

IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA

CIVIL DIVISION

LANCASTER COUNTY DISTRICT
ATTORNEY'S OFFICE

Petitioner

v.

CARTER WALKER and
LNP/LANCASTER ONLINE

Respondent

NO. CI-2019-01185

ENTERED AND FILED
2019 MAR - 1 PM 3:33
PROTHONOTARY'S OFFICE
LANCASTER, PA

ANSWER TO COUNTY OF LANCASTER'S PETITION TO INTERVENE

AND NOW, this 1st day of March 2019, comes Craig W. Stedman, District Attorney of Lancaster County, by and through Caitlin B. Blazier, Assistant District Attorney, who respectfully files the following Answer to the County of Lancaster's, "Petition to Intervene," requesting that the Petition be Denied and in support thereof, states:

1., through and including 6. Admitted.

7. Denied as a legal conclusion. The averment set forth in paragraph 7 is Intervenor's legal conclusion.

8. Admitted in part as to the general statement of law, however, the DAO suggests that intervention may not be proper in a Right to Know law (RTK) case where the underlying records deal exclusively with the Forfeiture Act. The Pennsylvania Rules of Civil Procedure apply to forfeiture proceedings unless there is a conflict between the Civil Rules of Procedure and specific provisions of the Forfeiture Act. *Commonwealth v. All That Certain Lot or Parcel of Land Located at 605 University Drive*, 104 3d 411, 428 (Pa. 2014). As will be outlined infra, forfeited proceeds/funds are within the exclusive control of the DAO and further, a county may not consider said proceeds/funds for district attorney budgeting purposes. 42 P.C.S.A. § 5803. To that end, the DAO suggests it would be improper to allow intervention as provided for under the civil rules

based on the inherent conflict that exists with the exclusive power afforded to the DAO derived from Section 5803. Id.

9. Admitted.

10. Denied, Intervenor's allegation of the potential of bad faith and any ensuing potential liability is based on pure speculation unsupported by law or fact. The Lancaster County District Attorney's Office (DAO) has not acted in bad faith so as to subject the Intervenor to liability. The DAO has asserted appropriate legal reasons for denying the original RTK request. Further, the burden to carry a bad faith determination under the RTK law rests squarely on the requester. *Uniontown Newspapers, Inc. Pennsylvania Department of Corrections*, 185 A.3d 1161 (Cmwlth. 2018). Unlike the situation in *Uniontown Newspapers Inc.*, the DAO has not attempted to avoid disclosure of records through failing to perform an appropriate search for the requested records. Rather, the DAO bases its denial fully on application of applicable law which proves that the requested material is not subject to dissemination under the RTK law.

The DAO contends, as will be set forth *infra*, that in denying the request the DAO is simply complying with the plain meaning of the Title 42, Chapter 58, Forfeiture of Assets and has substantively responded setting forth its legal analysis which comports with the understanding of the law by the Pennsylvania District Attorney's Association (PDAA) and several other county district attorney's offices. The DAO's legal position is not unique and as stated is in line with other county district attorneys and the PDAA. As a result, any suggestion of bad faith would also necessarily implicate the DA's offices of those other counties as well.

11, 12, 16, and 18. Admitted as to the general statements of law set forth in each paragraph.

13, 14, 15, 17, 19, through and including 22. Denied, the Pennsylvania legislature has established strict oversight procedures for the use of forfeited funds/proceeds through an annual

the DTF funds. Intervenor is currently and has been in possession of all the foregoing DTF financial information. Thus, there is no need to intervene to obtain information already in their possession.

Intervenor suggests as their core reason supporting intervention, in paragraphs 11-22, that the DAO queried the County of Lancaster regarding funding for the DTF and they thus need all this information to calculate future budgets. In actuality, the DAO has only requested a reform to the DTF funding stream in accordance with Intervenor's own Budget Services report. The focus of the DAO issue is with the creation of an equitable and reliable funding stream instead of an unreliable funding stream which fluctuates yearly and depends primarily upon inconsistent voluntary contributions from municipalities and forfeited funds/proceeds. The financial instability of the DTF is not only known to Intervenor the instability was determined by their own Budget Services studies.

