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JAN 11 2016

OFFICE OF OPEN RECORDS

IN THE COURT OF COMMON PLEAS
CENTRE COUNTY, PENNSYLVANIA

CENTRE COUNTY DISTRICT
ATTORNEY'S OFFICE,
PETITIONER
V.
PENNSYLVANIANS FOR UNION REFORM
And PENNSYLVANIA OFFICE OF OPEN
RECORDS,
RESPONDENTS

CV
NO CP-14-MQ-115-2016

FILED FEB 09 2016
DEBRA C. JAMIEL
PROTHONOTARY
CENTRE COUNTY, PA
2016 JAN -8 PM 3:12

PETITION FOR REVIEW OF FINAL DETERMINATION

Pursuant to Section 1302 of the Pennsylvania Right to Know Law the Centre County District Attorney's Office hereby petitions for review of the Pennsylvania Office of Open Records Final Determination Issued, dated and mailed December 9, 2015 in the matter of Pennsylvanians for Union Reform, Requester v. Centre County District Attorney's Office, Respondent, OOR Docket No. AP 2015-2557, and in support thereof avers as follows:

I. **Statement of Jurisdiction and Standard of Review.**

1. This Court has jurisdiction over this Petition pursuant to 65 P. S. 67.1302 which sets forth that judicial review of an Office of Open Records Final Determination shall besought by filing a petition for review with the Court of Common Pleas of the County where the local agency is situated. See id.

2. This Court's standard for review for an Office of Open Records Final Determination is *de novo*. See Bowling v. Office of Open Records, 621 Pa 133, 162 (Pa. 2013).

Supreme Court of Pennsylvania

Court of Common Pleas
Civil Cover Sheet



County _____

<i>For Prothonotary Use Only:</i>	TIME STAMP
Docket No: 2011e-115	

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

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SECTION A	Commencement of Action: <input type="checkbox"/> Complaint <input type="checkbox"/> Writ of Summons <input checked="" type="checkbox"/> Petition <input type="checkbox"/> Transfer from Another Jurisdiction <input type="checkbox"/> Declaration of Taking		JAN 14 2016
	Lead Plaintiff's Name: CENTRE COUNTY DISTRICT ATTORNEY	Lead Defendant's Name: OFFICE OF OPEN RECORDS PENNSYLVANIANS FOR UNION REFORM	
	Are money damages requested? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Dollar Amount Requested: <input type="checkbox"/> within arbitration limits (check one) <input type="checkbox"/> outside arbitration limits	
	Is this a <i>Class Action Suit</i> ? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Is this an <i>MDJ Appeal</i> ? <input type="checkbox"/> Yes <input type="checkbox"/> No	
	Name of Plaintiff/Appellant's Attorney: ROBERT B. STEWART III SPECIAL ASSISTANT DISTRICT ATTORNEY		

Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)

Nature of the Case: Place an "X" to the left of the ONE case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

