



# pennsylvania

OFFICE OF OPEN RECORDS

## FINAL DETERMINATION UPON RECONSIDERATION

IN THE MATTER OF

DAVID WOLF,  
Complainant

v.

CITY OF BETHLEHEM,  
Respondent

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Docket No. AP 2010-0894R

### INTRODUCTION

David Wolf (the “Requester”) submitted a request to City of Bethlehem (the “City”) pursuant to the Right-to-Know Law, 65 P.S. §§67.101 *et seq.*, (“RTKL”) seeking a copy of a contract and related documents (the “Request”). The City took the statutory thirty day extension but ultimately did not respond and the Request was deemed denied. The Requester appealed to the Office of Open Records (“OOR”). The OOR dismissed the appeal as untimely. The Requester filed a Petition for Reconsideration (Petition) claiming that the appeal was timely. After reviewing the Petition, the OOR agreed and granted the Petition. For the reasons set forth in this Final Determination Upon Reconsideration, the appeal is **granted** and the City is required to take further action as set forth below.

### FACTUAL BACKGROUND

On August 17, 2010, the Requester submitted a right-to-know request to the City, seeking “a contract between the City of Bethlehem and Chris Brothers, Inc. dated on or about January 13, 2005, for the disposal of Sludge Cake and Grit/Rags for 2005 & 2006, and all amendments, revisions,

and/or extensions thereafter.” The letter also referenced an attached request for records. The attached request also sought:

1. Copy of contract, and any renewals or amendments thereto;
2. Copy of all Performance Bonds provide relating to the aforesaid Contract and any renewals or amendments thereto
3. Copies of all correspondence or other documents relating to the Performance Bonds stating that Performance Bonds were unnecessary under the aforesaid Contract or during the renewal or during any amendments thereto.

The City responded on August 25, 2010, stating that it would need an additional thirty days to respond to the Request. The City did not provide any further response to the Request. On September 30, 2010, the Requester appealed to the OOR. The OOR notified the parties that the City bears the burden of showing why the requested records must be withheld and set a deadline for submission of documents. The City did not submit any documents to the OOR. Based on the record, it appeared to the OOR that the Request was deemed denied on August 24, 2010 because the August 25, 2010 extension letter was late. Therefore, the Request was deemed denied on August 24, 2010 and an appeal should have been filed with the OOR on or before September 15, 2010. As a result, in a letter dated November 1, 2010, the OOR dismissed the appeal as untimely.

On November 12, 2010, the Requester filed a Petition for Reconsideration with the OOR claiming the appeal was timely. In support, he attached a copy of the fax transmit confirmation report demonstrating the request was made after business hours on August 17, 2010 and actually received by the agency the following day. He argues that day 1 for the request was August 18, 2010 and that the City’s extension letter of August 25 was timely and therefore his appeal was

timely. The OOR agreed and granted the Petition. The City was given until December 8, 2010 to file a response to the Petition with the OOR. The City did not file a response.

### **LEGAL ANALYSIS**

The RTKL is “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. OOR*, 990 A.2d 813, 824 (Pa. Commw. 2010). The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. § 67.503(a). An appeals officer is required “to review all information filed relating to the request.” 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. The decision to hold a hearing or not hold a hearing is discretionary and non-appealable. *Id.* The law also states that an appeals officer may admit into evidence testimony, evidence and documents that the appeals officer believes to be reasonably probative and relevant to an issue in dispute. *Id.* Here, neither party requested a hearing, the facts are undisputed, and the OOR has the necessary, requisite information and evidence before it to properly adjudicate the matter.

The City is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.301. Records in possession, custody or control of a Commonwealth agency are presumed public unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. An agency bears the burden of proving the applicability of any cited exemptions. *See* 65 P.S. § 67.708(b).

Section 708 of the RTKL clearly places the burden of proof on the public body to demonstrate that a record is exempt. In pertinent part, Section 708(a) states: “(1) The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence.” 65 P.S. § 67.708(a). Preponderance of the evidence has been defined as “evidence

which as a whole shows that the fact sought to be proved is more probable than not.” BLACK’S LAW DICTIONARY 1064 (8th ed.); *see also Commonwealth v. Williams*, 567 Pa. 272, 786 A.2d 961 (2001).