Moreover, Intervenor is not entitled to any forfeited fund/proceeds nor is Intervenor legally entitled to consider such funds in its own budget analysis. 42 Pa.C.S.A. §5803(g) gives exclusive control of the use of funds/proceeds to the DAO. More particularly, Section 5803(g) states:

(g) Use of cash or proceeds of property.--Cash or proceeds of property, subject to forfeiture under section 5802 and transferred to the custody of the district attorney under subsection (f) shall be placed in the operating fund of the county in which the district attorney is elected. The appropriate county authority shall immediately release from the operating fund, without restriction, a like amount for the use of the district attorney for the enforcement of or prevention of a violation of the provisions of The Controlled Substance, Drug, Device and Cosmetic Act. The funds shall be maintained in an account or accounts separate from other

revenues of the office. The entity having budgetary control shall not anticipate future forfeitures or proceeds from future forfeitures in adoption and approval of the budget for the district attorney.

42 Pa.C.S.A. § 5803. As such, forfeited funds/proceeds do not involve tax payer dollars and shall not considered part of the general funds of the county.² Intervenor supports their argument for

² Set forth herein are paragraphs 24 to 27 of the DAO's Petition for Review/Appeal of Final Determination of the Pennsylvania Office of Open Records detailing, in part, the DAO's analysis for its original denial.

24. Most importantly, the requested information is not subject to disclosure pursuant to the Forfeiture Act, 42 Pa.C.S. § 5803(j), which states:

- a. Every county in this Commonwealth shall provide, through the controller, board of auditors or other appropriate auditor and the district attorney, an annual audit of all forfeited property and proceeds obtained under this chapter. *The audit shall not be made public but shall be submitted to the Office of Attorney General.* ... Each audit shall include:
 1. Date property was seized.
 2. The type of property seized.
 3. Where property was seized.
 4. The approximate value.
 5. The alleged criminal behavior with which the property is associated.
 6. The disposition or use of property forfeited.
 7. Whether the forfeiture was related to a criminal case and the outcome of the criminal case.
 8. Date of forfeiture decision.

42 Pa.C.S. § 5803(j)(1)-(8) (emphasis added).

25. Section § 5803(k)(1) of the Forfeiture Act states in pertinent part, "[t]he report shall include all information required under subsection (j) subject to the limitations provided under paragraph (2)." Following that subsection, § 5803(k)(2) states, "[t]he Attorney General shall adopt procedures and guidelines, which shall be public, governing the release of information by the Attorney General or the district attorney to protect the confidentiality of forfeited property or proceeds used in ongoing law enforcement activities." 42 Pa.C.S. § 5803(k)(1)-(2).

26. The Attorney General's Office procedures and guidelines that were created to accompany the statute reiterates this audit shall not be made public and that the information shall be released to the controller/auditor necessary for the annual audit under Section VII.

27. Considering the Statutory Construction Act, 1 Pa.C.S. § 1921(a), every statute shall be construed to give effect to all of its provisions. Subsection (b) states, "when the words of a statute are clear and free from ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." The language is simple and meaning plain. The audit consists of certain listed things and they shall not be made public. No ambiguity exists in that statement of law and to disregard the statutory language. Accordingly, for the Final Determination to

intervention, stating the necessity of this information in order to estimate future funding for DTF. The statutory language cited above is clear. The funds **shall** be maintained separate from other funds and the entity managing budgetary control **shall not** consider these funds as part of their review of the District Attorney's proposed budget. § 5803(g) emphasis added. Intervenor's argument directly cuts against the plain language and meaning of the statute. By law, Intervenor cannot consider these monies as part of their budgetary process and therefore cannot argue now that this information is necessary for the budgetary process. As such, the petition to intervene must be denied.

Regardless, the DAO is providing the amounts requested in Requestor's Original request at paragraphs four (4) and six (6). That is, the DAO is providing forfeited funds/proceeds account balances and annual totals. Further, the DAO has offered to provide LNP/Lancaster Online the totals for the general categories of expenses, i.e. officer training and compensation. Finally, in an attempt to resolve the matter, the DAO offered to have the matter presented to an independent mediator. LNP/Lancaster Online declined the DAO's offer of mediation.