SECTION B	TORT (do not include Mass Tort) <input type="checkbox"/> Intentional <input type="checkbox"/> Malicious Prosecution <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Nuisance <input type="checkbox"/> Premises Liability <input type="checkbox"/> Product Liability (does not include mass tort) <input type="checkbox"/> Slander/Libel/ Defamation <input type="checkbox"/> Other: _____	CONTRACT (do not include Judgments) <input type="checkbox"/> Buyer Plaintiff <input type="checkbox"/> Debt Collection: Credit Card <input type="checkbox"/> Debt Collection: Other _____ <input type="checkbox"/> Employment Dispute: Discrimination <input type="checkbox"/> Employment Dispute: Other _____ <input type="checkbox"/> Other: _____	CIVIL APPEALS <input type="checkbox"/> Administrative Agencies <input type="checkbox"/> Board of Assessment <input type="checkbox"/> Board of Elections <input type="checkbox"/> Dept. of Transportation <input type="checkbox"/> Statutory Appeal: Other _____ <input type="checkbox"/> Zoning Board <input checked="" type="checkbox"/> Other: PETITION FOR REVIEW RIGHT TO KNOW
	MASS TORT <input type="checkbox"/> Asbestos <input type="checkbox"/> Tobacco <input type="checkbox"/> Toxic Tort - DES <input type="checkbox"/> Toxic Tort - Implant <input type="checkbox"/> Toxic Waste <input type="checkbox"/> Other: _____	REAL PROPERTY <input type="checkbox"/> Ejectment <input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Ground Rent <input type="checkbox"/> Landlord/Tenant Dispute <input type="checkbox"/> Mortgage Foreclosure: Residential <input type="checkbox"/> Mortgage Foreclosure: Commercial <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Other: _____	MISCELLANEOUS <input type="checkbox"/> Common Law/Statutory Arbitration <input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Mandamus <input type="checkbox"/> Non-Domestic Relations Restraining Order <input type="checkbox"/> Quo Warranto <input type="checkbox"/> Replevin <input type="checkbox"/> Other: _____
	PROFESSIONAL LIABILITY <input type="checkbox"/> Dental <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional: _____		

II. Parties.

3. Petitioner, Centre County District Attorney's Office is the local agency which received the subject Right to Know request and is situated within the jurisdiction of this Court. The Centre County District Attorney's Office is physically located in the Centre County Courthouse in Bellefonte, PA and has a mailing address of 102 S. Allegheny Street, Courthouse Room 404, Bellefonte, Pennsylvania 16823.

4. Requester and Respondent, Pennsylvanians for Union Reform, ("PFUR") is a non-profit, non-stock corporation, entity number 4161131, formed January 25, 2013 and it has a mailing address of 668 Stony Hill Road, # 110, Yardley, Pennsylvania 19067.

5. The Pennsylvania Office of Open Records ("OOR") is the agency which issued a final determination with respect to Pennsylvanians for Union Reform's Right to Know request and OOR has a mailing address of Commonwealth Keystone Building, 400 North Street, Fourth Floor, Harrisburg, Pennsylvania 17120. The designated appeals officer for Pennsylvanians for Union Reform's appeal was Benjamin A. Lorah, Esquire. Commonwealth Keystone Building, 400 North Street, Fourth Floor, Harrisburg, Pennsylvania 17120

III. Procedural History.

6. This petition for review relates to a Right to Know request emailed by Pennsylvanians for Union Reform to the Centre County District Attorney's Office on September 28, 2015. See Pennsylvanians for Union Reform's Right to Know request attached hereto as EXHIBIT A.

7. Pursuant to the request Pennsylvanians for Union Reform sought the following records:

The following information from all bank accounts owned or controlled by the Office of the Centre County District Attorney for the time period between January 1, 2013 and September 25, 2015:

1. The names of depository banks.
- 1a. The names of all persons with signatory authority over those bank accounts.
2. A list of all deposit transactions, however this request was subsumed in the request number 7, wherein PFUR requested monthly bank statements.
3. A list of all debit card, ATM transactions, however this request is subsumed in request number 7, wherein PFUR requested monthly bank statements.
4. A list of all check withdrawal transactions, however this request is subsumed in request number 7, wherein PFUR requested monthly bank statements.
5. Copies of the front side face of all checks.
6. A list of all outgoing wire transfers, however this request is subsumed in request number 7, wherein list PFUR requested monthly bank statements.
7. Monthly bank statements.
8. Copies of all expense reports filed by Stacy Parks Miller.
9. Records of all line item expense reimbursements paid from governmental funds to Stacy Parks Miller

See EXHIBIT A.

