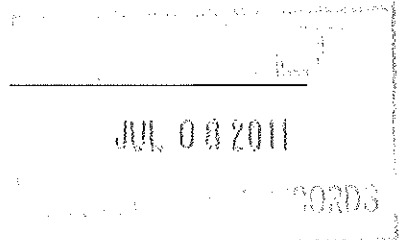


SPINO & NEWCOMB, LLC

1616 WALNUT STREET
SUITE 2323
PHILADELPHIA, PA 19103
PH. (215) 554-6171
FAX. (215) 558-5006

Valerie A. Spino†
Attorney at Law
vspino@spinonewcomb.com



Jonathan P. Newcomb†
Attorney at Law
jnewcomb@spinonewcomb.com

July 6, 2011

Philip W. Newcomer, Esq.
Montgomery County Solicitor's Office
One Montgomery Plaza, Ste. 800
P.O. Box 311
Norristown, PA 19404-0311

Audrey Buglione, Esq.
Pennsylvania Office of Open Records
Commonwealth Building
404 North Street, 4th Floor
Harrisburg, PA 17120

RE: Montgomery County v. Paul Iverson

Dear Counsel:

Enclosed please find the following:

1. Amended Certificate of Service in connection with the Notice of Appeal;
2. Notice of Appeal, filed on June 10, 2011; and
3. Request for Transcript.

Should you have any questions with regard to the foregoing, please do not hesitate to contact me.

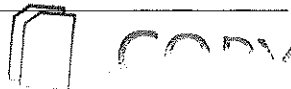
Very truly yours,

JONATHAN P. NEWCOMB

JPN/
Enclosures
cc: Mr. Paul Iverson

SPINO & NEWCOMB, LLC

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SUITE 2323
PHILADELPHIA, PA 19103
PH. (215) 554-6171
FAX. (215) 558-5006



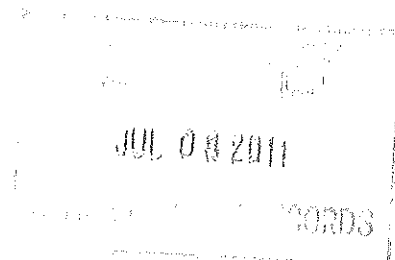
Valerie A. Spino²
Attorney at Law
vspino@spinonewcomb.com

Jonathan P. Newcomb²
Attorney at Law
jnewcomb@spinonewcomb.com

July 7, 2011

via federal express

Chief Clerk
Commonwealth Court of Pennsylvania
601 Commonwealth Avenue, Suite 2100
P.O. Box 69185
Harrisburg, PA 17106-9185



RE: Montgomery County v. Paul Iverson
No. 2011-06537

Dear Sir/Madam:

Enclosed for filing, please find the following:

1. Amended Certificate of Service in connection with the Notice of Appeal;
2. Notice of Appeal with Defect Correction Notice; and
3. Request for Transcript.

For your reference, I have also included copies of the letter requesting a copy of the transcript to Debra O'Dell, dated June 10, 2011 and a copy of the transmittal letter to the Prothonotary of Montgomery County, indicating submission of said request, also dated June 10, 2011.

Kindly file the originals and return a time-stamped copy of each document. I have provided a postage paid envelope for your convenience.

Should you have any questions with regard to the foregoing, please do not hesitate to contact me.

Very truly yours,

JONATHAN P. NEWCOMB

JPN/vs
Enclosures

cc: Philip W. Newcomer, Esq.
Andrea Buglione, Esq.
Debra O'Dell
Paul Iverson

AMENDED CERTIFICATE OF SERVICE

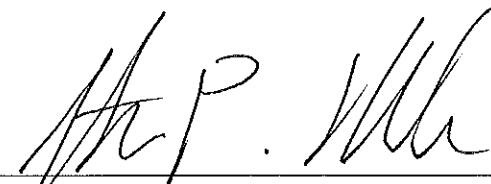
I, JONATHAN P. NEWCOMB, ESQ., Attorney for Defendant, Paul Iverson,
hereby certify that on this date I caused a true and correct copy of the foregoing Notice of
Appeal to be served as follows:

Hon. Gary S. Silow
Montgomery County Courthouse
Chambers, Plaza Level
Montgomery County Courthouse
Main & Swede Streets
P.O. Box 311
Norristown, PA 19404
via hand delivery on June 10, 2011

Philip W. Newcomer, Esq.
Office of Solicitor
One Montgomery Plaza, Suite 800
Norristown, PA 19404
Attorney for Plaintiff
via regular mail on June 10, 2011

Debra O'Dell
Montgomery County Courthouse
P.O. Box 218
Norristown, PA 19404
Court Reporter
via regular mail on June 10, 2011

Audrey Buglione, Esq.
Pennsylvania Office of Open Records
Commonwealth Building
404 North Street, 4th Floor
Harrisburg, PA 17120
via federal express July 6, 2011



JONATHAN P. NEWCOMB, ESQ.