In the present case, the City did not comply with the RTKL by timely responding to the Request, nor did it provide any factual or legal support for denying access to responsive records. After properly extending the deadline to respond, the City failed to provide a final response, resulting in a deemed denial pursuant to Section 902(b)(2). Based on the City’s failure to comply with the statutory requirements of the RTKL or provide any evidentiary basis in support of an exemption under the RTKL, the OOR finds that the City did not meet its burden under the RTKL. *See* 65 P.S. § 67.305.

#### **CONCLUSION**

For the foregoing reasons, Requester’s appeal is **granted** and the City is required to provide all responsive records, if such records exist, within thirty (30) calendar days. This Final Determination is binding on all parties. Within thirty (30) days of the mailing date of this Final Determination, any party may appeal to either the Northampton or Lehigh County Court of Common Pleas. 65 P.S. § 67.1302(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond according to court rules as per Section 1303. This Final Determination shall be posted on the website at:

<http://openrecords.state.pa.us>.

**FINAL DETERMINATION ISSUED AND MAILED: December 13, 2010**



**NATHANAEL J. BYERLY  
APPEALS OFFICER**

Sent to: David Wolf, Esquire; Cynthia Bartera

# Goldberg, Kamin & Garvin, LLP

Attorneys at Law

1806 Frick Building

437 Grant Street

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Fax (412) 281-1121

Counsel To The Firm

Stuart E. Savage

VIA U.S. MAIL & FAX 717-425-5343

November 8, 2010

Pennsylvania Office of Open Records  
Attention: Audrey L. Buglione, Appeals Officer  
Commonwealth Keystone Building  
400 North Street, 4<sup>th</sup> Floor  
Harrisburg, PA 17120-0225

In Re: Wolf v. City of Bethlehem  
Docket AP 2010-0894

## REQUEST FOR RECONSIDERATION OF THE NOVEMBER 1, 2010 DISMISSAL

Dear Ms. Buglione:

On November 1, 2010, the Open Record Request in the above caption matter was dismissed as untimely. A true and correct copy of the dismissal is attached hereto, incorporated herein and marked as **Exhibit "A"**. It was determined that the initial request was received by the agency ("City") on August 17, 2010. It was further determined, "that the five business day response period ended on August 24, 2001 and the request was therefore, deemed denied.... The City's thirty (30) day extension letter sent August 25, 2010 was untimely and did not create a valid thirty (30) day extension period."

I respectfully disagree as to when the five (5) day response period ended for the City and the time for filing the instant appeal and in support state the following:

1. On August 17, 2010, I sent by U.S. Mail and by facsimile the Open Record Request that is the subject in the instant appeal. A true and correct copy of the facsimile confirmation report together with a copy of the letter transmitted to the City is attached hereto, incorporated herein and marked as **Exhibit "B"**.
2. Pursuant to the Office of Open Records' web page under Citizens guide it states:

### WHAT TO EXPECT FROM THE AGENCY

An Agency has five business days to respond in writing to: 1) grant the request, 2) deny the request (citing the legal basis for denial/partial denial) or 3) invoke a 30-day extension for certain reasons.

Audrey L. Buglione, Appeals Officer  
Docket AP 2010-0894  
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The clock starts the day after the request is received during regular business hours.

Acceptable grounds for a 30-day extension includes: off-site location of records, staffing limitations, need for legal review or redaction, complex request, or requester did not pay applicable fees as required, or failed to follow Agency policy.

If an Agency does not respond to a request in the allotted time, the request is deemed denied, and you have the right to file an appeal with the Office of Open Records.

A true and correct copy of the Office of Open Records' web page under Citizens guide is attached hereto, incorporated herein and marked as **Exhibit "C"**.

