

IN THE COURT OF COMMON PLEAS OF BUCKS COUNTY, PENNSYLVANIA

REPUBLICAN NATIONAL,
COMMITTEE,

Petitioner,

v.

BUCKS COUNTY BOARD OF
ELECTIONS,

Respondent.

CIVIL DIVISION

No. _____

**PETITION FOR JUDICIAL REVIEW
OF A FINAL DETERMINATION OF
THE PENNSYLVANIA OFFICE OF
OPEN RECORDS**

Filed on behalf of: Republican National
Committee

Counsel of Record for this Party:

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Republican National Committee,	:	
	:	
Petitioner,	:	CIVIL DIVISION
	:	
v.	:	
	:	
Bucks County Board of Elections,	:	No. _____
	:	
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**PETITION FOR JUDICIAL REVIEW OF A
FINAL DETERMINATION OF THE
PENNSYLVANIA OFFICE OF OPEN RECORDS**

AND NOW, comes the Petitioner, Republican National Committee, by and through its attorneys, Gallagher Giancola, and respectfully presents this Petition for Judicial Review of a Final Determination of the Pennsylvania Office of Open Records (the “Petition”) and, in support thereof, sets forth the following grounds for judicial review.

PARTIES

1. Petitioner Republican National Committee (“RNC”) is the national committee of the Republican Party as defined by 52 U.S.C. § 30101(14). The RNC manages the Republican Party’s business at the national level, including development and promotion of the Party’s national platform and fundraising and election strategies; supports Republican candidates for public office at all levels across the country, including those on the ballot in Pennsylvania; and assists state parties throughout the country, including the Republican Party of Pennsylvania, to educate, mobilize, assist, and turn out voters.

2. Respondent Bucks County Board of Elections (“Bucks County”) is an agency of the State of Pennsylvania and, as such, is governed by the public disclosure requirements of the

Pennsylvania Right-to-Know Law, 65 P.S. §67.101 *et seq.* Bucks County is the agency responsible for overseeing the election process in the county. Most notably, it is the entity which determines whether to count or reject mail and/or absentee ballots. Bucks County is the legal custodian of the data at issue in this right-to-know law request. Bucks County maintains its primary place of business at 55 E. Court Street, Doylestown, PA 18901, is a legal resident of Bucks County, Pennsylvania, and is subject to service therein.

JURISDICTION AND VENUE

3. This Petition is filed with this Honorable Court pursuant to Section 67.1302 of the Pennsylvania Right to Know Law (“RTKL”), 65 P.S. §67.1302(a), as the result of a Final Determination of the Pennsylvania Office of Open Records (“OOR”) issued and mailed on January 14, 2022 and indexed at O.O.R. Dkt. AP 2021-2528.

FACTUAL ALLEGATIONS

4. The RNC requested records from the Bucks County Board of Elections on October 27, 2021 via Right-to-Know Request No. 3416 (“Request 3416”).

5. Request 3416 contained nine separate requests and generally sought communications and documents between Respondent and third parties, including the Pennsylvania Department of State, Bureau of Elections, regarding the counting, processing, curing, or rejection of mail-in or absentee ballots for the 2020 General Election. A true and correct copy of Request 3416 is attached hereto as **Exhibit A**.

6. Request 3416 sought the following records (“Items”) from Bucks County:

1. Any and all communications from the Pennsylvania Department of State, Bureau of Elections, regarding the counting, processing, curing, or rejection of mail-in or absentee ballots for the 2020 General Election.

2. Any and all communications to the Pennsylvania Department of State, Bureau of Elections, regarding the counting, processing, curing, or rejection of mail-in or absentee ballots for the 2020 General Election.
3. Any and all communications from the Pennsylvania Department of State, Bureau of Elections, regarding training for poll workers and judges of elections for the 2020 General Election.
4. Any and all documents reviewed or utilized by the Bucks County Board of Elections regarding the counting, processing, curing, or rejection of mail-in or absentee ballots for the 2020 General Election.
5. Any and all documents regarding and/or relating to any training sessions regarding the procedures to be used in counting, processing, curing, or rejection of mail-in or absentee ballots for the 2020 General Election.
6. Any and all documents reflecting the procedure used to count, process, cure, or reject mail-in or absentee ballots for the 2020 General Election.
7. Any and all documents relied upon and/or referred to during the Canvass, as that term is described in the Pennsylvania Election Code.
8. Any and all communications to or from any employee or staff member of the Bucks County Board of Elections, including the administrator of mail-in elections regarding the counting, processing, curing, or rejection of mail-in or absentee ballots for the 2020 General Election.
9. Any plan, documents, training materials, or other materials created or used by the Bucks County Board of Elections, its employees, officers, or agents for creating the system used to process, count, cure, or reject mail-in or absentee ballots for the 2020 General Election.

