

IN THE SUPREME COURT OF PENNSYLVANIA
Nos. 76 & 77 MAP 2019

Uniontown Newspapers, Inc., d/b/a The Herald Standard; and
Christine Haines, Appellees

v.

Pennsylvania Department of Corrections, Appellant

BRIEF OF THE PENNSYLVANIA OFFICE OF OPEN RECORDS
AS AMICUS CURIAE

On Appeal from the Order of the Commonwealth Court at No. 66 M.D. 2015,
dated 3-23-18 & 10-29-18 , granting a Fee Petition relative to a Petition for
Enforcement of a Final Determination of the Pennsylvania Office of Open Records

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INTRODUCTION

The Pennsylvania General Assembly determined that if a government agency failed to comply with the RTKL, the agency should face potential penalties in order to incentivize good faith compliance with the RTKL and to secure taxpayer access to public information.

Prior to the unanimous passage of the Right-to-Know Law, its author stood on the Senate floor, stating, "...the true foundation of government reform is a strong open records law. Today, we have the opportunity to establish that foundation. Pennsylvania needs a stronger open records law because openness builds trust in government. Transparency gives the public the ability to review government actions, to understand what government does, to see when government performs well, and when government should be held accountable." Senate Legislative Journal, Session of 2007, 191st of the General Assembly No. 89, page 1405 (Wednesday, November 28, 2007) (remarks by the Honorable Dominic Pileggi, Senate Majority Leader).¹

To breathe life into the stated goal of increased transparency in government, the availability of attorney's fees was of paramount concern: "Although Senate Bill No. 1 removes the criminal penalties, it also significantly strengthens civil penalties for noncompliance and **makes it easier for a plaintiff to recover attorney fees if**

¹ Available online at: <https://www.legis.state.pa.us/WU01/LI/SJ/2007/0/Sj20071128.pdf#page=3> (last accessed Jan. 21, 2020).

an agency acts in bad faith. I believe these are things that will have a practical, meaningful effect on people's ability to obtain records.” *Id.* (emphasis added).

Thus, the General Assembly exchanged criminal penalties contained in the former Right to Know Act with a stronger civil provision designed to serve as the “teeth” of the new law—Section 1304.

The Pennsylvania Department of Corrections asks this Honorable Court to interpret Section 1304 in a manner that strips the law of its enforcement mechanism, reversing the drafters’ intent for the new law to have a “meaningful effect on people's ability to obtain records.” *Id.*

Under the interpretation that the Department asks this Honorable Court to adopt, a successful requester must petition a reviewing court to reverse a favorable Final Determination in order to receive attorney’s fees. Such an interpretation contradicts legislative intent, as well as the obvious principle that in order to obtain remedies, a litigant must prove the violation for which remedies are sought.

Furthermore, the Office of Open Records developed the evidentiary record upon which this case relies. From the perspective of the initial finder-of-fact, the Office of Open Records disagrees with the Department’s conflated summation that the Commonwealth Court’s order “created new duties” for the Department’s open records officer at the request stage. The Office of Open Records routinely adjudicates appeals in which agencies have not performed adequate searches for

records at the request stage; such failure is typically cured during the appeal at the Office of Open Records.

However, the issues that gave rise to a finding of bad faith in this particular case did not occur solely at the request stage. Instead, the record reflects that the Department's failure to cure these issues throughout the appeal process at the Office of Open Records and before the Commonwealth Court culminated in a finding of bad faith that was neither unreasonable nor unfounded.

To preserve the future enforceability of the Right-to-Know Law, the Office of Open Records prays that this Honorable Court rejects the Department's attempted circumvention of fees and upholds the decision of the Commonwealth Court.

STATEMENT OF THE QUESTION INVOLVED

The Office of Open Records will address the following issue:

Did the Commonwealth Court properly construe the statutory language of 65 P.S. § 67.1304 as authorizing an award of attorney fees when a court reverses a final determination of an agency rather than when a court reverses the final determination of the appeals officer?

