

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

NO. 1491 CD 2018

CALIFORNIA UNIVERSITY OF PENNSYLVANIA

Petitioner

v.

GIDEON BRADSHAW

Respondent

RECEIVED

DEC 20 2019

OFFICE OF OPEN RECORDS

APPLICATION FOR ATTORNEY'S FEES, COSTS,
AND STATUTORY DAMAGES FOR BAD FAITH

MARRINER, JONES & FITCH
Colin E. Fitch, Esquire
Pa. I.D. #56710
6 South Main Street, Suite 600
Washington, PA 15301-6803
(724) 225-6600

*Attorneys for Respondent,
Gideon Bradshaw*

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

CALIFORNIA UNIVERSITY)	
OF PENNSYLVANIA)	
)	
Petitioner)	
)	
v.)	No. 1491 CD 2018
)	
GIDEON BRADSHAW)	
)	
Respondent)	

**APPLICATION FOR ATTORNEY'S FEES, COSTS,
AND STATUTORY DAMAGES FOR BAD FAITH**

AND NOW, comes the Respondent, Gideon Bradshaw ("Respondent"), by his attorneys, Marriner, Jones & Fitch, and files the following Application:

1. This Honorable Court issued an Opinion and Order on May 31, 2019, affirming the determination of the Office of Open Records directing California University of Pennsylvania ("University") to provide Respondent with records related to donations from Manheim Corporation to the Foundation for University pursuant to Respondent's Right to Know request.

2. After that decision, the University filed a Petition for Allowance of Appeal with the Pennsylvania Supreme Court.

3. By Order dated November 19, 2019, the Pennsylvania Supreme Court denied the Petition for Allowance of Appeal. A copy of said Order is attached hereto as Exhibit A.

4. Shortly thereafter, counsel for Respondent inquired of University's counsel concerning production of the records.

5. On December 3, 2019, counsel received a written response and related documentation. A true and correct copy of the University counsel's response is attached hereto as Exhibit B.

6. Based on the response of the University and the Attestation of Robert J. Thorn, it is clear that the University's challenge to the request for production of the records was frivolous and in bad faith.

7. In Paragraph 5 of the Attestation, Mr. Thorn states that:

"In my capacity as the Open Records Officer, pursuant to the decision of the PA Supreme Court a request was made to the Foundation for California University of Pennsylvania on November 21, 2019 (see Exhibit 1)."

8. The e-mail from Anna Stewart to Denise Smith states as follows:

"As a result of the recent denial of the PA Supreme Court and standing decision of the Commonwealth Court in the RTKL appeal between the University and Gideon Bradshaw of the *Observer-Reporter*, please accept this correspondence as an official request for Foundation donation records.

Specifically, as the original RTK request sought, *'all records related to donations from Manheim Corp. to the Foundation for University of California between Jan. 1, 2008, and Dec. 31, 2013, and all records identifying the use of those funds.'*"

9. These statements indicate that the University did not make a request for the records from the Foundation at the time the right to know request was initially received from Respondent.

10. 65 P.S. § 67.901 states the requirements for an agency's response to a Right to Know request:

"Upon receipt of a written request for access to a record, an agency shall make a good faith effort to determine if the record requested is a public record, legislative record or financial record and whether the agency has possession, custody or control of the identified record, and to respond as promptly as possible under the circumstances existing at the time of the request."

11. An Open Records Officer for an agency "must make a good faith effort to determine whether: (1) the record is a public record; and, (2) the record is in the possession, custody, or control of the agency." Breslin v. Dickinson Township, 68 A.3d 49, 54 (Pa. Cmwlth. 2013).

12. As part of a good faith search, the Open Records Officer has a duty to advise all custodians of potentially responsive records about the request, and to obtain all potentially responsive records from those in possession. Id.

13. If the records are not in an agency's physical possession, an Open Records Officer has a duty to contact agents within its control, including third-party contractors. Breslin.

14. Under § 506(d) of the RTKL (65 P.S. § 67.506(d)) the agency is required to take reasonable steps to secure the records from a third-party contractor and then make a determination if those records are exempt from disclosure.

15. In obtaining all potentially responsive records, an agency has the duty to review the records and assess their public nature under § 901 and 903 of the RTKL. Breslin.

