

IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY PENNSYLVANIA

LANCASTER COUNTY DISTRICT  
ATTORNEY'S OFFICE  
Petitioner

v.

CARTER WALKER and  
LNP/LANCASTER ONLINE  
Respondent

CIVIL ACTION - LAW

PETITION FOR REVIEW  
PURSUANT TO THE  
PENNSYLVANIA RIGHT  
TO KNOW LAW

No CI-2019-01185

PROTHONOTARY'S OFFICE  
LANCASTER, PA

2019 FEB 28 PM 2:30

ENTERED AND FILED

**PETITION TO INTERVENE**

AND NOW, comes the County of Lancaster, by and through its counsel, Isaac S. Gaylord, Assistant County Solicitor, who respectfully presents this Petition to Intervene in the Appeal of the Final Determination of the Pennsylvania Office of Open Records and, in support thereof, sets forth the following grounds for intervention:

1. The County of Lancaster (hereinafter "Intervenor" or "County") is a third-class county organized under the laws of the Commonwealth of Pennsylvania with offices at 150 North Queen Street, Lancaster Pennsylvania.
2. On February 6, 2019 the Lancaster County District Attorney's Office (hereinafter the "DA's Office") filed its "Petition for Review/Appeal of Final Determination of the Pennsylvania Office of Open Records" with the Prothonotary in and for Lancaster County, Pennsylvania, docketed at 2019-01185.
3. The original records request was submitted by Carter Walker of LNP Media Group (hereafter "Requestor") to the District Attorney's Office on September 11, 2018 and requested production of forfeiture accounts, specifically:

1—Records of what items were forfeited under this Act, for example, vehicles, real property, cash and/or cash equivalent, or any other item of value. This documentation should identify the property, the date the property ... was seized, value of item and context of the forfeiture (seized from whom, where and why). [“Item 1”]

2—After the item was forfeited, documentation that shows how it was processed, whether that was sale, reutilization, or distribution to other law enforcement agenc[ies] or personnel. Documentation should identify the property, what was done with the item (sold or distributed), date sold/distributed, who the item was distributed to if it was distributed, and how much the item was sold for if it was sold. [“Item 2”]

3—Any documentation of a policy, formal or information, that governs the use and/or disposal of forfeited assets by the DA's office. For example, a policy that guides the decision to sell forfeited property for profit and later use, or use the property. [“Item 3”]

4—Records of the amount of funds taken in by the agency in a given year as a result of civil asset forfeiture, whether that be through cash forfeitures or sale of forfeited property. This documentation should show the amount of funds coming into the agency's forfeiture account, where the funds originated and when it was received. [“Item 4”]

5—Records that show how forfeited property proceeds were spent, i.e. officer training, equipment, funding programs, etc., and records that illustrate how these expenditures comply with the Act's mandate that forfeited funds be used for combating substance abuse. [“Item 5”]

6—Forfeiture account balances at the end of each year, and for 2018, as of the date of this request. [“Item 6”]

4. After the District Attorney's office declined production of the requested documents on October 18, 2018, Requestor filed an appeal to the Pennsylvania Office of Open Records on November 6, 2018 challenging the denial of items 1, 2, 4, 5, and 6 (listed in Paragraph 3).
5. On January 7, 2019, the Pennsylvania Office of Open Records (“OOR”) issued its Final Determination holding, inter alia, that Requester's appeal was granted, and the DA's Office was required to provide the requested records.
6. Petitioner District Attorney's Office seeks reversal of the January 7, 2019 Final Determination relative to records related to forfeiture accounts and items seized pursuant

to The Controlled Substance Drug Device and Cosmetic Act, 42 Pa. C.S. 5801 *et seq* (hereinafter the “Act”).

7. Intervenor believes, and therefore avers, that significant portions of the requested records at issue in this case are public records, and therefore should be produced to Requester.

**Intervenor’s Status as a Party Who Meets Intervention Criteria**

8. A party may intervene if it meets any of the criteria listed in Pennsylvania Rule of Civil Procedure 2327.
9. Pa. R.C.P. Rule 2327(1) allows intervention if “the entry of a judgment in such action or the satisfaction of such judgment will impose any liability upon such person to indemnify in whole or in part the party against whom judgment may be entered.”
10. In the case at hand, Intervenor may be subject to liability should a finding of bad faith be entered against the DA’s Office pursuant to the Right to Know Act provision 65 P.S. §67.1305, which states that “A court may impose a civil penalty of not more than \$1,500 if an agency denied access to a public record in bad faith.”
11. Pursuant to the County Code, 16 P.S. § 1403, “all necessary expenses incurred by the district attorney or the district attorney’s assistants... shall be paid by the county from the general funds of the county.”
12. Pa. R.C.P. Rule 2327(3) allows intervention if “such person could have joined as an original party in the action or could have been joined therein.”
13. Some of the records requested are in the custody and control of the Lancaster County Controller’s Office, specifically records showing how forfeited proceeds were spent.
14. In December 2018 and in February 2019 Intervenor received right to know requests from Requestor seeking production of certain vouchers and associated documents from the

County, all of which were transferred to the District Attorney's Open Records Officer due to the pendency of the instant appeal. (Attached hereto as Exhibit A).