INTEREST OF THE OFFICE OF OPEN RECORDS

Your *amicus curiae* is the Office of Open Records. The Office of Open Records is a quasi-judicial agency created by the Right-to-Know Law in 2008, described by this Court as a "unique, independent agency charged with the delicate

task of applying the RTKL....” *Arneson v. Wolf*, 124 A.3d 1225, 1228 (Pa. 2015); *see also* 65 P.S. § 67.1310.

The Office of Open Records’ principal occupation is the adjudication of Right-to-Know Law appeals, pursuant to this Court’s jurisprudence and the jurisprudence of lower courts. *See* 65 P.S. § 67.1101. As the first level of review in Right-to-Know Law disputes, the Office of Open Records is regularly required to analyze the holdings of Pennsylvania courts and the legislative history of the Right-to-Know Law in order to adjudicate appeals involving issues of first impression.

Due to its multiple functionalities as adjudicator, mediator, and educator, the Office of Open Records is the frequent recipient of grievances regarding the implementation of the Right-to-Know Law, offered by citizens and agencies alike. It is within this pragmatic framework that the Office of Open Records strives to uphold the broad, “open-access” promise of the Right-to-Know Law, which was “designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials and make public officials accountable for their actions.” *Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), *aff’d* 75 A.3d 453 (Pa. 2013).

In 2012, this Court opined that “[t]he 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). For more than a decade, the Office of Open Records has supported that objective by conveying its subject matter expertise to state and local agencies, requesters, and Pennsylvania courts as *amicus curiae*. As the chief administrator of this law from the perspective of volume and interest, the Office of Open Records is well-equipped to provide this Court with supportive legal analysis as to the implications of the present challenge.²

This *amicus* brief primarily presents analysis pertaining to the second issue before this Court—whether an award of attorney’s fees must be preceded by a reversal of an appeals officer’s final determination. The Office of Open Records has a vested interest in the outcome of this issue, as it employs and trains the appeals officers contemplated by the statute. *See* 65 P.S. § 67.1101 *et seq.*; *see also* 65 P.S. § 67.1304. This Court’s interpretation of Section 1304 of the RTKL will determine the future legal consequence of an appeals officer’s decision, and the realistic enforceability of the Right-to-Know Law. *Id.*

There is no person or identity other than the *amicus curiae*, its members, or counsel who paid in whole or in part for the preparation of the *amicus curiae* brief or authored in whole or in part the *amicus curiae* brief.

² Based on the best available estimates, approximately 1 million RTKL requests have been submitted since the law took full effect on January 1, 2009. *See Costs to Implement the Right-to-Know Law*, prepared by the Legislative Budget and Finance Committee, <http://lbfc.legis.state.pa.us/Resources/Documents/Reports/610.pdf>. Last accessed Dec. 13, 2019. The Office of Open Records has docketed and decided more than 22,000 RTKL appeals.

ARGUMENT

I. THE COMMONWEALTH COURT PROPERLY CONSTRUED THE STATUTORY LANGUAGE OF 65 P.S. § 67.1304 AS AUTHORIZING AN AWARD OF ATTORNEY FEES WHEN A COURT REVERSES A FINAL DETERMINATION OF AN AGENCY

The Department argues that the Commonwealth Court erred by finding ambiguity in the meaning of Section 1304 of the RTKL and contends that its opinion is shortsighted in that it purportedly overlooks the availability of a remedy in a completely different statute.

The RTKL language at issue is set forth below:

“REVERSAL OF AGENCY DETERMINATION.—If a court reverses the final determination *of the appeals officer...*the court may award reasonable attorney fees and costs of litigation or an appropriate portion thereof to a requester....”

