



**pennsylvania**  
OFFICE OF OPEN RECORDS

January 24, 2012

Joel S. Barras, Esquire  
Reed Smith, LLP  
2500 One Liberty Place  
1650 Market Street  
Philadelphia, PA 19103-7301

RE: Request for Advisory Opinion on Behalf of Berks County Prison Board

Dear Mr. Barras,

We are in receipt of your request for an advisory opinion and hereby grant the request. An advisory opinion will be issued in approximately 90 days and posted on our website along with your request.

Yours truly,

A handwritten signature in black ink, appearing to read 'D. Lefkowitz'.

Dena Lefkowitz  
Chief Counsel

Cc: Terry Mutchler, Executive Director  
Benjamin Lorah, Esquire

JAN 23 2012

Reed Smith LLP  
OFFICE OF OPEN RECORDS 2500 One Liberty Place  
1650 Market Street  
Philadelphia, PA 19103-7301  
+1 215 851 8100  
Fax +1 215 851 1420  
reedsmith.com

Joel S. Barras  
Direct Phone: +1 215 241 7990  
Email: [jbarras@reedsmith.com](mailto:jbarras@reedsmith.com)

January 17, 2012

## By Certified Mail

Terry Mutchler, Executive Director  
Office of Open Records  
Commonwealth of Pennsylvania  
400 North Street  
Harrisburg, PA 17120

### Re: Request for an Advisory Opinion on behalf of Berks County Prison Board

Dear Director Mutchler :

Reed Smith LLP routinely represents several county prisons across the Commonwealth. We request an advisory opinion from the Office of Open Records ("OOR") regarding whether a county prison board is required to provide to the media or public photographs of inmates taken at the time of incarceration by a county prison upon a Right to Know Law request for such information.

We are aware that in a past case involving the Pennsylvania State Police ("PSP"), the OOR concluded that an arrest photograph taken by the Pennsylvania State Police related to a criminal investigation and was therefore protected from disclosure as "a record of an agency relating to or resulting in a criminal investigation," under 65 P.S. § 67.708(b) (16). *In the Matter of Francis Duffner v. Pennsylvania State Police*, No. AP 2009-0130 (April 1, 2009).

It is not clear however, if the exemption that applied to the above case would apply where the photograph was not taken as part of the criminal investigation, but was taken as part of the procedures related to commencing incarceration for the inmate. If the exemption does not apply, we request an opinion on whether a photograph taken as part of the procedures related to commencing incarceration would be protected from disclosure by any other exemption. This request for an advisory opinion is relevant to the application of the Right to Know Law because the media or public rely on the Right to Know Law as the basis of their requests for a booking photograph from a county prison board.

Berks County Prison Board is not involved in any pending litigation regarding this issue and is not aware of any other pending litigation involving this issue. The county prisons we represent have routinely received requests for booking photographs from the media and the public in the past. However we are not aware of any pending Right to Know requests for such information.

Terry Mutchler, Executive Director  
January 17, 2012  
Page 2

Any communications regarding this request can be sent directly to my attention.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Joel S. Barras', with a long horizontal flourish extending to the right.

Joel S. Barras

JSB:ve

cc: Valerie Eifert