8. On October 2, 2015 the Centre County District Attorney's Office invoked a thirty day extension to respond to the request. See 65 P. S. 67.902. See EXHIBIT B

9. On October 28, 2015 the Centre County District Attorney's Office responded to the request, granting it in part and denying it in part. Pennsylvanians for Union Reform's requests one through seven inclusive were denied and requests eight and nine regarding expense reports filed by District Attorney Stacy Parks Miller and line item expense reimbursements paid from governmental funds to Stacy Parks Miller were provided as is set forth in EXHIBIT C Response to request dated October 28, 2015 attached hereto.

10. On November 9, 2015, Pennsylvanians for Union Reform appealed the partial denial to the Office of Open Records. See the Notice of Appeal attached hereto as EXHIBIT D.

11. On December 1, 2015, the Centre County District Attorney's Office submitted its Attestation, together with its legal arguments in opposition to the appeal as well as a Memorandum Opinion in Drew Johnson and the Washington Times, Requestor vs. Bedford County and William Higgins, Jr., Direct Interest Participant, in the Court of Common Pleas of Bedford County, Pennsylvania at case No. 60071 for the year 2015, and a Transcript of Proceedings in Stacy Parks Miller, District Attorney vs. County of Centre, Sean P. McGraw, Andrew Shubin, Attorney at Law d/b/a The Law Office of Andrew Shubin, Bernard F. Cantorna, Esquire, Bryant & Cantorna, P.C. and John Does 1-5 in the Court of Common Pleas of Centre County, Pennsylvania at case No. 15-1185, said transcript reflecting proceedings which took place on May 13, 2015, pages one through ninety-eight inclusive. The Attestation is included herein and is marked as EXHIBIT E.

12. In the Centre County District Attorney's Office legal arguments, it argued that the Office of Open Records lacks jurisdiction over the appeal and that it must be dismissed because of a prior finding by the Hon. Stewart L. Kurtz that the Centre County District Attorney's Office is a Judicial Agency for purposes of the Right to Know Law and that such declaration deprived the Office of Open Records of jurisdiction to decide this appeal. See, Stacy Parks Miller, District Attorney vs. County of Centre, Sean P. McGraw, Andrew Shubin, Attorney at Law d/b/a The Law Office of Andrew Shubin,

Bernard F. Cantorna, Esquire, Bryant & Cantorna, P.C. and John Does 1-5 in the Court of Common Pleas of Centre County, Pennsylvania at case No. 15-1185,

13. Judge Ling of the Bedford County Court of Common Pleas made the same determination in his Memorandum Opinion in Drew Johnson and the Washington Times, Requestor vs. Bedford County and William Higgins, Jr., Direct Interest Participant, in the Court of Common Pleas of Bedford County, Pennsylvania at case No. 60071 for the year 2015. The result of both of these judicial determinations are that the Office of Open Records has no jurisdiction over matters that relate to judicial employees, or records of judicial agencies and hence, could not lawfully issue the Final Determination herein.

14. The Centre County District Attorney's Office argued that Pennsylvanians for Union Reform impermissibly created a double track appeal system by appealing both to the Office of Open Records and to the Centre County Right to Know Appeals Officer, Mark Smith, First Assistant District Attorney. See EXHIBIT F. The Right to Know Concurrent Appeal to Mark M. Smith, First Assistant District Attorney and Appeals Officer for the Office of the Centre County District Attorney's Office, EXHIBIT G. his response and EXHIBIT H the withdrawal of that concurrent appeal by PFUR.

15. The Centre County District Attorney's Office also argued that the records which Pennsylvanians for Union Reform sought herein were exempt from disclosure in that these records are not by definition public records. See 65 P. S. 67.102. Under that section a, "public record," is expressly defined as a record that is "(1) not exempt under section 708 or (2) is not exempt from being disclosed under Federal or State law, regulation or judicial decree, or (3) is not protected by a privilege."