16. Respondent's request required the University to make a good faith effort to find and obtain responsive records before denying access. If an agency like the University does not perform a search of records or contact third-party recordholders until the matter is in litigation, the agency has denied access in willful disregard of the public's right to public records. Parson v. PA Higher Education Assistance Agency (PHEAA), 910 A.2d 177 (Pa. Cmwlth.), (en banc), appeal denied, 917 A.2d 316 (Pa. 2006).

17. The conduct of the University in this case justifies an award of attorney's fees, costs, and statutory bad faith.

18. A copy of Respondent's legal bills with an attestation of their authenticity is attached hereto as Exhibit C.

19. The conduct of the University in this case justifies an award of statutory damages in accordance with 65 P.S. § 67.1305(a).

WHEREFORE, Respondent requests that it be awarded \$8,278.32 in attorney's fees and costs plus statutory damages of \$1,500.00 for bad faith.

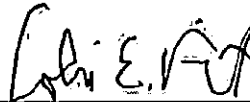
Respectfully submitted,

MARRINER, JONES & FITCH

Date: _____

12/17/19

BY _____



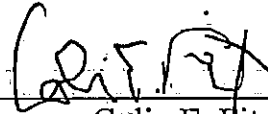
Colin E. Fitch
Pa. I.D. # 05470
6 South Main Street, Suite 600
Washington, PA 15301
Attorneys for Respondent

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

MARRINER, JONES & FITCH

BY



Colin E. Hitch

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing document upon the persons and in the manner indicated below, which service satisfies the requirements of Pa. R.A.P. 121:

Service by first-class mail addressed as follows:

Michael S. Ferguson, Esquire
PA State System of Higher Education
Dixon University Center
2986 N. Second Street
Harrisburg, PA 17110
*Attorney for Petitioner, California
University of Pennsylvania*

PACFile Notified

Charles Rees Brown, Esquire
Chief Counsel
Commonwealth Keystone Building
333 Market Street, 16th Floor
Harrisburg, PA 17126-0333

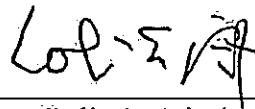
Joshua D. Shapiro, Esquire
Attorney General of Pennsylvania
PA Office of Attorney General
16th Floor, Strawberry Square
Harrisburg, PA 17101-1825

MARRINER, JONES & FITCH

Date: _____

12/17/19

BY _____



Colin E. Fitch
Pa. I.D. # 05470
6 South Main Street, Suite 600
Washington, PA 15301
Phone: (724) 225-6600
Attorneys for Respondent

EXHIBIT A
Pennsylvania Supreme Court Order dated November 19, 2019

IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

CALIFORNIA UNIVERSITY OF
PENNSYLVANIA,

Petitioner

v.

GIDEON BRADSHAW,

Respondent

: No. 199 WAL 2019
:
:
:
: Petition for Allowance of Appeal
: from the Order of the
: Commonwealth Court
:
:
:
:
:
:
:
:
:

ORDER

PER CURIAM

AND NOW, this 19th day of November, 2019, the Petition for Allowance of Appeal is **DENIED**, and the Application to file an amicus curiae brief in support for the petition for allowance of appeal is also **DENIED**.

EXHIBIT B
University Counsel's Response dated December 3, 2019



Pennsylvania's
STATE SYSTEM
of Higher Education

GOVERNOR'S OFFICE OF GENERAL COUNSEL
University Legal Counsel

December 3, 2019

Colin E. Fitch, Esquire
Marriner Jones & Fitch
6 S. Main Street
Suite 600
Washington, PA 15301

Re: California Univ. of PA v. Bradshaw
Commonwealth Ct. Dkt. No. 1491 CD 2018

Dear Mr. Fitch,

I apologize for the delay in my response, as I was out over the Thanksgiving holiday. Attached please find the attestation of Robert Thorn with supporting documentation that is responsive to the Commonwealth Court's decision regarding the request for donation records possessed by the Foundation for California University from the Manheim Corporation.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

Michael S. Ferguson
University Legal Counsel

Attachment

c: Robert Thorn, California University of Pennsylvania





California University of Pennsylvania

250 University Avenue
California, PA 15419-1394
www.calu.edu

OFFICE OF ADMINISTRATION AND FINANCE

Building Character. Building Careers.