65 P.S. § 67.1304(a) (emphasis added). The heading—“REVERSAL OF AGENCY DETERMINATION”—indicates that a requester may pursue attorney’s fees when an agency’s determination is reversed: the exact facts presented by this case. *See* 65 § 67.1304(a). Likewise, the conditions precedent to an award within Section 1304 of the RTKL indicate that the statute contemplated the availability of an award after the reversal of an agency’s determination. *See id.* However, another phrase within the interior of this provision appears to predicate the ability to obtain attorney’s fees upon a reversal of a final determination “of the appeals officer.” *See id.*

The Department asks this Court to ignore the heading of the statute and the context of the surrounding law, and to adopt a rigid construction that completely relieves the Department—and future agency litigants—of the consequences of its disregard of the statutory requirements of the RTKL.

a. The Commonwealth Court did not err in finding the language of Section 1304 of the RTKL ambiguous within its statutory context

The Pennsylvania Supreme Court, like the Supreme Court of the United States, utilizes a common sense, *noscitur a sociis* approach when assessing the ambiguity of a statute. *See King v. Burwell*, 135 S. Ct. 2480, 2489, 2015 U.S. LEXIS 4248, *19; *accord, Commonwealth v. Giulian*, 141 A.3d 1262, 1267-1268 (Pa. 2016).

“If the statutory language is plain, we must enforce it according to its terms. But oftentimes the meaning—or ambiguity—of certain words or phrases may only become evident when placed in context. So when deciding whether the language is plain, we must read the words in their context and with a view to their place in the overall statutory scheme.” *Id.*

In *Yates v. United States*, the Supreme Court held that “[t]he plainness or ambiguity of statutory language is determined not only by reference to the language itself, but as well by the specific context in which that language is used, and the broader context of the statute as a whole.” 574 U.S. 528, 537 (2015) (internal citations and quotations omitted). “Ordinarily, a word’s usage accords with its

dictionary definition. In law as in life, however, the same words, placed in different contexts, sometimes mean different things.” *Id.*

Justice Antonin Scalia explained, in a case in which the Pennsylvania Department of Corrections was a party, that “[f]or interpretive purposes,” the heading of a statute should be considered “when [it] sheds light on some ambiguous word or phrase.” *Pa. Dep’t of Corrs. v. Yeskey*, 524 U.S. 206, 212 (1998) (quoting *Trainmen v. Baltimore & Ohio R. Co.*, 331 U.S. 519, 528-529, (1947)).

The heading of the statute at issue, “REVERSAL OF AGENCY DETERMINATION” clearly contemplates the situation before this Court today. The Department, a Commonwealth agency, determined that certain records were not public. The Office of Open Records reversed this agency determination, and the Commonwealth Court upheld this reversal. Thus, the Requester sought recovery of her attorney’s fees under a statute which, by its plain language, offers an award of fees upon the reversal of an agency determination, subject to certain conditions.

However, the Department contorts the statute’s meaning by the isolation of a single phrase, which can be read to permit an award of attorney’s fees only “[i]f a court reverses the final determination *of the appeals officer....*” 65 P.S. § 67.1304(a) (emphasis added). The RTKL, of course, defines an “appeals officer” for a Commonwealth agency as an adjudicating attorney at the Office of Open Records. *See* 65 P.S. § 67.102; *see also* 65 P.S. § 67.503(a). The Department asks this Court

to hold that a reversal of the Office of Open Record’s Final Determination is a statutory predicate to an award of attorneys’ fees under Section 1304 of the RTKL.

Although a statute's plain language “generally provides the best indication of legislative intent,” this Court has held that in construing statutory language and giving it effect, a court “should not interpret statutory words in isolation, but must read them with reference to the context in which they appear.” *Giulian*, 141 A.3d at 1267-1268 (internal citations and quotations omitted); *see also Commonwealth v. Office of Open Records*, 103 A.3d 1276, 1285 (Pa. 2014) (statutory language must be read in context; in ascertaining legislative intent, every portion is to be read together with remaining language and construed with reference to statute as a whole).

In this case, not only does the statute’s heading contradict the phrase “the final determination of the appeals officer,” but the remainder of the statute does, as well. *See* 65 P.S. § 67.1304. The immediately succeeding passages require a court to find, as a prerequisite to an award of fees and costs, that:

- (1) **the agency** receiving the original request willfully or with wanton disregard deprived the requester of access to a public record subject to access or otherwise acted in bad faith under the provisions of this act; or
- (2) the exemptions, exclusions or defenses **asserted by the agency in its final determination** were not based on a reasonable interpretation of law.