16. The Centre County District Attorney's Office also argued that the records which Pennsylvanians for Union Reform sought herein were exempt from disclosure in that the information sought contained public safety information pursuant to 65 P. S. 67.708 (b) (2), records of a criminal investigation 65 P. S. 67.708 (b) (16), records of a noncriminal investigation 65 P. S. 67.708 (b) (17), and that the information sought herein was also made confidential by statutes, citing to the Controlled Substances Forfeiture Act, 42 Pa C. S. A 6801 et. seq.; the Terrorism Forfeiture Act, 42 Pa C. S. A 6801.1; and the Chop Shop Forfeiture Act. 18 Pa. C. S 7707.

17. On November 30, 2015, Pennsylvanians for Union Reform submitted its Final Appeal submission to the Pennsylvania Office of Open Records. EXHIBIT I.

18. The Office of Open Records denied all of the arguments of the Centre County District Attorney's Office and directed the Office to provide all responsive records. See EXHIBIT J.

IV. Determination Sought to be Reviewed.

19. The determination for which review is sought is the Final Determination of the Office of Open Records issued on December 9, 2015 in the matter captioned Pennsylvanians for Union Reform, Requester v. Centre County District Attorney's Office, Respondent, OOR Docket No. AP 2015-2557.

20. Relief is sought regarding the Office of Open Records determination that the records referred to in PFUR's requests one through seven are public records and are records are subject to access under the Right to Know law. A copy of the Final Determination is attached hereto, is incorporated by reference and is referred to as EXHIBIT J.

21. The Office of Open Records erred when it ignored the Opinions of the Hon. Stewart L. Kurtz II and the Hon. Thomas Ling and decided that contrary to those Opinions it could decide the appeal of Pennsylvanians for Union Reform.

22. The Office of Open Records erred when it relied instead on Sawicki v. Centre County District Attorney's Office, OOR Dkt. AP 2015-0757 2015 PA O.O. R. D LEXIS 885 and decided that the Centre County District Attorney's Office was collaterally estopped from arguing that it was not a judicial agency. In so ruling the Office of Open Records has set its own decisions above those of a Common Pleas Court that has appellate jurisdiction over the said Office of Open Records.

23. The Office of Open Records erred when it ignored its own precedent, McDivitt v. Allegheny County District Attorney, OOR Dkt. AP 2010-0123, 2010 PA O.O.R.D. LEXIS 165, See EXHIBIT K, attached herewith and incorporated by reference herein, and instead relied on Karson v. County of Lycoming, OOR Dkt. 2014 AP 2014-1926, 2015 PA O.O. R. D. LEXIS 55. These two cases reach diametrically opposite results and construe the same law and there is no reason in which one should be followed instead of the other.

24. The Office of Open Records erred when it failed to apply the plain language of the Right to Know Law, which sets forth that, "a public record," is one that, "is not exempt from being disclosed under any other Federal or State Law or regulation." See 65 P. S. 67.102.

25. Further, Section 306 of the Right to Know Law expressly states that, "nothing in this act shall supersede or modify the public or non-public nature of a record or document established in Federal or State Law, Regulation or Judicial Order or

Decree," and the Office of Open Records erred when it ignored this section of the law which it is supposed to uphold. See 65 P. S. 67.306.

26. The Office of Open Records erred when it ignored The Controlled Substances Forfeiture Act 42 Pa C. S. A 6801 which states plainly that audits of the drug forfeiture fund," shall not be made public." See 42 Pa C. S. A 6801 (i) and its own decision in McDivitt v. Allegheny County District Attorney, OOR Dkt. AP 2010-0123, 2010 PA O.O.R.D. LEXIS 165 which states that supporting papers of an audit are not to be made public.

27. The Office of Open Records erred when it failed to conclude that the records sought by the requester were expressly confidential under the definition of a public record section of the Right to Know Law, 65 P. S. 67.102 and The Controlled Substances Forfeiture Act 42 Pa C. S. A 6801, and thus not subject to access under the Right to Know Law.