724-938-4432 | 724-938-4138 FAX

Attestation of Robert J. Thorn.

Name of Requester: Gideon Bradshaw / Observer Publishing Co.

Records Requested: Donation Records of the Foundation for California University of Pennsylvania

Appeal Docket Nos.: OOR Dkt. # AP 2018-1657; Cmwth. Ct. Dkt. No. 1481 CD 2018; Sup. Ct. Dkt. No. 199 WAL 2019

1. I, Robert Thorn, hereby declare that the following statements are true and correct based upon my personal knowledge information and belief:
2. I serve as the Open Records Officer for the California University of Pennsylvania ("Agency").
3. I am responsible for responding to Right-to-Know requests filed with the Agency.
4. I am familiar with the instant request that was denied by the University and subsequently litigated through the Pennsylvania Commonwealth and Supreme Courts.
5. In my capacity as the Open Records Officer, pursuant to the decision of the PA Supreme Court a request was made to the Foundation for California University of Pennsylvania on November 21, 2019 (see Exhibit 1).
6. Upon receipt of the request, Foundation Executive Director, Denise Smith, conducted a thorough examination of files in the possession, custody and control of the Foundation for records responsive to the request underlying this appeal.
7. Ms. Smith concluded no such records exist.
8. As such, the University is unable to produce any such donation records from Manheim Corporation to the Foundation for California University of Pennsylvania.

I make these statement subject to the penalties set for in 18 Pa. C.S. § 4904 Unsworn falsification to authorities.

Date: 11-26-2019

Signature: Robert J. Thorn
 Robert J. Thorn
 Open Records Officer
 California University of Pennsylvania

From: Smith, Denise
To: Stewart, Anna; Thorn, Robert
Cc: Harry Serene; Schreiber, Stephanie Winer
Subject: RE: Request for Foundation Records
Date: Thursday, November 21, 2019 4:52:51 PM

Dear Bob,

The Foundation for California University of Pennsylvania has no records responsive to this request.

Denise Smith '88, '89
Executive Director
Foundation for California University of Pennsylvania

(724) 938-4329



This electronic transmission contains **CONFIDENTIAL INFORMATION** intended only for the use of the recipient named above. If you are not the intended recipient of this electronic transmission or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any use, dissemination or copying of this electronic transmission is strictly prohibited. If you received this electronic transmission in error, please contact the sender at 724-938-4329 or by return e-mail and delete the material from any computers on which it may be stored.

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From: Stewart, Anna <stewart_a@calu.edu>
Sent: Thursday, November 21, 2019 3:57 PM
To: Smith, Denise <smith_de@calu.edu>
Cc: Thorn, Robert <thorn@calu.edu>
Subject: Request for Foundation Records

Dear Denise,

As a result of the recent denial of the PA Supreme Court and standing decision of the Commonwealth Court in the RTKL appeal between the University and Gideon Bradshaw of the *Observer-Reporter*, please accept this correspondence as an official request for Foundation donation records.

Specifically, as the original RTK request sought, "*all records related to donations from Manheim Corp. to the Foundation for University of California between Jan. 1, 2008, and Dec. 31, 2013, and all records identifying the uses of those funds.*"

Please respond at your earliest convenience. Should you have any questions or need clarification, please let me know.

Regards,

Robert J. Thorn

*Vice President for Administration and Finance
California University Open Records Officer*

RJT/as

Anna Stewart

*Executive Staff Assistant
Administration and Finance*

California University of Pennsylvania

**250 University Ave., Campus Box 5
California, PA 15419-1394**
office: 724-938-4432 | fax: 724-938-4138
RightToKnow@calu.edu | www.calu.edu



The content of this email is confidential and intended only for the recipient(s) specified. If you received this message by mistake, please reply so the sender can correct the error, and then delete this email immediately. Do NOT forward it to a third party without the written consent of the sender. California University of Pennsylvania is a public agency; consequently, this email may be subject to disclosure under the commonwealth's Right-to-Know Law.