Dated: July 6, 2011

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA

Montgomery County *

VS. *

Paul Iverson *

_____ *

NO. 2011-06537

NOTICE OF APPEAL

OFFICE OF THE
PROTODUOTARY
14 JUN 10 PM 2:11


Notice is given that Paul Iverson

Plaintiff Defendant Appeals to the

Superior Commonwealth Court of Pennsylvania

From an order entered on June 3 2011

And reflected in the docket entries attached.




Signature

Jonathan P. Newcomb, Esq.

Print/Type Name

Case Details

Case Number	2011-06537
Commencement Date	3/17/2011
Case Type	Petition
PFA Number	
Caption Plaintiff	MONTGOMERY COUNTY
Caption Defendant	IVERSON, PAUL
Lis Pendens Indicator	No
Status	2
Judge	
Parcel Number	
Remarks	FOR REVIEW OF THE 02/15/2011 FINAL DETERMINATION OF THE PENNSYLVANIA OFFICE OF RECORDS
Sealed	No

Docket Date Range: 

Dockets

Seq.	Filing Date	Docket Type	Docket Text	Sealed
0	3/17/2011	Petition	FOR REVIEW OF THE 02/15/2011 FINAL DETERMINATION OF THE PENNSYLVANIA OFFICE OF RECORDS	No
1	3/17/2011	Affidavit/Certificate of Service of	PET FOR REVIEW ON 03/17/2011	No
2	4/11/2011	Notice of Scheduling		No
3	E 4/12/2011	Answer/Response	BY PAUL IVERSON TO PETITION FOR REVIEW OF THE FEBRUARY 15, 2011 FINAL DETERMINATION OF THE PENNSYLVANIA OFFICE OF OPEN RECORDS	No
4	E 4/12/2011	Affidavit/Certificate of Service of	RESPONSE TO PETITION FOR REVIEW OF FEBRUARY 15, 2011 FINAL DETERMINATION OF THE PENNSYLVANIA OFFICE OF OPEN RECORDS ON 4/11/2011	No
5	E 4/12/2011	Praec for Substitution of	VERIFICATION	No
6	E 4/12/2011	Affidavit/Certificate of Service of	PRAECIPE TO SUBSTITUTE VERIFICATION ON 4/11/2011	No
7	6/2/2011	Hearing/Court Reporter	DEB ODELL ON 06/02/2011	No
8	6/3/2011	Order	OF 6/2/11 SILOW, J 2/15/11 FINAL DETERMINATION IS REVERSED; PETITIONERS DENIAL OF RESPONDENTS REQ ON GROUNDS OF INSUFFICIENT SPEDIFICITY IS SUSTAINED; CC	No

CERTIFICATE OF SERVICE

I, JONATHAN P. NEWCOMB, ESQ., Attorney for Defendant, Paul Iverson,
hereby certify that on this date I caused a true and correct copy of the foregoing Notice of
Appeal to be served as follows:

Hon. Gary S. Silow
Montgomery County Courthouse
Chambers, Plaza Level
Montgomery County Courthouse
Main & Swede Streets
P.O. Box 311
Norristown, PA 19404

Philip W. Newcomer, Esq.
Office of Solicitor
One Montgomery Plaza, Suite 800
Norristown, PA 19404
Attorney for Plaintiff
via regular mail

Debra O'Dell
Montgomery County Courthouse
P.O. Box 218
Norristown, PA 19404
via regular mail



JONATHAN P. NEWCOMB, ESQ.

