

NOTICE RELATED TO THE CORONAVIRUS (COVID-19) EMERGENCY

Pennsylvania is currently under a declared state of emergency related to the coronavirus (COVID-19). Some agencies and requesters may face challenges in regard to their ability to meaningfully participate in Right-to-Know Law (RTKL) appeals. Accordingly, and to ensure due process, the Office of Open Records (OOR) is taking the following temporary steps.

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.

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 **November 12, 2020**.

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 **October 6, 2020**.

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

Every staff member of the OOR is working remotely, and we are only able to receive postal mail on a limited basis at this time. Accordingly, we urge agencies and requesters to use email for all communication with the OOR at this time.

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 during this time to ensure that the RTKL appeal process proceeds as fairly and as smoothly as possible.

September 16, 2020

Via Email Only:

Ms. Marissa Bluestine
Quattrone Ctr for the Fair Admin of Justice
University of Pennsylvania Law School
3501 Sansom Street
Philadelphia, PA 19104
quattroneproject@law.upenn.edu

Via Email and First Class Mail:

Agency Open Records Officer
Steelton Borough Police Department
123 N Front St
Harrisburg, PA 17113
SteeltonRTKRequest@steeltonpa.com

RE: OFFICIAL NOTICE OF APPEAL – **DOCKET #AP 2020-1776** -----

Dear Parties:

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

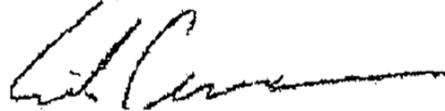
The Office of Open Records (“OOR”) received this appeal under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101, *et seq.* on September 1, 2020. A binding Final Determination (“FD”) will be issued pursuant to the timeline required by the RTKL, **subject to the enclosed information regarding the coronavirus (COVID-19)**.

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 any questions about the appeal process, please contact the assigned Appeals Officer (contact information is enclosed) – and be sure to provide a copy of any correspondence to all other parties involved in this appeal. -----

Sincerely,



Erik Arneson
Executive Director

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



pennsylvania

OFFICE OF OPEN RECORDS

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>.



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OFFICE OF OPEN RECORDS

OOB MEDIATION AGREEMENT

OOB Dkt. No. _____ - _____

Requester Name: _____

Agency Name: _____

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: _____

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 enclosed information regarding the coronavirus (COVID-19). 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.

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.

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.

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...”

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.

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.



pennsylvania

OFFICE OF OPEN RECORDS

APPEALS OFFICER:

Kelly Isenberg, Esq.

CONTACT INFORMATION:

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

FACSIMILE:

(717) 425-5343

EMAIL:

kisenberg@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.

OOOR 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.

From: no-reply@openrecords.pa.gov
To: quattroneproject@law.upenn.edu
Subject: PA Office of Open Records - Appeal Confirmation
Date: Tuesday, September 1, 2020 1:15:31 PM
Attachments: [oor_logo_email.png](#)



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

Name:	Marissa Bluestine
Company:	Quattrone Center for the Fair Administration of Justice
Address 1:	3501 Sansom Street
Address 2:	
City:	Philadelphia
State:	Pennsylvania
Zip:	19104
Phone:	215-898-6073
Email:	quattroneproject@law.upenn.edu
Agency (typed):	Steelton Borough Police Department
Agency Address 1:	123 N Front St
Agency Address 2:	
Agency City:	Harrisburg
Agency State:	Pennsylvania
Agency Zip:	17113
Agency Phone:	
Agency Email:	
Records at Issue in this	Policies, directives, procedures, in-house training, or other

Appeal: materials related to eyewitness identification procedures or suspect interviews or interrogations. See attached.

Request Submitted to Agency Via: fax

Request Date: 08/05/2020

Response Date:

Deemed Denied: Yes

Agency Open Records Officer:

Attached a copy of my request for records: Yes

Attached a copy of all responses from the Agency regarding my request: Yes

Attached any letters or notices extending the Agency's time to respond to my request: Yes

Agree to permit the OOR an additional 30 days to issue a final order: Yes

Interested in resolving this issue through OOR mediation: Yes

Attachments:

- Steelton Borough 8-5.pdf

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.

TIME SENT
August 5, 2020 at 11:17:40 AM EDT

REMOTE CSID
717+939+74924

DURATION
159

PAGES
5

STATUS
Sent

Quattrone Center for the Fair Administration of Justice
University of Pennsylvania Law School - Quattrone Center
Philadelphia
Pennsylvania 19104

FROM

TO

Name: Marissa Bluestine

Steelton Borough Police Department

Phone: 2158986073 Fax:

717-939-4924

E-mail: quattroneproject@law.upenn.edu

Sent: 8/5/20

at: 11:15:00 AM

5 page(s) (including cover)

Subject: Steelton Borough Police Department

Comments:



Quattrone Center for the Fair Administration of Justice
3501 Sansom Street
Philadelphia, PA 19104-6204
Tel. 215.898.6073 Cell. 267.971.3082

Marissa Boyers Bluestine
Assistant Director

August 5, 2020

Steelton Borough Police Department
Sent via facsimile: 717-939-4924

Dear Right to Know Officer:

I am an Assistant Director with the Quattrone Center for the Fair Administration of Justice at the University of Pennsylvania Carey Law School. We are conducting a statewide survey of law enforcement departments regarding each agency's policies with regard to eyewitness identification and suspect interrogation procedures. The completed Right to Know Request Form and information sought are attached.