65 P.S. § 67.1304(a)(1-2). All of the prerequisites to an award of attorney’s fees under Section 1304 of the RTKL contemplate bad faith action on the part of the

agency, and a reversal of the *agency's* initial determination, not the decision of the Office of Open Records' appeals officer. *See id.* Thus, the context of the statute supports the Commonwealth Court's holding. *See id.*

The position of the Requester and the holding of the Commonwealth Court, which the Office of Open Records supports, is that this language should be read in the context of its surroundings, and in the context of the widespread notion applied by other Pennsylvania statutes—that in order to obtain attorney's fees at the close of a dispute, a requester must first prevail.

A simple hypothetical displays the absurdity that results from applying the Department's extrapolation. Assume *arguendo* that a requester is denied access to public records by an agency and exercises his right of appeal to the Office of Open Records. In response, the Office of Open Records' appeals officer grants the appeal in the requester's favor, noting, in his or her opinion, specific facts upon which a reviewing court might rely in order to determine that the agency acted in bad faith (*e.g.*, failure to conduct a good faith search for records, contradictory statements made under oath, *et cetera*). It is the Department's position that, before such a requester can petition an appellate court for its attorney's fees, the opinion of the Office of Open Records' appeals officer—including facts which support a finding of bad faith—must first be overturned. The Department's position rejects common sense in favor of self-preservation.

Given that the linguistic context strongly supports an alternative interpretation and given that Pennsylvania statutes generally award attorney's fees to successful litigants as opposed to unsuccessful litigants, the meaning of Section 1304 is ambiguous, and should be scrutinized in the light of legislative intent.

b. The Commonwealth Court's interpretation of Section 1304 of the RTKL is consistent with legislative intent

“In matters involving statutory interpretation,” this Court begins its analysis by noting that “the Statutory Construction Act directs courts to ascertain and effectuate the intent of the General Assembly.” *Commonwealth v. Giulian*, 141 A.3d 1262, 1267-1268 (Pa. 2016) (citing 1 Pa.C.S. §1921(a)).

“Where statutory or regulatory language is ambiguous, this Court may resolve the ambiguity by considering, *inter alia*, the following: the occasion and necessity for the statute or regulation; the circumstances under which it was enacted; the mischief to be remedied; the object to be attained; the former law, if any, including other statutes or regulations upon the same or similar subjects; the consequences of a particular interpretation; and administrative interpretations of such statute.” *Freedom Med. Supply, Inc. v. State Farm Fire & Cas. Co.*, 131 A.3d 977, 984 (Pa. 2016), *citing* 1 Pa.C.S. §1921(c).

The legislature clearly indicated their intent: “...Senate Bill No. 1...significantly strengthens civil penalties for noncompliance and makes it easier for a plaintiff to recover attorney fees if an *agency* acts in bad faith. I believe these

are things that will have a practical, meaningful effect on people's ability to obtain records.” Senate Legislative Journal, Session of 2007, 191st of the General Assembly No. 89, page 1405 (Wednesday, November 28, 2007) (remarks by the Honorable Dominic Pileggi, Senate Majority Leader) (emphasis added). Note that the bill’s drafter specifically stated that the law was designed to provide attorney’s fees when an *agency* acts in bad faith—in other words, upon the event of a reviewing tribunal’s reversal of an agency decision—not upon a reversal of the appeals officer’s final determination.

As Pennsylvania courts frequently note in RTKL opinions, the general objective of the RTKL is “to empower citizens by affording them access to information concerning the activities of their government.” *SWB Yankees LLC v. Wintermantel*, 45 A.3d 1029, 1042 (Pa. 2012). The legislature determined that providing litigants with attorney’s fees when an agency withholds records in bad faith is best way to fulfill that objective:

“Another criticism of Senate Bill No. 1 is the fact that it removes criminal penalties which have existed since the current law was adopted. This was done because we can find no evidence of a single criminal prosecution under the 1957 law, and because the ACLU and the Attorney General of Pennsylvania agree that criminal sanctions were an inappropriate remedy. Although Senate Bill No. 1 removes the criminal penalties, it also significantly strengthens civil penalties for noncompliance and makes it easier for a plaintiff to recover attorney fees if an agency acts in bad faith. I believe these are things that will have a practical, meaningful effect on people's ability to obtain records.”