3. The City has posted on it's web page the hours of operation as:

**CITY HALL HOURS - Monday to Friday 8:00 a.m. to 4:30 p.m.**

A true and correct copy of the City of Bethlehem's web page under "about Bethlehem" is attached hereto, incorporated herein and marked as **Exhibit "D"**.

The Open Record Request which is the subject of the instant matter was received by the City at 4:43 p.m., as set forth on the Transmit Confirmation Report (Exhibit B). However, the City's normal business hours are 8:00 a.m. to 4:30 p.m. Pursuant to the Office of Open Record's Citizen's guide, "the clock stats the day after the request is received during regular business hours."

As aforesaid, the Open Record Request was faxed to the City on August 17, 2010 at 4:43 p.m., **which is beyond the City's normal business hours of 8:00 a.m. to 4:30 p.m.** Therefore, pursuant to Office of Open Record's Citizen's guide the instant Right to Know request was not deemed to have been received by the City until August 18, 2010. In turn, the City had five (5) business days to respond. The fifth (5<sup>th</sup>) business day for the City to respond is August 25, 2010, the day the City made its request for a thirty (30) day extension. The City's request for an extension of time to respond to the Right to Know Request should therefore, also be deemed as a timely request for an extension.

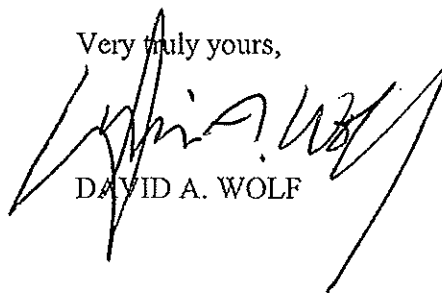
Audrey L. Buglione, Appeals Officer  
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Thereafter the City's response under its thirty (30) day extension, would have been due on or before September 24, 2010. Since the City failed to respond by September 24, 2010, it was deemed denied on that date. I then had fifteen (15) days to request an appeal, which was on or before October 9, 2010. The appeal in this matter was received by the Office of Open Records on September 30, 2010, well in advance of the appeal deadline.

For the foregoing reasons the undersigned respectfully requests that the Office of Open Records reconsider and reverse its order dismissing the instant appeal as untimely and thereafter make a final determination in favor of the undersigned, directing the City to produce all records as requested.

Very truly yours,

A handwritten signature in black ink, appearing to read 'David A. Wolf', is written over the typed name. The signature is stylized and somewhat cursive.

DAVID A. WOLF

DAW/djh  
Enclosures

cc: City of Bethlehem Solicitor  
Stuart E. Savage, Esquire  
Read Collins Associates Inc.



**pennsylvania**

OFFICE OF OPEN RECORDS

November 1, 2010

David A. Wolf, Esquire  
Goldberg, Kamin, & Garvin, LLP  
1806 Frick Building  
437 Grant Street  
Pittsburgh, PA 15219

Cynthia Bartera  
City of Bethlehem  
10 East Church Street  
Bethlehem, PA 18018

**Re: Wolf v. City of Bethlehem, Docket AP 2010-0894  
DISMISSED AS UNTIMELY**

Dear Parties:

I write in regard to the above appeal. Upon review of the file the appeal is dismissed for the following reason:

Section 901 requires an agency to respond to a written request for records within 5 business days of receipt of the request. The request was received by the agency on August 17, 2010. The five business day response period ended on August 24, 2010 and the request was, therefore, deemed denied, as noted by Mr. Wolf in his appeal. The City's thirty (30) day extension letter sent August 25, 2010 was untimely and did not create a valid thirty (30) day extension period. A Requester must appeal within fifteen (15) business days of an agency's denial or deemed denial. In this case, the appeal was required to be filed on or before September 15, 2010. The appeal was filed on September 30, 2010 and is, therefore, untimely.