Similar requests to those currently presented by LNP/Lancaster Online to the DAO were made to the district attorney's offices in Berks County, York County, Chester County, Lebanon County and Dauphin County. In each of those counties the respective district attorney's offices denied the request based on the same legal basis as was presented by the Lancaster DAO. The Pennsylvania District Attorney's Association agrees with the legal analysis as has been presented by each of the respective district attorney's offices. An appeal on this issue is currently pending in Commonwealth Court from the case out of Berks County. An appeal on this issue is currently

order disclosure, it disregards the plain meaning as well as spirit of the Forfeiture Act as intended by the legislature. The Final Determination fails to give effect to the provisions in 42 Pa.C.S. 5803(j), and therefore a clear error of law exists in its conclusion to order release.

pending in the Court of Common Pleas in York County. LNP/Lancaster Online withdrew the appeal in Chester County. Neither the Lebanon County District Attorney nor the Dauphin County District Attorney have filed an appeal. Further, the DAO is not aware of any other instance where a County itself has petitioned to intervene, making Intervenor very unique in its current request. The DAO suggests that it is likely that no other County has attempted to intervene based on the directives of Section 5803 which strongly state that use of forfeited proceeds/funds remain solely with the DAO and considering that Intervenor is prohibited from even contemplating "future forfeitures or proceeds" in its determination of the DAO's budget. 42 Pa.C.S.A. § 5803(g).

23. Denied as a legal conclusion. The averment set forth in paragraph 23 is Intervenor's legal conclusion. Rather than file the present, "Petition to Intervene," on a matter already before this Court, Intervenor should focus on working with the DAO and municipal leaders to create an equitable, long-term, and reliable funding mechanism for the DTF.

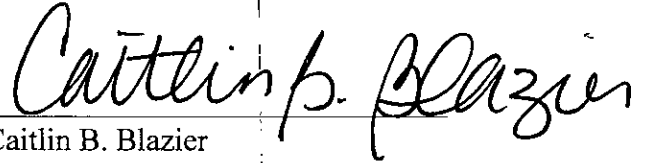
24. Denied, the DAO has set forth its allegations that the request should be denied as per its prior filing.

25. Denied, Intervenor is not entitled to control the records at issue pursuant to 42 Pa.C.S.A. § 5803.

26. Denied, any agency responding to a RTK law request must comply with the law in responding, as the DAO has done in this case. Intervenor is not an appeal agency for the DAO nor does Intervenor maintain any ability to assert a priority right to review DAO's answers to RTK requests. Further, prior to the filing of its "Petition to Intervene," Intervenor never expressed any concerns regarding this request or contacted the DAO regarding this request.

WHEREFORE, based on all of the foregoing, the DAO respectfully requests that this Honorable Court Deny the Petition to Intervene.

Respectfully Submitted,



Caitlin B. Blazier
Assistant District Attorney
Lancaster County District Attorney's Office
P.O. Box 83480
50 N. Duke Street, 5th Floor
Lancaster, PA 17608-3480
Pa. Id. No. 324217
(717) 299-8100

Exhibit A

2019 INVOICE

TO:
FROM: Craig W. Stedman, District Attorney
DATE:

Send payment to:
PO Box 83480
Lancaster, PA 17608-3480
Attn: JoAnna Evans

SUBJECT: LANCASTER COUNTY DRUG ENFORCEMENT TASK FORCE

Please accept this invoice as a request for your annual contribution of \$0,000.00 to the Lancaster County Drug Enforcement Task Force, based upon statistics from the 2010 US Census Bureau for your municipality.

An agreement was reached many years ago between the Lancaster County Board of Commissioners and county municipalities such that all municipalities would voluntarily contribute \$1.00 per resident to the Lancaster County Drug Task Force (DTF). Your contributions are deposited into a separate escrow account, and are used exclusively to fully reimburse the salaries of municipal police officers who are temporarily assigned to the DTF. This arrangement was made in lieu of a county tax increase, and the cost has not changed since implementation in the early 1990's.