Senate Legislative Journal, Session of 2007, 191st of the General Assembly No. 89, page 1405 (Wednesday, November 28, 2007) (remarks by the Honorable Dominic Pileggi, Senate Majority Leader). The General Assembly, in designing the Right-to-Know Law, noted the reluctance of prosecutors to charge government agencies who failed to comply with the open records law and decided to empower the requesters with the ability to enforce the law, instead.

c. The Commonwealth Court's interpretation of Section 1304 of the RKL is consistent with a majority of other judicial interpretations

Section 1304 of the RTKL has been applied in several cases since the inception of the RTKL, and, consistent with the common sense embedded in the Commonwealth Court's holding in this case, the courts and litigants have interpreted Section 1304 of the RTKL as a remedy reserved for instances of agency misconduct, due to the obvious meaning of the statute.

For example, in 2013, Judge Pellegrini upheld an order from the Court of Common Pleas of Luzerne County, awarding attorneys fees to a prevailing requester under Section 1304. *Staub v. City of Wilkes-Barre*, 2013 Pa. Commw. Unpub. LEXIS 739, *9, 77 A.3d 724. As recently as 2017, Senior Judge Colins, writing for a panel of Commonwealth Court judges, declared that "Section 1304 of the RTKL seeks to remedy the damage to the requester where an agency has denied access to records in bad faith...." *Office of the DA of Phila. v. Bagwell*, 155 A.3d 1119, 1140 (Pa. Commw. Ct. 2017), appeal denied, 174 A.3d 560 (Pa., Nov. 7, 2017); *see also*

Ledcke v. County of Lackawanna, 2013 Pa. Dist. & Cnty. Dec. LEXIS 162, *25, 28 Pa. D. & C.5th 34, 50; *but c.f. City of Phila. v. Ali*, 2015 Pa. Commw. Unpub. LEXIS 830, *1, 125 A.3d 881, 2015 WL 7200945.

Courts, when faced with an inquiry under Section 1304(a) of the RTKL, have consistently recognized the intent of the statute—to provide requesters with attorney’s fees following an adverse agency determination.

d. The fact that similar remedies may be available under a different statute does lessen the necessity of Section 1304 of the RTKL remedies, which are exclusively available to RTKL litigants

The Department argues that similar remedies are available to successful litigants under Section 2503 of the Judicial Code, 42 Pa. C.S. § 2503, implying that Section 1304 is unnecessary. However, Section 2503 of the Judicial Code has existed in substantially similar form since 1976, and significantly predates the Right-to-Know Law of 2008. The legislature, then, knew of the existence of a general statutory remedy, and purposefully elected to add additional, specific remedies to the new law. *See Commonwealth v. Hansley*, 47 A.3d 1180, 1186 (Pa. 2012) (“...the statute latest in date of final enactment shall prevail.”).

Contrary to the Department’s position, Pennsylvania courts do not favor a repeal of statutes by implication unless there is an irreconcilable conflict between statutes applying to the same matter. *See Consumers Ed. and Protective Ass’n. v. Schwartz*, 432 A.2d 173, 180 n. 17 (Pa. 1981). Instead, “[i]n the absence of a

manifestly contrary intention of the Legislature, two apparently conflicting statutes must be construed so that both are allowed to operate.” *Pekular v. Eich*, 513 A.2d 427, 433 (Pa. Super. Ct. 1986) (citing 1 Pa.C.S. § 1933).

Accordingly, the Department’s argument that the availability of similar remedies under Section 2503 of the Judicial Code somehow extinguishes Section 1304 of the RTKL, is without merit. Absent a conflict between two statutes, the existence of one does not diminish the viability of another.

e. Case studies demonstrate the necessity of an enforcement mechanism to support of the objective of the Right-to-Know Law

From its unique perspective as a frontline enforcer of the Right-to-Know Law, your *amicus* would respectfully offer its insight into the everyday ramifications of this Court’s decision.