Dated: June 10, 2011

SPINO & NEWCOMB, LLC
By: Jonathan P. Newcomb, Esq.
Attorney I.D. No.: 94142
By: Valerie A. Spino, Esq.
Attorney I.D. No.: 91439
1616 Walnut Street, Ste. 2323
Philadelphia, PA 19103
Ph. (215) 554-6171
Fax. (215) 558-5006


Attorneys for Defendant, Paul Iverson

IN THE COURT OF COMMON PLEAS OF
MONTGOMERY COUNTY, PENNSYLVANIA

MONTGOMERY COUNTY	:	
P.O. Box 311	:	
Norristown, PA 19404-0311	:	
<i>Petitioner,</i>	:	
	:	
v.	:	
	:	
PAUL IVERSON	:	Docket No. 11-06537
P.O. Box 76	:	
Southampton, PA 18966	:	
<i>Respondent.</i>	:	Commonwealth Court No. 1071 CD 2011

REQUEST FOR TRANSCRIPT

A Notice of Appeal having been filed in this matter on June 10, 2011, the official court reporter is hereby ordered to produce, certify, and file the transcript in this matter in conformity with Rule 1922 of the Pennsylvania Rules of Appellate Procedure.

SPINO & NEWCOMB, LLC
By: 

JONATHAN P. NEWCOMB
VALERIE A. SPINO

Dated: July 6, 2011

CERTIFICATE OF SERVICE

I, JONATHAN P. NEWCOMB, ESQ., Attorney for Defendant, Paul Iverson,
hereby certify that on this date I caused a true and correct copy of the foregoing Notice of
Appeal to be served as follows:

Hon. Gary S. Silow
Montgomery County Courthouse
Chambers, Plaza Level
Montgomery County Courthouse
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P.O. Box 311
Norristown, PA 19404
via hand delivery on June 10, 2011

Philip W. Newcomer, Esq.
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One Montgomery Plaza, Suite 800
Norristown, PA 19404
Attorney for Plaintiff
via regular mail on June 10, 2011

Debra O'Dell
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Audrey Buglione, Esq.
Pennsylvania Office of Open Records
Commonwealth Building
404 North Street, 4th Floor
Harrisburg, PA 17120
via federal express July 6, 2011



JONATHAN P. NEWCOMB, ESQ.

Dated: July 6, 2011



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

PAUL IVERSON,
Complainant

v.

MONTGOMERY COUNTY,
Respondent

:
:
:
:
:
:
:
:
:
:

Docket No. AP 2011-0071

INTRODUCTION

Paul Iverson (the “Requester”) submitted a request to Montgomery County (“County”) pursuant to the Right-to-Know Law, 65 P.S. §§67.101 *et seq.*, (“RTKL”), seeking various records. The County denied the request as insufficiently specific. . The Requester timely appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **granted** and the County is required to take further action.

FACTUAL BACKGROUND

On December 3, 2010, the Requester submitted a right-to-know request seeking the following records:

[A]ll email records to and from the <montcopa.org> mail domain, to and from the <septa.org>,<dvrpc.org>,<state.pa.us>,<pahouse.net> and <pasenate.com> domains,

WHERE the email subject and body contain the following terms:

Newtown, Fox Chase, Fox Chase-Newtown, R8, HS-1, Pennypack, Trail, Greenway, Pa-tec, Bryn Athy, Pitcairn, Parkhouse, Lorimer, Bethayres

(“Request”). The County extended its deadline to respond pursuant to 65 P.S. § 67.902(b). On January 10, 2011, the County denied the Request as insufficiently specific because it 1) did not

identify a time period; 2) did not identify County senders/recipients; and 3) did not identify the subject matter for the email sought.

On January 21, 2011, the Requester appealed to the OOR, asserting he identified a time period by seeking “all records in the agency’s possession.” He contends he does not know the dates of records maintained by the agency and therefore requests all records. He argues that he could not provide senders or recipients because he does not have a list of all employees in the montco.org domain, and thus requests records of any user under that domain. Finally, he contests that the Request identifies the subject through the list of nouns provided.

On February 2, 2011, the County Open Records Officer responded to the appeal, reasserting its position that the Request was not sufficiently specific. The County states that to search for email from the County domain to the domains named in the Request, a manual search of each mailbox is required and would take multiple staff working full time for over a forty-five (45) day period, which reflects the insufficiently specific nature of the Request. The County provided an Affidavit signed by Anthony Olivieri, Infrastructure Development Manager for the County Information Technology Solutions Department, signed under penalty of perjury stating as follows:

1. “[T]he County Information Technology Solutions Department maintains an email archive that is accessible dating back through approximately 2006.”
2. “[T]here are approximately 5,000 email addresses in use by the County and its employees.”
3. “All information contained within the County’s letter brief that is attributed to me is true and correct to the best of my knowledge and belief.”

