

IN THE COURT OF COMMON PLEAS OF CAMBRIA COUNTY, PENNSYLVANIA  
CIVIL DIVISION

JOHN DEBARTOLA,

PETITIONER,

vs.

CAMBRIA COUNTY DISTRICT  
ATTORNEY'S OFFICE,

RESPONDENT.

CIVIL ACTION - LAW

No. G.D. # 2017 -

**PETITION FOR JUDICIAL  
REVIEW UNDER THE  
PENNSYLVANIA RIGHT TO  
KNOW LAW**

Filed on behalf of  
Plaintiff,

JOHN DEBARTOLA

Counsel of Record for  
This Party:

*Pro-se.*

John DeBartola  
1197 Bedford Street  
Johnstown, PA 15902

(814)-421-8000

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**NOTICE TO DEFEND**

TO: CAMBRIA COUNTY DISTRICT ATTORNEY'S OFFICE,

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE OR KNOW A LAWYER, THEN YOU SHOULD GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP:

MidPenn Legal Services  
401 E. Louther Street  
Suite 103  
Carlisle, PA 17013

Telephone Number: (717)-243-9400

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RESPONDENT.

**PETITION FOR JUDICIAL REVIEW**  
**UNDER THE PENNSYLVANIA RIGHT TO KNOW LAW**

**AND NOW**, comes your Petitioner, JOHN DEBARTOLA, acting *pro-*  
*se*, and files the within PETITION FOR JUDICIAL REVIEW UNDER THE  
PENNSYLVANIA RIGHT TO KNOW LAW against Defendant CAMBRIA COUNTY  
DISTRICT ATTORNEY'S OFFICE, averring as follows:

**THE PARTIES**

1. Petitioner, JOHN DEBARTOLA ("Petitioner"), is an adult individual and Cambria County taxpayer who resides at 1197 Bedford Street, Johnstown, Cambria County, PA 15902.
2. Respondent, CAMBRIA COUNTY DISTRICT ATTORNEY'S OFFICE, ("DA"), is Cambria County's chief law enforcement agency with a principal place of business located at the Cambria

County Courthouse, 200 South Center Street, Ebensburg PA  
15931.

**STANDING**

3. All of the foregoing paragraphs are incorporated herein by reference as fully set forth.

4. The Petitioner has standing to bring the within Petition for Judicial Review under Section 1302(a) of the Pennsylvania Right to Know Law which provides:

Within 30 days of the mailing date of the final determination of the appeals officer relating to a decision of a local agency issued under section 1101(b) or of the date a request for access is deemed denied, a requester or local agency may file a petition for review or other document as required by rule of court with the court of common pleas for the county where the local agency is located. The decision of the court shall contain findings of fact and conclusions of law based upon the evidence as a whole. The decision shall clearly and concisely explain the rationale for the decision.

5. Petitioner is asking for Judicial Review of the Office of Open Records' Final Determination issued and mailed on April 25, 2017. Petitioner is requesting said review, as the DA has failed to comply with the terms, conditions and directives of the Final Determination, and your Petitioner

was unaware of this non-compliance until *after* the 30 day period to appeal lapsed.

6. Accordingly, this Petition for Judicial Review is being filed *nunc pro tunc*. The decision to allow the filing of a post-trial motion *nunc pro tunc* is vested in the discretion of the trial court. Korn v. Consolidated Rail Corp. , 355 Pa.Super. 170, 512 A.2d 1266 (1986).<sup>1</sup>

#### **FACTS AND PROCEDURAL HISTORY**

7. All of the foregoing paragraphs are incorporated herein by reference as fully set forth.
8. On January 19, 2017, Petitioner submitted a request ("Request") to the DA pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101, et. seq., seeking various records related to asset forfeiture accounts.

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<sup>1</sup>Allowance of an appeal *nunc pro tunc* lies at the sound discretion of the Trial Judge. More is required before such an appeal will be permitted than the mere hardship imposed upon the appellant if the request is denied. As a general matter, a Trial Court may grant an appeal *nunc pro tunc* when a delay in filing [an appeal] is caused by "extraordinary circumstances involving 'fraud or some breakdown in the court's operation through a default of its officers.'" ' [W]here an appeal is not timely because of non-negligent circumstances, either as they relate to appellant or his counsel, and the appeal is filed within a short time after the appellant or his counsel learns of and has an opportunity to address the untimeliness, and the time period which elapses is of very short duration, and appellee is not prejudiced by the delay, the court may allow an appeal *nunc pro tunc*.

McKeon v. Bailey, 731 A.2d 628, 630 (Pa.Super.1999).

9. More specifically, the Petitioner requested the following  
in his Request:

All the records for a full accounting of all payroll wages and overtime wages paid from the drug forfeiture account to any county employees and police officers of Cambria County from January 1, 2000 to the present.

All records of all official audits involving forfeiture accounts and reports filed with the state of Pennsylvania regarding the use of funds from drug forfeiture accounts from January 1, 2000 to present.

Internal audit report from the DA's office with the City of Johnstown for the drug forfeiture account that was listed on the news that was done to verify how the City of Johnstown spent the drug forfeiture account from the DA's Office from January 1, 2000 to present.

All records and official audits involving the DUI accounts and reports filed with the state of Pennsylvania regarding the use of funds from the DUI account from January 1, 2000 to present.