15. The records Requestor requested from the Intervenor in the other separate requests do not facially relate to a criminal investigation nor constitute an audit conducted pursuant to the Act, 42 Pa.C.S. §5803(j)(k), although some information contained in the requested documents may be withheld as provided in the Right to Know Act, 65 P.S. §67.708(B)(6)(i)(a)&(c), as containing the home address of a law enforcement officer or judge or other personally identifying information and more generally under the redaction provisions of 65 P.S. §67.708(c).
16. Pa. R.C.P. 2327(4) allows intervention if "the determination of such action may affect any legally enforceable interest of such person whether or not such person may be bound by a judgment in the action."
17. This appeal will affect the production of records sought by Requestor from Intervenor, and accordingly, meets the criteria for intervention as determining a standard that will be applicable to Intervenor.
18. The County Code, 16 P.S. §1783, provides that "The [County] budget shall reflect as nearly as possible the estimated revenues and expenditures for the year for which it is prepared. The commissioners shall, upon adopting the budget, adopt the appropriation measures required to put it into effect, and shall fix such rate of taxation upon the valuation of the property taxable for county purposes as will, together with all other estimated revenues of the county, excluding operating, capital and other reserve funds, raise a sufficient sum to meet the said expenditures."

19. The County currently relies upon voluntary contributions from municipalities and the proceeds of asset forfeiture to fund the Drug Task Force (hereinafter "DTF").
20. The DA's Office raised the question of whether Intervenor should commit County money to DTF during the last budget process to assure certainty of future financial support.
21. In order to commit such money, Intervenor needs to be able to accurately, publicly, and lawfully account for the monies spent by the DTF prior to committing such funds in the future.
22. The records sought by Requestor of historic and current revenues and expenditures related to forfeiture funds are necessary to estimate future funding for the Lancaster County Drug Task Force.

**Intervenor's Interest in the Action**

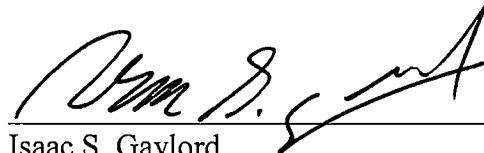
23. Intervenor proposes release of some of the requested documents at issue in this appeal, making its position "in subordination to and in recognition of the propriety of the action."  
Pa. R.C.P. No. 2329.
24. Intervenor urges release of some documents, specifically the financial documents showing the disposition of property and funds that are the fruits of asset forfeiture, as adjusted by retention or redaction based upon statutory exceptions including but not limited to personal security, home addresses of law enforcement and judicial officers, and criminal investigative materials.

25. Intervenor's position is not adequately represented in this action insofar as the Requestor seeks all records requested and the DA's Office opposes release of the underlying records and takes the position that the Forfeiture Act prohibits such release.

26. Intervenor has a further interest in ensuring that documents in the custody of Lancaster County are made public in a manner that is uniform under the Right to Know Law throughout all County agencies, so that results of a request for public records will be the same regardless of the office receiving the request.

WHEREFORE, for the above-stated reasons, Intervenor respectfully requests that its Petition to Intervene be granted and that it be provided the opportunity to submit briefs to the Court as a party.

Respectfully Submitted,

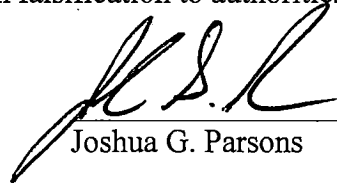
A handwritten signature in black ink, appearing to read 'Isaac S. Gaylord', written over a horizontal line.

Isaac S. Gaylord  
Attorney I.D. 323722  
Assistant County Solicitor  
County of Lancaster  
150 N. Queen Street, Suite 714  
Lancaster, PA 17603  
(717)735-1584

**VERIFICATION**

I, Joshua G. Parsons, Chairman of the Board of Commissioners of Lancaster County, verify that the statements made in this Petition to Intervene are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 PA. C.S. § 4904 relating to unsworn falsification to authorities.

