical marijuana patients and caregivers or could constitute “[i]nformation regarding the physical features of, and security measures installed in, a facility.” 28 Pa. Code §§ 1141.22(b)(3), (8)-(9). In support of its arguments, the Department provided affidavits, made under the penalty of perjury, from Tabbith Bosack, Compliance Manager of the Department’s Office of Medical Marijuana, and Michael Azar, Safety Inspection Supervisor of the Department’s Office of Medical Marijuana.

On March 18, 2022, in response to a request for additional information from the OOR, the Department provided a supplemental submission, explaining that the Department’s temporary regulations relating to the medical marijuana program remain in effect. On the same day, the Requester replied to the Department’s submission, arguing that, even if the regulations have the full force and effect of law, the responsive video footage is not subject to the confidentiality provisions within the regulations.

### **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). The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. § 67.503(a). The Department is a Commonwealth agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.301. Records in the possession of a Commonwealth agency are presumed public unless exempt under the RTKL

or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. An agency bears the burden of proving the applicability of any cited exemptions. *See* 65 P.S. § 67.708(b).

The Department argues that the requested video footage is made confidential by 28 Pa. Code § 1141.22(b), which states, in relevant part as follows:

(b) The following information is considered confidential, is not subject to the [RTKL] and will not otherwise be released to a person unless pursuant to court order:

(3) Individual identifying information concerning a patient or caregiver, or both. ...

(8) Other information regarding a patient, caregiver, practitioner or medical marijuana organization not listed in subsection (a) that falls within an exception to the [RTKL], or is otherwise considered to be confidential proprietary information by other law.

(9) Information regarding the physical features of, and security measures installed in, a facility.

28 Pa. Code §§ 1141.22(b)(3), (8)-(9)<sup>3</sup>; *see also* 35 P.S. § 10231.302(a) (“All information obtained by the [D]epartment relating to patients, caregivers and other applicants shall be confidential and not subject to disclosure under [the RTKL], including: ... (1) [i]ndividual identifying information about patients and caregivers.”).

**1. The Department has not proven that disclosure of the video footage would reveal individual identifying information of patients or caregivers, or other confidential information regarding a patient, caregiver, practitioner or medical marijuana organization.**

First, the Department contends that release of the video footage would identify confidential information of patients or caregivers utilizing the dispensary. In his affidavit, Mr. Azar attests, in relevant part, as follows:

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<sup>3</sup> The Department’s temporary regulations were set to expire on May 12, 2020; however, pursuant to Act 10 of 2020, they were extended until November 20, 2021, and Act 44 of 2021 again extended the Department’s authority to draft temporary regulations through May of 2022.

I serve as Safety Inspection Supervisor for [the] Office of Medical Marijuana within the [Department].

In this capacity, I am familiar with the records in the possession, custody and/or control of the Office of Medical Marijuana of the Department....

Prior to the Department's receipt of the above [R]equest, I received email correspondence from counsel for the dispensary facility whose records are the subject of the instant [R]equest, who provided a link to the security footage at issue and sought clarification as to whether the Department's regulations permitted the release of the footage to Requester. ...

While viewing the security footage, I observed what appeared to be medical marijuana patients or caregivers walking up to the front door of the dispensary, presenting identification cards, and entering and exiting the dispensary.

Based on this observation, I believed that the footage may be confidential pursuant to the Department's temporary regulations, and I relayed what I saw on the video to the Department's Office of Legal Counsel and sought advice on whether to release the video.

Counsel advised that the security footage should not be released without a court order.

Furthermore, Ms. Bosack attests that the video footage exists as part of the security system installed at the facility and reiterates Mr. Azar's assertion that the footage shows marijuana patients and caregivers entering and existing the facility. *Bosack Affidavit*, ¶¶4-5. Ms. Bosack further attests as follows:

Additionally, I observed a truck striking a pedestrian in front of the dispensary exist, and an individual walking up to assist the fallen pedestrian.

Right after the accident occurred and while the fallen pedestrian was receiving assistance, I observed what appears to be two patients or caregivers leave the dispensary, and an additional two apparent patients or caregivers enter the dispensary.

Based upon her observations, Ms. Bosack believed the footage may be confidential pursuant to the Department's temporary regulations and, as a result, sought advice from the Department's legal office. *Bosack* Affidavit, ¶8.<sup>4</sup>

The Requester argues that the limited amount of video footage he is seeking “does not depict any patients nor employees of the facility” and, as a result, does not violate 28 Pa. Code §§ 1141.22(b)(3) or (b)(8). In support of his position, the Requester provided a sworn affidavit from Ms. Simonetti, who serves as the General Manager of the Apothecarium. Ms. Simonetti attests that she “...reviewed the security camera footage requested related to the incident in question on 09/24/2021” and determined the only individuals captured on the video were an individual exiting a vehicle and walking toward the front door of LabCorp, another business entity located near the Apothecarium, the driver of a white box truck, several individuals who exited LabCorp, and first responders including police officers and paramedics. *Simonetti* Affidavit, ¶¶4-16. Additionally, Ms. Simonetti affirms that “[b]etween 13:49:32 and 14:00:18 (the video footage requested by [the Requester]), no employees of Apothecarium and no patients of Apothecarium could be identified.”