EXHIBIT C
Respondent's legal bills with Attestation

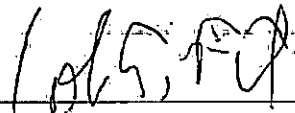
IN THE COMMONWEALTH COURT OF PENNSYLVANIA

CALIFORNIA UNIVERSITY)
OF PENNSYLVANIA)
)
Petitioner)
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v.)
)
GIDEON BRADSHAW)
)
Respondent)

No. 1491 CD 2018


COMMONWEALTH OF PENNSYLVANIA)
) SS:
COUNTY OF WASHINGTON)

Before me, the undersigned authority, a notary public, this day personally appeared Colin E. Fitch, to me known (or satisfactorily proven), being duly sworn according to law, deposes and says that the attached invoices concerning the work provided for the above-captioned matter and the cost of preparing the Application for Attorney's Fees, Costs, and Statutory Damages for Bad Faith are true and correct.



Colin E. Fitch

Sworn to and subscribed
before me this 17th day
of December, 2019.


Notary Public
My Commission Expires:

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Katherine D. White, Notary Public
Cañonsburg Boro, Washington County
My Commission Expires Jan. 13, 2021
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES

MARRINER, JONES & FITCH
 Washington Trust Building
 6 South Main Street, Suite 600
 Washington, PA 15301
 Federal EIN: 25-1085730

Invoice submitted to:

Central PA Newspaper/Observer Reporter
 122 South Main St.
 Washington, PA 15301
 Attn: David Lyle

March 4, 2019

In Reference To: G-1496

Invoice # 42032

			<u>Hours</u>	<u>Amount</u>
<u>CAL U</u>				
2/11/2019	CEF	Phone conference with Liz regarding right-to-know dispute and open records case; review Liz e-mail and relevant Commonwealth Court documents; legal research on exceptions and cases cited by Cal U	4.00	780.00
2/12/2019	CEF	Legal research on corporation privacy; message to Liz; enter appearance; work on brief issues	3.80	741.00
2/13/2019	CEF	Review and outline legal issues; continued research	1.70	331.50
2/15/2019	CEF	Work on brief	3.30	643.50
2/18/2019	CEF	Continued work on brief	1.00	195.00
2/20/2019	CEF	Continued work on brief	3.20	624.00
2/21/2019	CEF	Work on brief	1.80	351.00
2/24/2019	CEF	Work on brief	1.00	195.00
Total:			[19.80	3,861.00]
For professional services rendered			19.80	\$3,861.00

Liz Rogus
Robert G. Pinski

News - Legal Services

	<u>Amount</u>
For professional services rendered	19.80 \$3,861.00
Previous balance	\$643.50
1/7/2019 Payment - thank you	(\$175.50)
1/18/2019 Payment - thank you	(\$468.00)
Total payments and adjustments	(\$643.50)
Balance due	<u>\$3,861.00</u>

PLEASE MAKE CHECK PAYABLE TO "MARRINER, JONES & FITCH"

MARRINER, JONES & FITCH
 Washington Trust Building
 6 South Main Street, Suite 600
 Washington, PA 15301
 Federal EIN: 25-1085730

Invoice submitted to:

Central PA Newspaper/Observer Reporter
 122 South Main St.
 Washington, PA 15301
 Attn: David Lyle

May 7, 2019

In Reference To: G-1496

Invoice #42218

			<u>Hours</u>	<u>Amount</u>
<u>CAL U</u>				
3/5/2019	CDJ	Prepare brief	3.60	702.00
3/6/2019	CDJ	Revise brief; prepare brief for filing	0.60	117.00
4/4/2019	CDJ	Note argument date; letter to client and Club	0.10	19.50
Total:			[4.30	838.50]
For professional services rendered			4.30	\$838.50
For professional services rendered			4.30	\$838.50
Previous balance				\$3,861.00
3/19/2019 Payment - thank you				(\$3,861.00)
Total payments and adjustments				(\$3,861.00)

Central PA Newspaper/Observer Reporter
Page 2

Balance due

Amount

\$838.50

PLEASE MAKE CHECK PAYABLE TO "MARRINER, JONES & FITCH"

Ray Rogers

Newsroom - Cal U

Robert A. Pinski


MARRINER, JONES & FITCH
Washington Trust Building
6 South Main Street, Suite 600
Washington, PA 15301
Federal EIN: 25-1085730

Invoice submitted to:

Central PA Newspaper/Observer Reporter
122 South Main St.
Washington, PA 15301
Attn: David Lyle

June 4, 2019
In Reference To: G-1496
Invoice # 42235

			<u>Hours</u>	<u>Amount</u>
<u>CALU</u>				
5/3/2019	CEF	Conference with CDJ re appellate argument scheduled for May 6	0.10	19.50
5/5/2019	CDJ	Prepare for argument	3.20	624.00
5/6/2019	CDJ	Appearance at Commonwealth Court for argument on appeal	5.50	1,072.50
5/31/2019	CEF	Review decision of Commonwealth Court; scan and email to Observer with comment	0.50	97.50
	Total:		[9.30	1,813.50]
<u>General</u>				
5/28/2019	CEF	Letter to Dave Lyle	0.20	39.00
	Total:		[0.20	39.00]
	For professional services rendered		9.50	\$1,852.50



COSTS ADVANCED

		<u>Amount</u>
<u>CAL U</u>		
5/6/2019	#53718 Cary D. Jones - travel to and from Pittsburgh (including parking) for argument before Commonwealth Court	63.32
	Total:	[63.32]
	Total costs	<u>\$63.32</u>
	For professional services rendered	<u>9.50</u> <u>\$1,915.82</u>
	Total amount of this bill	<u>\$1,915.82</u>
	Previous balance	\$838.50
5/21/2019	Payment - thank you	(\$838.50)
	Total payments and adjustments	(\$838.50)
	Balance due	<u><u>\$1,915.82</u></u>

PLEASE MAKE CHECK PAYABLE TO "MARRINER, JONES & FITCH"

Wj Byers

Robert A. Parinski

Legal

MARRINER, JONES & FITCH
 Washington Trust Building
 6 South Main Street, Suite 600
 Washington, PA 15301
 Federal EIN: 25-1085730

Invoice submitted to:

Central PA Newspaper/Observer Reporter
 122 South Main St.
 Washington, PA 15301
 Attn: David Lyle

August 5, 2019

In Reference To: G-1496

Invoice #42377

			<u>Hours</u>	<u>Amount</u>
<u>CALU</u>				
7/2/2019	CEF	Review University and Foundation filings; letter to Liz Rogers	1.80	351.00
7/3/2019	CEF	Review of second Amicus Brief; letter to Liz Rogers	0.30	58.50
7/11/2019	CEF	Preparation of letter to Supreme Court; file and serve	0.30	58.50
Total:			[2.40	468.00]
For professional services rendered			2.40	\$468.00
			<i>Liz Rogers</i>	
For professional services rendered			2.40	\$468.00
Previous balance				\$1,915.82
6/17/2019 Payment - thank you				(\$1,915.82)

Robert A. Prinski

News

	<u>Amount</u>
Total payments and adjustments	(\$1,915.82)
Balance due	<u>\$468.00</u>

PLEASE MAKE CHECK PAYABLE TO "MARRINER, JONES & FITCH"

Robert A. Prinski

News

MARRINER, JONES & FITCH
Washington Trust Building
6 South Main Street, Suite 600
Washington, PA 15301
Federal EIN: 25-1085730

Invoice submitted to:

Central PA Newspaper/Observer Reporter
122 South Main St.
Washington, PA 15301
Attn: David Lyle

December 3, 2019

In Reference To: G-1496

Invoice # 42661

			<u>Hours</u>	<u>Amount</u>
<u>CAL U</u>				
11/20/2019	CEF	Quick research on timing of production of documents; e-mail to Liz	0.60	117.00
11/25/2019	CEF	Review file; obtain number of attorney for University; call University counsel; leave message	0.20	39.00
	CEF	Review prior Order to see if timeframe is in order	0.20	39.00
Total:			[1.00	195.00]
		For professional services rendered	1.00	\$195.00
				<i>Liz King</i>
		For professional services rendered	1.00	\$195.00
		Previous balance		\$58.50
11/14/2019		Payment - thank you		(\$58.50)

Robert A. Prinski

Attorney Fees - News

	<u>Amount</u>
Total payments and adjustments	(\$58.50)
Balance due	<u>\$195.00</u>

PLEASE MAKE CHECK PAYABLE TO "MARRINER, JONES & FITCH"