Dated: Feb 28th, 2019

  
\_\_\_\_\_  
Joshua G. Parsons

**Exhibit A**



LCOOR-001

Date Received: \_\_\_\_\_



#71-2019

LANCASTER Co Open Records

2019 FEB 25 PM 3:47

RECEIVED

**COUNTY OF LANCASTER OPEN RECORDS REQUEST FORM**

Date Requested: 2/25/19

Request Submitted By: E-MAIL  U.S. MAIL  FAX  IN-PERSON

Name Of Requestor: Carter Walker

Mailing Address: 8 West King Street

Street/P.O. Box

Lancaster

PA

17601

City

State

Zip Code

Telephone Number: 484 947 1305

Fax Number: 717 399 6507

E-Mail Address: cwalker@lnpnews.com

**Records Requested:** Please identify each of the documents that are subject to this request. You must identify these documents with sufficient specificity to enable the County to ascertain which records are being requested.

Requester seeks the receipt or voucher underlying the \$10,000 purchase at Lancaster Toyota Mazda that corresponds with Voucher 01198734. The purchase was made from County Controller Account 6587, Fund AA, Program 19011.

Requester notes that the record sought is in possession of the County Controller, and is a County Record subject to disclosure. Please notify requester prior to the action if this request will be forwarded to any other agency.

As noted in Office of Open Records AP 2018-1918 (In the Matter of Charles Spatz and Muckrock News), "the Commonwealth Court has held that: [t]he non-agency status of the creator or sender of records does not preclude their public status. See Dep't of Env'tl. Prot. v. Cole, 52 A.3d 541 (Pa. Commw. 2012) (rebate applications submitted by homeowners and small business owners are public); Easton Area Sch. Dist. v. Baxter, 35 A.3d 1259 (Pa. Commw.), appeal denied, \_\_\_ Pa. \_\_\_, 54 A.3d 350 (2012) (requiring disclosure of emails of individual public officials as records of agency). Private persons and entities may create correspondence and send it to an agency, thereby potentially making it a record of the agency. Bagwell v. Pa. Dep't of Educ., 76 A.3d 81, 90 (Pa. Commw. 2013). Therefore, it is of no import that AGA created and sent the emails at issue."

In this instance, even if the voucher or receipt in question was created or submitted by another county department, because the records themselves are lodged and are part of the Controller's office, they become a record of the Controller's office subject to release under the RTKL.

In addition, requester notes that Section 506(c) of the Right to Know Law permits an agency to exercise its discretion to make any otherwise exempt record accessible for inspection, after a weighing of interests and providing that no other law precludes release. Requester is a reporter with the county's daily and Sunday paper and the content sought in this request is in the public interest, such that access outweighs other factors that may favor restriction of access.

Please check one of the following boxes:

I am only requesting access to the documents identified above.

I am only requesting a copy of the documents identified above.

I am requesting access to the documents identified above and a copy of those documents.

If you are requesting a copy of the documents identified above, please check one of the following boxes: I want a paper copy of the documents.

Other format (please specify): email

**Right To Know Official:**

**Date Received By The Agency:** \_\_\_\_\_

LCOOR-001

Date Received: \_\_\_\_\_



#70-2019

**COUNTY OF LANCASTER OPEN RECORDS REQUEST FORM**

Date Requested: 2/25/19

Request Submitted By: E-MAIL  U.S. MAIL FAX IN-PERSON

RECEIVED  
2019 FEB 25 PM 3:47  
LANCASTER CO OPEN RECORDS

Name Of Requestor: Carter Walker

Mailing Address: 8 West King Street

_____ <i>Street/P.O. Box</i>		
Lancaster	PA	17601
<i>City</i>	<i>State</i>	<i>Zip Code</i>

Telephone Number: 484 947 1305

Fax Number: 717 399 6507

E-Mail Address: cwalker@lnpnews.com

**Records Requested:** Please identify each of the documents that are subject to this request. You must identify these documents with sufficient specificity to enable the County to ascertain which records are being requested.

I am requesting a copy of all purchasing orders with Lancaster Toyota Mazda, of East Petersburg, PA, from Jan. 1 2015 to Dec. 31, 2016.

Please notify the requester if fulfillment of this request will exceed \$100, or if the request needs to be transferred to another agency.

Please check one of the following boxes:

- I am only requesting access to the documents identified above.
- I am only requesting a copy of the documents identified above.
- I am requesting access to the documents identified above and a copy of those documents.

If you are requesting a copy of the documents identified above, please check one of the following boxes: I want a paper copy of the documents.