I firmly believe that the number one role of government is to provide for public safety and we must confront the fact that drug crimes take place throughout the entire county and have widespread effects. We are losing people at epidemic level proportions and no part of the county is immune to the heroin scourge. There simply are no boundaries to our drug problem and drug dealers certainly do not recognize municipal lines. Further, many crimes such as convenience store robberies, house and business burglaries, all manner of theft cases, as well violent crimes, while not specifically drug crimes, are in fact the direct result of the perpetrator's need to support his or her drug habit. Thus, although no drugs were present when the crime took place and these crimes will not be reported as drug crimes, these crimes are the direct result of the illegal drug trade. The victims of these crimes are in each and every municipality in this county.

Large scale drug investigations require a significant amount of resources which municipal departments typically cannot afford to undertake on their own. The electronic equipment required to handle many of these cases is extremely expensive and must be used regularly to maintain performance standards. In addition, major drug cases are long term and dangerous investigations which require specialized training, knowledge and experience. For that reason, the process of combining resources in an organized fashion under the direction of the District Attorney's Office and the DTF is vital to our continued efforts at fighting illegal drugs throughout all of Lancaster County.

The public safety benefits of the DTF transcend drug crimes. We use the DTF to assist municipalities at no cost on serious non-drug related crimes when there is a need for undercover and/or wiretap operations. In the recent past, the DTF has been able to conduct undercover operations which have not only solved numerous non-drug crimes but literally saved someone's life in a serious attempted murder plot. In that case, there was no other local agency which could have responded as rapidly and effectively as the DTF and I am sure the innocent intended victim would have been killed but for the DTF and its work with the municipal police.

The DTF also has the unique ability to build a network of informants which provide an intelligence network to help fight all types of crimes. Many serious non-drug crimes such as murder, arson and robbery have been solved because we had a DTF informant steer us in the direction of the perpetrator. Without the DTF, this intelligence network will cease to exist. In addition, we established a comprehensive prescription drug drop box program in 2013 which is administered by the DTF at no cost to municipalities. Also, the last two years we used DTF forfeiture money to pay the advance costs for Narcan, an injectable antidote to heroin overdose, which has saved over 100 lives so far in Lancaster County.

Although participation is much stronger than before, as more and more leaders recognize the scope of the heroin scourge we are facing, we still struggle to collect contributions from a number of municipalities. Further, there is no doubt that the DTF is long overdue for a reliable and fair financial stream. The voluntary rate has not changed since inception and, it is still, of course, voluntary. This in turn makes it very difficult to budget each year. The DTF is currently has been operating at a loss and expenses are going up. Thus, unless something changes current operations are unsustainable absent strong forfeiture results which is, of course, another unreliable funding stream.

Specifically, annual expenses and salaries are over \$1,000,000. The state contributes almost \$195,000 annually to this county solely because we have a task force. Should we discontinue the DTF, that money will not be sent to Lancaster County. The county funds about 15% of expenses and I have previously expressed concerns here. Municipal contributions should come to \$519,445, however, we fell \$49,043 short in collections in 2018.

The good news is this is the one of the smallest deficits in recent memory and much better than the \$120,000 we were short in 2013 and 2014. I believe this improvement compared to 2014 is certainly in part due to an increased recognition by officials that we are facing a drug/heroin epidemic which is literally taking more lives than traditional homicides and vehicle accidents combined. However, we cannot let things continue to slip back while our citizens are dying and the drug dealers are getting rich. Thus, your contributions are now, more than ever, vital to the continued operation of the DTF and to public health and safety.

The situation remains serious. Lancaster County Budget Services conducted an independent study in 2013 of the financial sustainability of the DTF and has calculated that the DTF is not sustainable for the long term unless the funding model is changed. They conducted a recent follow up study which came to the same conclusion.

Because we have had some strong forfeiture results the past few years, in my opinion the reality is not quite as bad as the study suggests, and we do have enough forfeiture reserves to sustain the DTF for a few years. However, the study should not be ignored. Further, particularly in light of the facts that the DTF has done so much to protect our county for many years, I firmly believe it is incumbent on the municipal leaders of the county to join together to support the DTF and protect our communities and finally establish a reliable long-term funding stream.