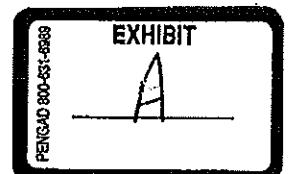
The file is now closed and no further action will be taken. This final determination is binding on the parties. Within thirty (30) days of the mailing date of this Determination, either party may appeal to the Lehigh County Court of Common Pleas. All parties must be served with notice of the appeal. The Office of Open Records also shall be served notice and have an opportunity to respond according to court rules. 65 P.S. §67.1302.

Thank you for your attention to this matter.

Sincerely,

Audrey L. Buglione  
Appeals Officer

NOV - 3 2010



**\*\* Transmit Confirmation Report \*\***

P. 1

Aug 17 2010 04:44pm

Name/Fax No.	Mode	Start	Time	Page	Result	Note
16108657205	Fine	17.04:43pm	0'41"	3	# 0 K	

**Goldberg, Kamin & Garvin, LLP**

Attorneys at Law  
1806 Frick Building  
437 Grant Street

Pittsburgh, PA 15219-6101

(412) 281-1119  
Fax (412) 281-1121

August 17, 2010

Edward I. Goldberg (1906-2001)  
Samuel R. Kamin  
Robert J. Garvin  
David A. Wolf  
Jonathan M. Kamin  
John J. Arminas  
Robert W. Mandell

Counsel To The Firm  
Stuart E. Savage

VIA FACSIMILE

City of Bethlehem  
Solicitor's Office  
10 East Church Street  
Bethlehem, PA 18018  
(610) 865-7205

RE: Right to Know Request

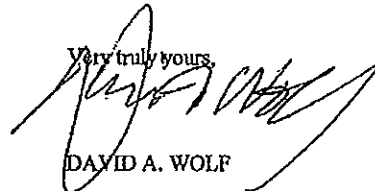
To Whom It May Concern:

Please allow this letter to serve as an Open Records Request with respect to a certain contract between the City of Bethlehem and Chrin Brothers, Inc. dated on or about January 13, 2005, for the Disposal of Sludge Cake and Grit/Rags for 2005 & 2006, and all amendments, revisions and/or extensions thereafter. Please see the record request attached.

Prior to providing us with the documents requested, please let me know the cost of copying said documents.

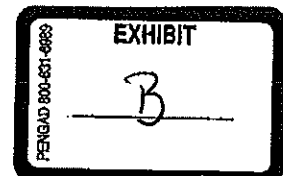
If you should have any questions concerning the attached, please feel free to contact me at your earliest convenience.

Very truly yours,



DAVID A. WOLF

DAW/hjm  
Attachments  
cc. Stuart Savage, Esquire



PA STATE AGENCIES

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Open Records

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Citizens' Guide

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**Citizens' Guide** (Printable Format - [Download PDF](#)) *revised August 2009*

The Mission of the Office of Open Records is to enforce the state's Right-to-Know Law and to serve as a resource for citizens, public officials and members of the media in obtaining public records of their government. As part of that mission, the Office of Open Records has established a short "Citizens' Guide" that will provide a basic overview of the Right-to-Know Law.

Agencies are reminded to ensure that citizens are provided access to records to which they are entitled. Equally important, the Office of Open Records reminds citizens to use good judgment in seeking records from the public body and not use this law to harass or overburden a public body from performing its other functions. The Office of Open Records reminds both citizens and agencies that when the law takes effect in January, the process initially may not be seamless. The Office of Open Records encourages patience and a spirit of cooperation among all parties.

As always, if you have any questions or need more information please contact the Office of Open Records at (717) 346-9903 or [openrecords@state.pa.us](mailto:openrecords@state.pa.us).

**PRESUMPTION OF OPENNESS: Records are Public Unless...**

The most significant change to the Right-To-Know Law is that all records are presumed to be public records unless disclosure is barred by: 1) state or federal law or regulation, or judicial order; or 2), privilege, e.g., attorney-client, doctor-patient, or 3) one of the exceptions in Section 708 of the Right-to-Know Law.

The burden is now 100 percent on the Agency to establish why the record is not available.