10. On January 24, 2017, the DA invoked a 30 day extension during which to respond.

11. On February 24, 2017, the DA partially denied the Request, asserting that certain of the requested records are confidential under the Controlled Substances Forfeiture Act, 42 Pa. C.S. § 6801-6802, and are exempt from disclosure because they relate to criminal and noncriminal investigations, 65 P.S. §§ 67.708(b)(16)-(17), threaten personal security and public safety, 65 P.S. §§ 67.708(b)(1)-(2), and contain personal identification

information, 65 P.S. § 67.708(b) (6); the DA also claimed that no records existed prior to 2010.

12. On February 27, 2017, the Petitioner appealed to the Office of Open Records, challenging the denial and asserting grounds for disclosure. The OOR invited both parties to supplement the record and directed the DA to notify any third parties of their ability to participate in this appeal.

13. On March 9, 2017, Cambria County District Attorney Kelly Callihan, Esq., submitted a position statement along with an affidavit asserting that the annual audit submitted to the PA Attorney General and work papers underlying the audit are confidential under the Controlled Substances Forfeiture Act, 42 Pa.C.S. §§ 6801-6802; the DA further stated that the records provided to the Petitioner have been redacted to protect personal security and public safety (65 P.S. §§ 67.708(b) (1)-(2), personal identifying information, 65 P.S. §§ 67.708(b) (6), and information related to its criminal and noncriminal investigations. 65 P.S. §§ 67.708(b) (16)-(17).

14. On April 25, 2017, the Office of Open Records granted the Petitioner's appeal in part, and denied it in part. A

copy of the April 25, 2017 determination is attached to this Petition.

15. The determination from the OOR made the following conclusions:

The DA met its burden of proving that no responsive records prior to 2010 existed in the DA's possession, custody or control.

The DA DID NOT meet its burden of proving that records are confidential under the Controlled Substances Forfeiture Act.

The DA's conclusory statements are NOT sufficient evidence to demonstrate records related to noncriminal investigations.

The OOR has jurisdiction over the DA's redactions in Item 4 of the Request,

The DA has proven that certain information is exempt from disclosure under the personal security or public safety exemptions

16. Despite the OOR's determination of April 25, 2017, the DA has yet to disclose the records requested by the Petitioner.

17. The DA did disclose disbursement records to the Petitioner from 2010 on, for disbursements made to the Johnstown Police Department; however, said records are almost entirely blank and are **contradicted** by the ledgers belonging to the City of Johnstown which indicate receipts of the DA's drug forfeiture account. Copies of the City of

Johnstown's ledgers indicating receipt **and disbursement** of drug forfeiture funds from the DA. (the records from the City of Johnstown and the District Attorney's Office are in contradiction; someone is not being forthright).

18. The DA is not following the OOR's Final Determination, and appears to be acting in bad faith by not disclosing this important information.

19. The Petitioner is asking that the Court order the DA to provide copies of the records he is requesting, and to comply with the OOR's Final Determination.

20. If the DA continues to disregard the Final Determination from the OOR, the office should be sanctioned as well.

**WHEREFORE**, the Petitioner respectfully requests that his Petition for Judicial Review be granted, and the Cambria County District Attorney's Office comply with the OOR's Final Determination of April 25, 2017, and provide him with the records he is requesting.

Respectfully Submitted,

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JOHN DEBARTOLA  
*Pro-Se.*

**VERIFICATION**

I verify that the statements made in this Petition are true and correct. I understand that false statements made herein are made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name

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JOHN DEBARTOLA,

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PETITIONER,

No. G.D. # 2016 -

vs.

CAMBRIA COUNTY DISTRICT  
ATTORNEY'S OFFICE,

RESPONDENT.

**Proposed Order of Relief**

**AND NOW**, this \_\_\_\_\_ day of \_\_\_\_\_,  
2016, it is hereby ORDERED, DIRECTED and DECREED, that the  
Petitioner's PETITION FOR JUDICIAL REVIEW UNDER THE PENNSYLVANIA  
RIGHT TO KNOW LAW is GRANTED, and that the Respondent Cambria  
County District Attorney's Office, is ordered and compelled to  
perform their duties and obligations under the Pennsylvania  
Right to Know Law as set forth in the Office of Open Records'  
Final Determination Issued and Mailed on April 25, 2017.  
Accordingly, the Cambria County District Attorney's Office is to  
provide Petitioner John DeBartola with all information regarding  
the disbursement of the drug forfeiture accounts to the City of  
Johnstown. The Court notes that the information provided to Mr.

DeBartola should coincide with the records from the City of  
Johnstown.

BY THE COURT:

\_\_\_\_\_, J.

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**SCHEDULING ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2017, upon review of the Petitioner's PETITION FOR JUDICIAL REVIEW UNDER THE PENNSYLVANIA RIGHT TO KNOW LAW a hearing on this matter is scheduled for the \_\_\_\_\_ day of \_\_\_\_\_, 2017, in Courtroom No. \_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ .m., Cambria County Courthouse in Ebensburg, Pennsylvania, before the Honorable Judge \_\_\_\_\_.

BY THE COURT:

\_\_\_\_\_ J.

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the  
foregoing PETITION JUDICIAL REVIEW UNDER THE PENNSYLVANIA RIGHT  
TO KNOW LAW was served on opposing parties as follows this \_\_\_\_\_  
day of June 2017:

Cambria County District Attorney's Office  
Cambria County Courthouse  
200 South Center Street  
Ebensburg, PA 15931

BY:

\_\_\_\_\_  
JOHN DEBARTOLA  
*Pro-Se.*