Please be advised that we are not seeking investigative materials. We are aware investigative reports and records of police investigations are not subject to mandatory disclosure under the Right to Know Act, 65 P.S. § 67.708 (2009). See Scheetz v. Morning Call, Inc., 747 F. Supp 1515 (E.D.Pa. 1990); Sullivan v. City of Pittsburgh, 561 A.2d 863 (Pa. Cmwlth. 1989). Rather, the documents we are requesting are akin to police blotters, in that they merely pertain to administrative matters. Police blotters and the information we are requesting are public records under the Right to Know Act because they are merely "a chronological compilation of original records of entry." Commonwealth v. Mines, 680 A.2d 1227, 1229 (Pa. Commw. Ct. 1996). This request involves such records.

We would prefer to receive your response electronically through e-mail to quattroneproject@law.upenn.edu. Should the records not be available in electronic form, please let us know what the approximate cost of duplication will be prior to copying any records.

Thank you very much for your attention to this matter.

Very truly yours,

Marissa Boyers Bluestine



Standard Right-to-Know Law Request Form

Good communication is vital in the RTKL process. Complete this form thoroughly and retain a copy; it may be required if an appeal is filed. You have 15 business days to appeal after a request is denied or deemed denied.

SUBMITTED TO AGENCY NAME: Steelton Borough Police Department
ATTN: AORO/ Right to Know Officer

Date of Request: August 5, 2020 Submitted via: Email U.S. Mail Fax In Person

PERSON MAKING REQUEST:

Name: Marissa Bluestine Company (if applicable): The Quattrone Ctr. For the Fair Administration of Justice at the University of Pennsylvania Carey School of Law

Mailing Address: 3501 Sansom Street

City: Philadelphia State: PA Zip: 19104 Email: quattroneproject@law.upenn.edu

Telephone: 267-971-3082 (c) 215-898-6073 (w) Fax: _____

How do you prefer to be contacted if the agency has questions? Telephone Email U.S. Mail

RECORDS REQUESTED: *Be clear and concise. Provide as much specific detail as possible, ideally including subject matter, time frame, and type of record or party names. RTKL requests should seek records, not ask questions. Requesters are not required to explain why the records are sought or the intended use of the records unless otherwise required by law. Use additional pages if necessary.*

See Attached

DO YOU WANT COPIES? Yes, printed copies (default if none are checked)

Yes, electronic copies preferred if available

No, in-person inspection of records preferred (may request copies later)

Do you want certified copies? Yes (may be subject to additional costs) No

RTKL requests may require payment or prepayment of fees. See the Official RTKL Fee Schedule for more details.

Please notify me if fees associated with this request will be more than \$100 (or) \$_____.

ITEMS BELOW THIS LINE FOR AGENCY USE ONLY

Tracking: _____ Date Received: _____ Response Due (5 bus. days): _____

30-Day Ext.? Yes No (If Yes, Final Due Date: _____) Actual Response Date: _____

Request was: Granted Partially Granted & Denied Denied Cost to Requester: \$_____

Appropriate third parties notified and given an opportunity to object to the release of requested records.

NOTE: In most cases, a completed RTKL request form is a public record.

Form updated Feb. 3, 2020

More information about the RTKL is available at <https://www.openrecords.pa.gov>

Pursuant to the Pennsylvania Right to Know Law, we request the following records which we believe are in the possession of your agency:

1. All written materials (including but not limited to directives, manual training materials, policies, instructions to police or witnesses, training presentation materials, memoranda, or mandates), video or sound recordings, maintained by your Department and/or distributed to investigative officers or trainees, concerning the procedures used to conduct in-field identification, whether those procedures are referred to as “show-ups,” “cold shows,” or by other terminology. Please include any admonishments provided to potential witnesses in conjunction with the procedure.
2. All written materials (including but not limited to directives, manual training materials, policies, instructions to police or witnesses, training presentation materials, memoranda, or mandates), video or sound recordings, maintained by your Department and/or distributed to investigative officers or trainees, concerning the procedures used to conduct identification via photograph, whether in the format of single photo, photo lineups or “photo spreads,” or in any other form. Please include any admonishments provided to potential witnesses in conjunction with the procedure.
3. All written materials (including but not limited to directives, manual training materials, policies, instructions to police or witnesses, training presentation materials, memoranda, or mandates), video or sound recordings, maintained by your Department and/or distributed to investigative officers or trainees, concerning the procedures used to conduct live “line-ups,” wherever such procedures are done. Please include any admonishments provided to potential witnesses in conjunction with the procedure.
4. All written materials (including but not limited to directives, manual training materials, policies, instructions to police or witnesses, training presentation materials, memoranda, or mandates), video or sound recordings, maintained by your Department and/or distributed to investigative officers or trainees, governing how to conduct eyewitness identification procedures in any other form. Please include any written policies or training materials that address or concern the use of composite sketches, including how such sketches are to be generated.
5. All written materials (including but not limited to directives, manual training materials, policies, instructions to police or witnesses, training presentation materials, memoranda, or mandates), video or sound recordings, maintained by your Department and/or distributed to investigative officers or trainees, governing how your Department conducts interviews or interrogations with witnesses, victims, or suspects, whether oral or written. Please include any written policies or training materials that address or concern conducting interviews or interrogations.

6. All written materials (including but not limited to directives, manual training materials, policies, instructions to police or witnesses, training presentation materials, memoranda, or mandates), video or sound recordings, maintained by your Department and/or distributed to investigative officers or trainees, concerning the procedures used to record interviews or interrogations with witnesses, victims, or suspects. Please include any documents provided to suspects regarding constitutional rights as required by the United States Supreme Court in the *Miranda v. Arizona* decision.

Thank you once again for your help.