In the absence of evidence to the contrary, the Office of Open Records presumes that government agencies act in good faith. *See, e.g., McGowan v. Pa. Dep’t of Env’tl. Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014) (citing *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)). However, in rare cases, it is clear that due either to systematic failure, or to the conduct of individuals, bad faith occurs. Whether in the form of negligence or blatant indifference to the law, agencies will occasionally fail to comply with their duties under the RTKL.

Consider the case of *California University of Pennsylvania v. Bradshaw*, as an illustration of the impact of this case on Pennsylvania transparency. *See generally*, *Cal. Univ. of Pa. v. Bradshaw*, 210 A.3d 1134, 1138 (Pa. Commw. Ct. 2019), appeal denied, 2019 Pa. LEXIS 6442 (Pa., Nov. 19, 2019).

In *California University*, an individual filed a RTKL request seeking certain records and was denied by the agency. *See id.* The agency fiercely litigated the request from the initial request stage to the Office of Open Records, to the Commonwealth Court, and finally to this Court, which denied its appeal. *See id.*

Having litigated the applicability of RTKL exemptions to “the responsive records” in every available venue, with each court affirming the decision of the Office of Open Records, the requester prevailed with a final judgment establishing that the records he sought were public. *See id.*

An agency is required to make a good faith search for information responsive to a request, *before* responding to the request. *See Office of the DA of Phila. v. Bagwell*, 155 A.3d 1119, 1140-1141 (Pa. Cmmw. Ct. 2017) (citing 65 P.S. § 67.901; *Chambersburg Area School District v. Dorsey*, 97 A.3d 1281, 1291-1292 (Pa. Cmmw. Ct. 2014)). However, at the close of the three *California University* appeals, the agency sent the requester a one-page affidavit, attesting that there were no responsive records to his request. *See Ex. A.* Had the *California University* open

records officer fulfilled his duty to conduct a good faith search for records at the initial request stage, three tiers of litigation could have been avoided.

Should this Court agree that an award of attorney's fees must be predicated by a reversal of an appeals officer's Final Determination, the enforcement arm of the statute will be effectively broken, incentivizing such dilatory behavior.

CONCLUSION

While RTKL jurisprudence has developed significantly over the last decade, the law will never succeed in its transparency mission without a working enforcement mechanism. A legal determination that a taxpayer is entitled to peer into the workings of government is merely aspirational until given concrete effect by the monetary remedies contemplated by Section 1304 of the RTKL.

The Office of Open Records respectfully asks this Honorable Court to construe Section 1304 of the RTKL in a manner that realizes the General Assembly's intent to provide Pennsylvanians with a transparency law that "increases financial penalties for noncompliance." Senate Legislative Journal, Session of 2007, 191st of the General Assembly No. 89, page 1405 (Wednesday, November 28, 2007) (remarks by the Honorable Dominic Pileggi, Senate Majority Leader).

The decision of the Commonwealth Court should be upheld.

Respectfully submitted:



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CERTIFICATE OF COMPLIANCE: Pa. R.A.P. 2135(d)

I certify that this filing complies with the word count limitations set forth within Pennsylvania Rules of Appellate Procedure 2135(d) and 531(b)(1)(i) (establishing a 7,000-word limit for an *amicus* brief), based upon the word count of the word processing system used to prepare this brief.

/s/ Joy Baxter Ramsingh

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Counsel for Amicus Curiae

CERTIFICATE OF COMPLIANCE: Pa. R.A.P. 127

Pursuant to Pennsylvania Rule of Appellate Procedure 127, I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

/s/ Joy Baxter Ramsingh

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EXHIBIT A



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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; Cmwrth. 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

A proud member of the Pennsylvania State System of Higher Education.

CERTIFICATE OF SERVICE

I, Faith Henry, hereby certify that on this the 21st day of January, 2020, I served the foregoing upon the persons indicated below via the Court's electronic filing system and United States Mail, satisfying the service requirements of Pennsylvania Rule of Appellate Procedure 121(c).

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/s/ Faith Henry

FAITH HENRY

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