**WHO IS SUBJECT TO THE LAW: Agencies Must Comply**

**Commonwealth Agencies:** Any office, department, authority or other parts of the executive branch, state-affiliated entities, independent agencies, and includes the Governor, Attorney General, Auditor General and the Treasury Department.

**Local Agencies:** Any political subdivision, intermediate unit, or charter, public trade or vocational school [or] any local, intergovernmental, regional or municipal agency, authority, council, board commission or similar governmental entity.

**Legislative Agencies:** The Senate, House of Representatives and many committees and commissions like the Capitol Preservation Committee, the IRRC, Center for Rural Pennsylvania, the Legislative Reapportionment Commission, and Legislative Audit Advisory Commission to name a few. For a complete list, see Section 102.

**Judicial Agencies:** Any entity or office of the unified judicial system, like Magisterial District Judges

**WHAT IS COVERED BY THE LAW: Records, not Questions**

Make sure when you file a RTK request, you are seeking records and not just asking questions. The law governs release of records.

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."

Records can take many forms, including papers, letters, maps, books, tapes, photographs, film or sound recordings, information stored or maintained electronically and a data-processed or image-processed documents. Note that e-mails can also be a form of public records, subject to any exceptions.

#### EXCEPTIONS: Protects Certain Information From Disclosure

The law contains 30 exceptions, cited in Section 708, that permit an Agency to withhold records. An Agency may deny release of a record if it falls within one of the 30 exceptions designed to protect information that is confidential or may jeopardize safety or investigations. Types of records that can be withheld include records related to personal or public security, DNA/RNA records, autopsy records, social security numbers, personal financial information, personal email addresses, marital status, identity of a covert law enforcement officer, home address of judges or law enforcement, confidential source records, victim information.

#### HOW TO FILE A REQUEST

A citizen can file a Right-to-Know request in four ways. You can submit your request by:

1. Fax
2. Electronic mail
3. In person
4. U.S. Mail

When submitting a request to the Agency, always retain a copy for your file. A copy of this RTK request would be necessary if you should need to file an appeal to our office upon denial.

The first thing a citizen should do to file a RTK request is check with the local or Commonwealth Agency to determine the Open Records Officer (each Agency must have one) and whether the Agency has a Right-to-Know request form. You can always use the Uniform Request Form available on our website to file a request. Address your request to the Open Records Officer. Some Agencies use the term "Right-to-Know Officer."

You should make sure that your request for records is specific and concise. Identify as specifically as you can the records you want, so that an Agency can quickly locate them and determine whether they are public record.

Please be advised that if you send an e-mail request or file a request in person it does not speed-up the time that that an Agency has to respond to your request. An Agency has five business days to respond to a request, whether you place the request in person or by mail.

#### WHAT TO EXPECT FROM THE AGENCY

An Agency has five business days to respond in writing to: 1) grant the request, 2) deny the request (citing the legal basis for denial/partial denial) or 3) invoke a 30-day extension for certain reasons.

The clock starts the day after the request is received during regular business hours.

Acceptable grounds for a 30-day extension includes: off-site location of records, staffing limitations, need for legal review or redaction, complex request, or requester did not pay applicable fees as required, or failed to follow Agency policy.

If an Agency does not respond to a request in the allotted time, the request is deemed denied, and you have the right to file an appeal with the Office of Open Records.

#### HOW TO FILE AN APPEAL?

If an Agency denies a record, or a portion of a record, the requester can file an appeal with the Office of Open Records.

The appeal must be submitted to the Office of Open Records within 15 business days of the mailing date of the Agency's response. Appeals should be sent to the Office of Open Records, Commonwealth Keystone Building, 400 North St., 4th Floor, Harrisburg, PA 17120-0225. They may

also be submitted via facsimile to 717-425-5343 or via email to [openrecords@state.pa.us](mailto:openrecords@state.pa.us) as a Microsoft Word or PDF attachment.