28. The Office of Open Records erred when it construed Section 6801 (j) of the Controlled Substances Forfeiture Act 42 Pa C. S. A 6801 as requiring the Centre County District Attorney's Office to cite the procedures governing the release of drug forfeitures information.

29. Those Revised Guidelines, effective March 19, 2007, are included herewith as EXHIBIT L, and are incorporated by reference herein. Also included herewith is a portion of the email from Letty A. Kress, Chief Deputy Attorney General, Asset Forfeiture and Money Laundering Section, and representative letters to District Attorneys and Controllers by which these guidelines were sent to the District Attorneys and Controllers in Pennsylvania.

30. These Guidelines covered forfeitures under the Controlled Substances Forfeitures Act, the Terrorism Forfeitures Act and the Chop Shop Forfeitures Act.

31. One of the purposes of those Revised Guidelines is to enable the District Attorneys' Offices to maintain confidentiality regarding forfeited property or proceeds used in ongoing drug enforcement activities. Revised Guidelines Section I. B.

32. Pursuant to those Revised Guidelines, effective March 19, 2007, the District Attorney has sold discretion to determine what information shall not be released. See EXHIBIT L.

33. Those Revised Guidelines, effective March 19, 2007 constitute, "any other Federal or State Law or regulation," that precludes these records being public records pursuant to 65 P. S. 67.102.

34. The Office of Open Records erred when it ignored the law which states that the audit of the drug forfeiture fund is expressly confidential under The Controlled Substances Forfeiture Act 42 Pa C. S. A 6801 et. seq. and the Terrorism Forfeitures Act and the Chop Shop Forfeitures Act, and The Office of Open Records misconstrued The Controlled Substances Forfeiture Act to place a burden on the Centre County District Attorney's Office that does not exist in the law.

35. The Office of Open Records erred when it failed to apply 65 P. S. 67.708 (b) (17) to the records sought by the requestor herein. The audits are confidential under The Controlled Substances Forfeiture Act 42 Pa C. S. A 6801, and the Terrorism Forfeitures Act and the Chop Shop Forfeitures Act and the records sought by the requestor are all documents underlying the audit and these records are exempt as, "work papers underlying an audit," under Section 708 (b) (17) of the Right to Know Law.

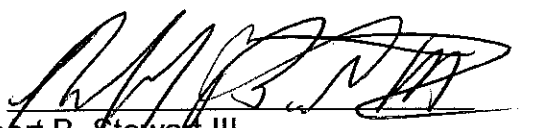
36. Accordingly, all the records requested by the requestor herein related to the Centre County District Attorney's drug forfeiture fund are confidential and non-public and The Office of Open Records erred when it failed to so decide.

WHEREFORE, petitioner, The Centre County District Attorney's Office requests that this Court reverse the December 9, 2015 Final Determination of The Office of Open Records with respect to disclosure of the records sought by the requestor herein and further requests that no further action be required to be undertaken by the Centre County District Attorney's Office with regard to Pennsylvanians for Union Reform, Requester's request.

Respectfully Submitted



Stan Parks Miller
District Attorney of Centre County

BY: 
Robert B. Stewart III
Special Assistant District Attorney
Attorney ID # 19319
Office of Centre County District Attorney
Room 404 Courthouse
102 S. Allegheny Street
Bellefonte, PA 16823
814. 355-6735

IN THE COURT OF COMMON PLEAS
CENTRE COUNTY, PENNSYLVANIA

CENTRE COUNTY DISTRICT :
ATTORNEY'S OFFICE, :
PETITIONER :
V. :
PENNSYLVANIANS FOR UNION REFORM :
And PENNSYLVANIA OFFICE OF OPEN :
RECORDS, :
RESPONDENTS :

CV
115
NO CP-14-MD-_____-2016

ORDER

AND NOW, this _____ day of _____, 2016, upon
consideration of the foregoing petition and, it is ORDERED and DECREED as follows:

The prayer of the Petition is granted.

BY THE COURT:

J.