While the Department contends that the video footage depicts individuals walking to the front door of the dispensary, presenting identification cards, entering or exiting the facility, the affidavits of Ms. Bosack and Mr. Azar do not explain whether patients, caregivers or other patrons of the dispensary can be observed during the relevant portions of the footage. Furthermore, the Department has not clearly articulated the times during which potential patients or caregivers were seen entering and exiting the dispensary. Conversely, Ms. Simonetti clearly describes the individuals able to be viewed on the footage and affirms, as the General Manager of the dispensary,

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<sup>4</sup> Under the RTKL, a statement made under the penalty of perjury is competent evidence to sustain an agency's burden of proof. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010).



that no employees or patients can be observed from 13:49:32 through 14:00:18, the portion of the footage sought by the Requester. Based upon the evidence provided, therefore, the Department has failed to meet its burden of proving that the responsive portion of the video footage showed patients or caregivers such that the footage would be confidential under 28 Pa. Code §§ 1141.22(b)(3), (b)(8) or 35 P.S. § 10231.302(a)(1).<sup>5</sup> *See Delaware Cnty. v. Schaefer ex rel. Phila. Inquirer*, 45 A.3d 1149, 1156 (Pa. Commw. Ct. 2012) (“[a] preponderance of the evidence standard, the lowest evidentiary standard, is tantamount to a more likely than not inquiry”).

**2. The Department has not proven that release of the video footage would disclose information regarding the physical features of, and security measures installed in, the dispensary.**

Next, the Department argues that the video footage is confidential because “it exists part of a dispensary facility’s security surveillance system, and very plainly constitutes ‘[i]nformation regarding the physical features of, and security measures installed in, a facility.’” *See* 28 Pa. Code § 1141.22(b)(9). Mr. Azar attests that “[t]he video footage at issue exists as part of the security surveillance system installed in a medical marijuana dispensary facility permitted by the [Department].” The Requester, on the other hand, challenges the notion that video footage from an exterior camera depicting exterior portions of the dispensary constitutes “the type of security protections ... contemplated and covered by 28 Pa. Code § 1141.22(b)(9).”

As noted by the Requester, the responsive video footage was captured by a single exterior camera and depicts the front of the dispensary, including the parking lot. *Simonetti Affidavit*, ¶1. The Department has presented no evidence to suggest that the video footage from this camera

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<sup>5</sup> The Department also argues that the video footage would be exempt under Section 708(b)(5) of the RTKL, 65 P.S. § 67.708(b)(5), as it would disclose individually identifiable health information. However, for the same reasons as set forth in Section 1 of this Final Determination, the Department has not demonstrated that disclosure of the requested video footage would reveal individually identifiable health information. *See also* 65 P.S. § 67.706 (stating that an agency “shall redact from the record the information which is not subject to access, and the response shall grant access to the information which is subject to access”).

shows any of the physical features of the facility outside of those visible from the front of the facility. Furthermore, apart from Mr. Azar's conclusory statement, the Department has not submitted evidence to demonstrate how an eleven-minute piece of video footage, taken from a "front door entrance camera," would reveal the types of "security measures installed in" the dispensary. *Cf. McKelvey v. Pa. Dep't of Health*, 255 A.3d 385, 397 n.12 (Pa. 2021) (permitting the redaction of medical marijuana applications to remove information regarding building security). Accordingly, the Department has failed to meet its burden of proving that the video footage is confidential under 28 Pa. Code § 1141.22(b)(9).<sup>6</sup>

### CONCLUSION

For the foregoing reasons, the appeal is **granted**, and the Department is required to provide the Requester with the responsive video footage, as discussed above, 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 Commonwealth Court. 65 P.S. § 67.1301(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond as per Section 1303 of the RTKL. 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>7</sup> This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

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<sup>6</sup> Notwithstanding this finding, under no circumstances must the Department provide the Requester with video other than the limited footage identified in Ms. Simonetti's Affidavit, nor must the Department provide the Requester with any footage showing individuals showing their identification cards and entering or exiting the building.

<sup>7</sup> *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

**FINAL DETERMINATION ISSUED AND MAILED: 25 March 2022**

*/s/ Joshua T. Young*

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JOSHUA T. YOUNG  
DEPUTY CHIEF COUNSEL

Sent to: Nicholas Starinieri, Esq. (via email only);  
Shea Skinner, Esq. (via email only);  
Anna LaMano, Esq. (via email only);  
Lisa Keefer, AORO (via email only)