7. After invoking the extension of time provision in Section 902(a)(3) and (4) of the RTKL, Bucks County issued its response to Request 3416 on November 4, 2021 wherein it denied the Request in its entirety on the grounds that the records sought were insufficiently specific to enable it to ascertain what records were being requested. A true and correct copy of Bucks County's Response to Request 3416 is attached hereto as **Exhibit B**.

8. The RNC appealed Bucks County's denial to the Pennsylvania Office of Open Records on November 19, 2021, within fifteen (15) business days of Bucks County's denial.

9. On January 14, 2021, the OOR issued its Final Determination regarding the RNC's Appeal of the Denial of Request 3416. The Final Determination granted in part, denied in part, and dismissed as moot in part the RNC's appeal. A true and correct copy of the OOR's Final Determination is attached hereto as **Exhibit C**.

STANDARD AND SCOPE OF APPEAL

10. Under Chapter 13 of the RTKL, Courts of Common Pleas "are the ultimate finders of fact and that they are to conduct full de novo review of appeals from decisions made by the RTK Law appeals officers." *Bowling v Office of Open Records*, 75 A.3d 453, 474 (Pa. 2013).

11. Further, the "scope of review" of courts hearing appeals of a decision made by the OOR are likewise broad and plenary, and permit trial courts "to expend the record" to fulfill their statutory function as fact-finders and thereby consider matters beyond the record that is certified by the OOR. *Bowling*, supra.

GROUND FOR REVIEW

12. The Pennsylvania Right-to-Know Law ("RTKL"), 65 P.S. §305, declares that "a record in the possession of a Commonwealth Agency or local agency shall be presumed to be a public record."

13. Under the RTKL, a record is defined as "any information regardless of its physical form or character that documents a transaction or activity of an agency and is created, received, or retained pursuant to law OR in connection with a transaction, business or activity of an agency." 65 P.S. §67.102.

14. Section 703 of the RTKL states that "[a] written request should identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested." 65 Pa. Stat. Ann. §67.703.

15. When considering a challenge to the specificity of a request under Section 703 of the RTKL, the Pennsylvania Commonwealth Court employs a three-part balancing test, examining the extent to which the request sets forth: (1) the subject matter of the request; (2) the scope of documents sought; and (3) the timeframe for which records are sought. *Pa. Dep't of Educ. v. Pittsburgh Post-Gazette*, 119 A.3d 1121, 1124 (Pa. Cmwlth. 2015).

16. The OOR's Final Determination concluded that Bucks County was required to produce records responsive to Items 1, 2, 3 and 8 within thirty days. However, the Final Determination concluded that Items 4, 5, 6, 7 and 9 were denied because they would require Bucks County to make judgments as to whether a given record was "reviewed or utilized,' 'regard[s] and/or relat[es] to,' or was 'relied upon and/or referred to.'" Ex. A., p 8. The Office of Open Records concluded that these Items were therefore insufficiently specific to enable the County to locate responsive records. *Id.*

17. Applying the three-factor specificity test to Request 3416 reveals that Items 4, 5, 6, 7 and 9 were sufficiently specific that Bucks County should have been able to provide the requested documents.

18. First, the subject matter of the request is clear, as the Items make it clear that only records which relate to the process used to count, process, cure, or reject mail-in or absentee ballots and to conduct the Canvas are being sought.

19. Second, scope of the documents is sufficiently clear, as the RNC is requesting communications and documents created by and relied upon by Bucks County to count, process, cure, or reject mail-in or absentee ballots. Such documents include any relied on by Bucks County in carrying out the election, or for training in preparation of the election. Contrary to the

conclusions reached in the Final Determination, accumulating a list of responsive records does not require Bucks County to make any judgments.

20. To the extent that Bucks County engaged in any activities to train its employees to prepare for the 2020 General Election, and how to determine whether to accept or reject mail-in and absentee ballots, those documents should be provided. Further, to the extent Bucks County created or received documents from the Pennsylvania Department of State which addressed what process or criteria to use to determine whether to accept or reject mail-in or absentee ballots, such records should also be produced.

21. Finally, the timeframe is clear, as it only relates to records used by Bucks County as part of the 2020 General Election.

22. Request 3416 was sufficiently specific that Bucks County should have been able to provide the documents it received and relied upon in order to process mail-in and absentee ballots for the 2020 General Election.

23. Bucks County should have responded to Items 4, 5, 6, 7 and 9, and to the extent that the Final Determination concluded that these items were insufficiently specific, it was in error.

PRAYER FOR RELIEF

WHEREFORE, the Republican National Committee respectfully requests that this Honorable Court issue a decision with findings of fact and conclusions of law based upon the evidence as a whole that reverses the instant Final Determination of the OOR with respect to Items 4, 5, 6, 7 & 9, and which orders Bucks County to provide records responsive to these Items, as well as such other relief as the Court deems proper and just.

Dated: February 11, 2022

Respectfully submitted,

GALLAGHER GIANCOLA LLC

A handwritten signature in blue ink, appearing to be 'BMA', is written over a horizontal line.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within *Petition for Judicial Review of Final Determination* has been served on the following parties of record via email on February 11, 2022.

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