Other format (please specify): email

**Right To Know Official:**

**Date Received By The Agency:** \_\_\_\_\_

LCOOR-001

Date Received:

348-2018  
12-31-18 Dec



# 348-2018

COUNTY OF LANCASTER OPEN RECORDS REQUEST FORM

Date Requested: 12/20/18

Request Submitted By:

E-MAIL

U.S. MAIL

FAX

IN-PERSON

Name Of Requestor: Carter Walker

Mailing Address: 8 West King Street

Street/P.O. Box

Lancaster

PA

17601

City

State

Zip Code

Telephone Number: 484 947 1305

Fax Number: 717 399 6507

E-Mail Address: cwalker@lnpnews.com

Records Requested: Please identify each of the documents that are subject to this request. You must identify these documents with sufficient specificity to enable the County to ascertain which records are being requested.

I am requesting the receipts/invoices and any associated documents with the following payments:

1. Voucher ID 01313942 (12/14/17)
2. Voucher ID 01315514 (12/28/17)

RECEIVED  
2018 DEC 20 PM 3:11  
Lancaster Co Open Records

Item two appears to be a reoccurring monthly transaction. I am also requesting documentation of when that series of transactions began, what the initial amount was, and when the series is scheduled to end. Both items deal with vehicles, and as such any documentation sent in response to this request should show the make, model, year, color and VIN of the vehicle.

If the invoice/receipt for the items are ready before documentation of when the transaction series for item two began, I would appreciate it if the invoice/receipts could be sent as they are ready.

Please check one of the following boxes:

- I am only requesting access to the documents identified above.
- I am only requesting a copy of the documents identified above.
- I am requesting access to the documents identified above and a copy of those documents.

If you are requesting a copy of the documents identified above, please check one of the following boxes: I want a paper copy of the documents.

Other format (please specify): email

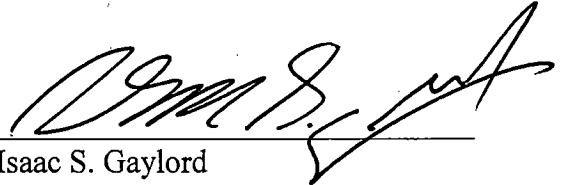
**Right To Know Official:**

**Date Received By The Agency:** \_\_\_\_\_

CERTIFICATION

I hereby certify that all parties in this appeal were notified of the filing of this Petition and Requestor, Carter Walker and LNP Media Group consent to intervention. The District Attorney's office has not responded as of the time of this filing.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Isaac S. Gaylord', written over a horizontal line.

Isaac S. Gaylord  
Attorney I.D. 323722  
Assistant County Solicitor  
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CARTER WALKER and	:	PURSUANT TO THE
LNP/LANCASTER ONLINE	:	PENNSYLVANIA RIGHT
Respondent	:	TO KNOW LAW
	:	
	:	No CI-2019-01185

CERTIFICATE OF SERVICE

I hereby certify that on February 28, 2019, a true and correct copy of the foregoing Petition to Intervene was served as follows:

HAND DELIVERY

Caitlyn Blazier, Esquire  
Assistant District Attorney  
Lancaster County Courthouse  
50 North Duke Street, 5<sup>th</sup> Floor  
Lancaster, PA 17608

HAND DELIVERY

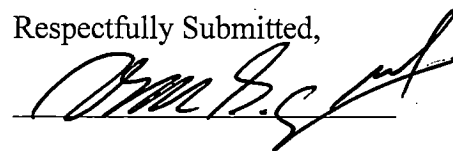
Carter Walker  
Lancaster Newspapers  
8 E. King Street  
Lancaster, PA 17603

VIA EMAIL and

FIRST CLASS MAIL

jiwolfe@pa.gov  
Jill Wolfe, Esquire  
Pennsylvania Office of Open Records  
333 Market St 16th floor  
Harrisburg, PA 17101

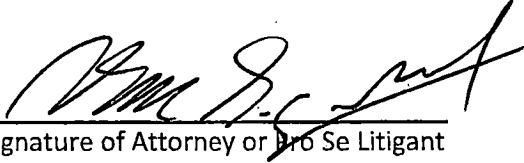
Respectfully Submitted,



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Attorney I.D. 323722  
Assistant County Solicitor  
County of Lancaster  
150 N. Queen Street, Suite 714  
Lancaster, PA 17603  
(717)735-1584



I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.



Signature of Attorney or Pro Se Litigant

Isaac S. Gaylord

Name

323722

Attorney Number (if application)

(717) 735-1584

Telephone

150 N. Queen Street, Suite 714

Address

Lancaster, PA 17603

City/State/Zip Code

lgaylord@co.lancaster.pa.us

Email Address

*Note: Parties and attorney of record in a case will have access to this confidential information form. Confidentiality of this information must be maintained.*