All appeals must be in writing and shall include the following information that may be submitted using the Appeals Forms found on <http://openrecords.state.pa.us>:

- A copy of the Right-to-Know Request
- A copy of the denial letter submitted by the Agency - If the agency does not respond in writing within five business days, the request is "deemed denied" and can be appealed.
- State the grounds you believe the record is a public record
- Address any grounds that the Agency raised in its denial

The Office of Open Records will only docket an appeal and assign an appeals officer when all of this information has been received.

When the Office of Open Records receives the appeal, it has 30 days to respond from the date of receipt of the appeal to issue a Final Determination.

The Office of Open Records may conduct a hearing (which is a non-appealable decision). It may decide the case on the basis of the information filed with the Office. It may seek additional information from the involved parties. In most cases, the Office of Open Records will issue a Final Determination based on information provided to our Office without conducting a hearing.

When the Office of Open Records issues a Final Determination it is binding on the Agency. If the Agency or the requester want to appeal the ruling of the Office of Open Records, the appeal must be filed with the appropriate court within 30 days of the mailing of the Final Determination by the Office.

#### FEES

The fee for a standard 8 1/2 x 11 black and white document is 10 cents to 25 cents per page.

- Postage fees may not exceed the actual cost of mailing.
- If an Agency offers enhanced electronic access it can establish user fees that must be approved by the Office of Open Records.
- An Agency cannot charge for the time it takes to redact a document or the legal review needed to determine if a document is a public record.
- An Agency may require pre-payment if the fees are expected to exceed \$100.

#### PENALTIES

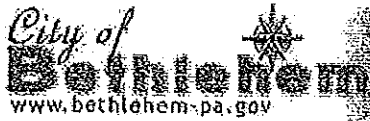
The law provides a civil penalty of up to \$1,500 if an Agency denies access to a public record in bad faith and up to \$500 per day when an Agency does not promptly comply with a court order to release records under the act.

#### ATTORNEYS FEES

If a court holds that records were denied based on an unreasonable interpretation of law, or in bad faith, an Agency can be required to pay attorneys' fees. Remember -- if your RTK request is deemed frivolous by the court, you can be required to pay attorneys' fees.

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HOME ABOUT BETHLEHEM DEPARTMENTS PERMITS CALENDAR VISITORS ECONOMIC DEVELOPMENT JOBS LIBRARY

### ABOUT BETHLEHEM



Bethlehem is a city in eastern Pennsylvania, United States. It lies in Northampton and Lehigh counties. Bethlehem borders with the cities of Allentown and Easton and is part of the greater Lehigh Valley community. It has an estimated population of around seventy thousand.

### ABOUT CITY GOVERNMENT

Bethlehem City Hall is located at 10 East Church Street, next to the Bethlehem Area Public Library at the city center complex.

**CONTACT US:**  
10 East Church Street,  
Bethlehem, PA 18018,  
United States  
**PHONE:** (610) 865-7000

**CITY HALL HOURS** - Monday to Friday 8:00 a.m. to 4:30 p.m.

**CITY COUNCIL MEETINGS** are normally scheduled the first and third Tuesdays of every month beginning at 7:00 p.m. in Town Hall. Click here to find [Council Agenda and Meeting Minutes](#). For an updated schedule, please call the City Clerk's office at (610) 865-7130.

**BY PHONE:** The general information number for City Hall is (610) 865-7000. Find the city offices and department phone numbers in the [DIRECTORY](#) .

**BY E-MAIL:** E-mail a question, concern, or suggestion to the Mayor, City Council, or anyone in City Hall. Find the e-mail addresses in the [DIRECTORY](#) .

[Link to Image Gallery](#)

### EXPLORE BETHLEHEM

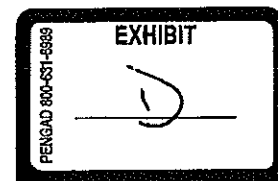


Information about Bethlehem, calendar of events, shopping, lodging.