Until/if things are reformed, the reality is such that without your contributions, the DTF quite simply will not last and this county will be unable to conduct in depth drug investigations and will lose all the above described public safety benefits the DTF brings to the county. Should that take place, drug dealers will notice and there will undoubtedly be an increase in drug dealers, drug related crimes, and drug related deaths in Lancaster County.

I certainly recognize these are extremely difficult economic times and 2019 will be an especially difficult budget year. Thus, I am more than willing to meet with any municipality, official, and/or board which might have any questions or concerns regarding the value of your contribution.

As District Attorney, I can assure you the Task Force will continue to operate with efficiency and accountability. To that end, quarterly progress reports are distributed to all municipal officials, so you know what is being accomplished with your hard-earned tax dollars. Further, the DTF undergoes annual audits by the county, state and federal governments.

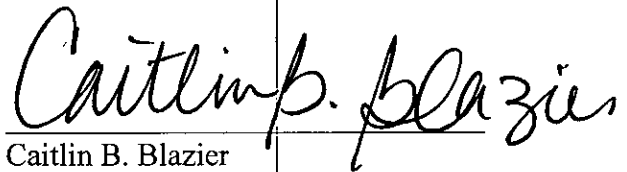
Further, I want to point out that I am more than willing to work with municipal leaders to create a municipal advisory/oversight board to allow for more municipal input and review in the process. I believe you have a right to know where your money is going and how it is being spent and think that the more we can include you in the process, the more you will see the value of your investment.

Also, in order to make sure you have a responsive DTF, I have instructed the DTF to be mindful of special requests of any municipality and to work closely with municipal leaders in this struggle.

Your payment may be sent to the attention of JoAnna Evans, at the address listed above. On behalf of the Lancaster County Drug Task Force, I would like to thank you for your financial support. Do not hesitate to contact me if you have any questions, or would like to discuss any issue and/or to schedule a meeting regarding the Drug Task Force or drug activity in your jurisdiction.

VERIFICATION

I, Assistant District Attorney Caitlin B. Blazier, certify that the facts as set forth in this Answer are true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.



Caitlin B. Blazier
Assistant District Attorney
Lancaster County District Attorney's Office
50 N. Duke Street, 5th Floor
Lancaster, PA 17608
(717) 299-8100
Pa. Id. No. 324217

CERTIFICATE OF SERVICE

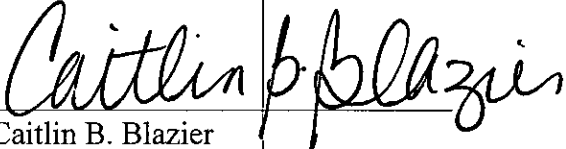
I hereby certify that the foregoing "Answer" has been served upon the person below via the listed methods:

First Class U.S. Mail, postage pre-paid
Carter Walker
LNP/Lancaster Online
8 W King Street
Lancaster, PA 17603

Hand Delivery
Isaac S. Gaylord, Esq.
Lancaster County Solicitor's Office
150 N. Queen Street, Suite 714
Lancaster, PA 17603

First Class U.S. Mail, postage pre-paid
Jill Wolfe, Esquire
Appeals Officer
Pennsylvania Office of Open Records
Commonwealth Keystone Building
333 Market Street, 16th Floor
Harrisburg, PA 17101-2235

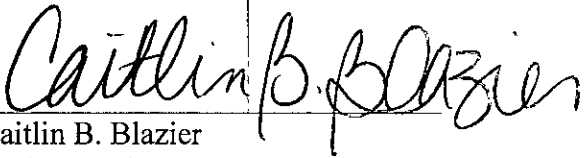
Dated: _____


Caitlin B. Blazier
Assistant District Attorney
Lancaster County District Attorney's Office
50 N. Duke Street, 5th Floor
Lancaster, PA 17608
(717) 299-8100
Pa. Id. No. 324217

CERTIFICATE OF COMPLIANCE

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 different than non-confidential information and documents.

Dated: _____


Caitlin B. Blazier
Assistant District Attorney
Lancaster County District Attorney's Office
50 N. Duke Street, 5th Floor
Lancaster, PA 17608
(717) 299-8100
PA. Id. No. 324217