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 and the OOR has the necessary, requisite information and evidence before it to properly adjudicate the matter.

The County is a local agency required to disclose public records. 65 P.S. §§67.102 and 302. Records in possession, custody or control of a local or 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)(1) states: “[t]he 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).

Section 703 provides in pertinent part 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 P.S. §67.703. The determination of whether a request is specific is by a

totality of the circumstances as it is entirely dependent up on the facts of any particular request and denial. “If the OOR can determine what the Requester sought, it will find the request to be sufficiently specific.” *See Lauff v. Fort Cherry School District*, OOR Dkt. AP 2010-0128, 2010 PA O.O.R.D. LEXIS 180 (finding request for “any and all” correspondence to be sufficiently specific).

Recently, the Commonwealth Court held a request for “[a]ny and all records, files, or communication(s) of any kind....” related to vehicle stops, searches and seizures, insufficiently specific. *Pa. State Police v. Office of Open Records*, 995 A.2d 515 (Pa. Commw. 2010) (“*George*”). The Commonwealth Court reasoned that the request did not set forth a type or class of records offering sufficient detail to enable the agency to discern the responsive records. *Id.* at 517 (finding portion of the request for “any and allmanuals” sufficiently specific); *see also Reed v. Pa. Game Commission*, OOR Dkt. AP 2010-0864, 2010 PA O.O.R.D. LEXIS 826 (holding request lacking a type of records insufficiently specific); *Urbina v. Office of the Governor*, OOR Dkt. AP 2009-0972, 2009 PA O.O.R.D. LEXIS 708.

Here the Request identifies the type of record sought as email records. It seeks all email records from any user of the County email domain sent to five identified email domains. The Request identifies the particular emails sought as those containing any of fourteen (14) listed nouns in the subject and body of the email. The County asserts it would take 45 days to do the search required to gather the responsive emails. However, “electronic communication and the volume of records created by this technology does not alter the public nature of agency information contained within.” *See Urbina*, OOR Dkt. AP 2009-0972, 2009 PA O.O.R.D. LEXIS 708 (finding request for emails from and to identified recipients regarding “public

business” of the Governor sufficiently specific). In *Urbina*, the OOR discussed electronic communications and the RTKL stating as follows:

The OOR recognizes the potential burden, and sometimes significant burden, these types of requests may place upon on an agency already struggling with heavy workloads. However, under this law, a request involving the detailed review of voluminous documents does not relieve the agency of its requirements to presume the records are open and available and respond in accordance with the RTKL. Moreover, the Legislature considered this balancing of a requestor’s rights under the RTKL with an agency’s ability to comply with the RTKL and determined that the law had a presumption of openness. *See Werner v. Pgh. Schl. Dist*, OOR Dkt. AP 2009-0551, p. 7.

The Legislature expressly rejected allowing the number of records to control whether the records need be produced through the language in Section 1308(1) which prohibits a policy or regulation which places “a limitation on the number of records which may be requested or made available for inspection or duplication.” 65 P.S. § 67.1308(1). The fact that this prohibition means that a request may involve an extensive number of records and that the review may take a considerable amount of time is also accounted for in the RTKL. Section 902(a)(7) allows the agency to extend the deadline for a response for thirty (30) days beyond the five (5) business day period by notifying the requester that “the extent or nature of the request precludes a response within the required time frame.” The RTKL enables an agency to extend the time frame to respond beyond even that period if it acquires the written consent of the requester. 65 P.S. § 67.902(b)(2).

In the instant matter, the Request is limited to email communications sent to or from identified domains containing specifically identified words. The OOR is cognizant of the difficulty of responding to a request of the type that is the subject of this appeal. However, to find such a request insufficiently specific puts a requester into the position of needing to know as much or more about agency business and transactions than the agency. Accordingly, the OOR finds that the Request was sufficiently specific as to what records are sought.

CONCLUSION

For the foregoing reasons, the appeal is **granted**, and the County is required to provide responsive records to the Requester within thirty (30) 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 or petition for review to the Montgomery 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 of the RTKL. This Final Determination shall be placed on the website at: <http://openrecords.state.pa.us>.

FINAL DETERMINATION ISSUED AND MAILED: February 15, 2011

A handwritten signature in black ink, appearing to read 'Audrey Buglione', written in a cursive style.

**AUDREY BUGLIONE, ESQUIRE
APPEALS OFFICER**

Sent to: Paul Iverson, Thomas Noonan