<http://www.bethlehem-pa.gov/about/>

web  bethlehem-pa.gov

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- RIGHT TO KNOW LAW
- CITY GOVERNMENT DIRECTORY
- SITE MAP



11/8/2010

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This site is maintained by Information Services of City of Bethlehem. [cobis@bethlehem-pa.gov](mailto:cobis@bethlehem-pa.gov)

## Brawley, Maryanne

---

**From:** Byerly, Nathanael  
**Sent:** Monday, November 08, 2010 4:55 PM  
**To:** Brawley, Maryanne  
**Subject:** FW: Wolf v. City of Bethlehem  
**Attachments:** CHRIN LTR\_20101108163727.pdf

Nathanael Byerly  
Chief Counsel  
Office of Open Records  
(717)346-9903  
Commonwealth Keystone Building  
400 North Street, 4th Floor  
Harrisburg, PA 17120-0225  
[www.newPA.com](http://www.newPA.com) | [www.visitPA.com](http://www.visitPA.com)

Confidentiality Notice: This electronic communication is privileged and confidential and is intended only for the party to whom it is addressed. If received in error, please return to sender.

-----Original Message-----

**From:** Buglione, Audrey  
**Sent:** Monday, November 08, 2010 4:52 PM  
**To:** Byerly, Nathanael  
**Subject:** FW: Wolf v. City of Bethlehem

It is a request for reconsideration.

Audrey Buglione  
Appeals Officer, Office of Open Records  
(717)346-9903  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120-0225  
<http://openrecords.state.pa.us>

Confidentiality Notice: This electronic communication is privileged and confidential and is intended only for the party to whom it is addressed. If received in error, please return to sender

**From:** Donna Hirschfield [DonnaH@gkgattorneys.com]  
**Sent:** Monday, November 08, 2010 4:41 PM  
**To:** Buglione, Audrey  
**Cc:** David Wolf  
**Subject:** Wolf v. City of Bethlehem

Ms. Buglione -

Attached you will find a letter with attachments concerning the above matter. This is being forwarded to you via email, as several attempts to fax the same have failed. Please confirm receipt of the attached.

Thank you.

Donna J. Hirschfield,  
Legal Assistant  
Goldberg, Kamin & Garvin, LLP  
1806 Frick Building  
437 Grant Street  
Pittsburgh, PA 15219  
(412) 281-1119 x 111  
(412) 281-1121 - Fax



November 23, 2010

David A. Wolf, Esquire  
Goldberg, Kamin, & Garvin, LLP  
1806 Frick Building  
437 Grant Street  
Pittsburgh, PA 15219

RE: Petition for Reconsideration received November 12, 2010, OOR Dkt. AP 2010-0894

Dear Mr. Wolf:

We are in receipt of your Petition for Reconsideration dated November 8, 2010 that was received by this office on November 12, 2010 in connection with the Office of Open Records November 1, 2010 determination that the appeal docketed at *Wolf v. City of Bethlehem*, OOR Dkt. AP 2010-0894 was untimely.

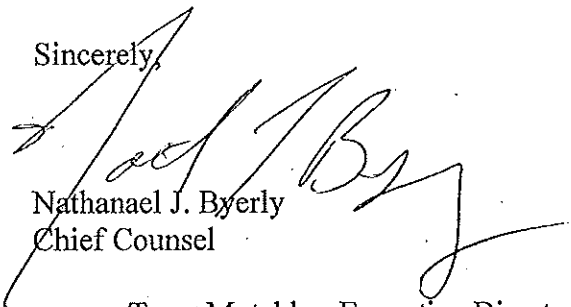
We note here that in the absence of applicable Office of Open Records interim regulations regarding petitions for reconsideration, this office will follow the procedures set forth in Pennsylvania General Rules of Administrative Practice and Procedure, 1 Pa. Code Section 35.241.

We also note that the agency, the City of Bethlehem, may file a response in the nature of an answer within 15 days of the issuance of this order granting reconsideration or by Tuesday, December 8, 2010.

This office will issue a determination responsive to this Petition for Reconsideration no later than Monday, December 13, 2010.

Please contact me if you have any further questions.

Sincerely,



Nathanael J. Byerly  
Chief Counsel

cc: Terry Mutchler, Executive Director, Office of Open Records  
Cynthia Bartera