County of Lancaster

County Solicitor
Jacquelyn E. Pfursich, Esquire

Office of the Solicitor
150 North Queen Street
Suite #714
Lancaster, PA 17603
Phone: 717-735-1584
Fax: 717-293-7208
www.co.lancaster.pa.us

January 6, 2023

VIA EMAIL: bdemiral@pa.gov
FIRST CLASS U.S. MAIL
Berk Demiral, Esquire
Appeals Officer
Commonwealth of Pennsylvania
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234

Re: Stoltzfus vs. Lancaster County; Docket No. 2022-2851

Dear Attorney Demiral:

I am in receipt of the letter from your Office dated December 27, 2022, notifying the County of Mr. Stoltzfus's appeal in this matter. Please consider this letter and enclosures as supplemental information to assist you in issuing a Final Determination in the matter at hand. Based on the following, the County respectfully requests that this appeal be denied.

The County received Mr. Stoltzfus's request under the Right-to-Know Law (RTKL) on October 26, 2022. Mr. Stoltzfus requested:

1. The original purchase order for all the mail in ballots for the 2022 primary election, including quantities and pricing.
2. The invoice for the above order.
3. A copy of the cancelled check or record of payment for this order.
4. The requisition and/or any written correspondence relating to an order for the emergency printing of new mail in ballots to replace the ones that were printed incorrectly by NPC.
5. The purchase order for the replacement ballots, including vendor and costs for these replacement ballots.
6. The invoice for this replacement order listed in item #5.
7. The cancelled check or record of payment for the invoice for #5.

A complete copy of the request is attached hereto as Exhibit "A."

The County invoked a time extension until December 2, 2022. On December 2, 2022, the County issued its response granting a portion of the request and denying portions of the request. A complete copy of the County's Response is attached hereto as Exhibit "B."

Mr. Stoltzfus's appeal focuses specifically on items #5 through #7 of his request. Specifically, "invoices and proof of payment of the emergency order of replacement ballots for the mail in ballots for the Lancaster County 2022 Primary election." The County granted Mr. Stoltzfus's request for invoices for the replacement order for the mail in ballots. Specifically, this was in the form of a credit memo from Lancaster County's vendor for mail-in ballots, NPC, Inc. (hereinafter "NPC").

The County focuses its attention on its denial of records based upon Section 705 which states that an agency shall not be required to create a record which does not currently exist, or to compile, maintain, format or organize a record in a manner in which the agency does not currently compile, maintain, format or organize the record. Specifically, the County denied the request because the County does not have records that would be response to Mr. Stoltzfus's request. "An agency is not required to modify its practices by compiling lists of information when such lists are not otherwise kept by the agency or required by law; and an agency is not required to modify its duties to become the agent of a commercial enterprise." *Current Status, Inc. v. Hykel, 778 A.2d 781, (Pa. Cmwlth.2001).* "Public agencies are not required to compile lists of information pursuant to requests under the Right-to-Know Act when the requested lists do not exist." *Scranton Times, L.P. v. Scranton Single Tax Office, 736 A.2d 711, (Pa. Cmwlth.1999).* "Furthermore, an agency's submission of an affidavit that no records exist may serve as sufficient evidentiary support." *Moore v. Office of Open Records, 992, A.2d 907, (Pa. Commw. Ct. 2010).*

In support of its position, the County's response includes an affidavit from Lancaster County Office of Voter Registration Chief Clerk, Christa Miller. Clief Clerk Miller's affidavit is attached hereto and incorporated as "Exhibit C." In her affidavit, Chief Clerk Miller attested to the situation that occurred which resulted in the need for replacement mail-in ballots for the 2022 Primary. Specifically, that on primary election day, it was discovered that numerous ballots did not have the appropriate election ID codes/numbers. Due to the need for a rapid response, a purchase order for replacement mail-in ballots from vendor NPC, was not completed. Rather, Chief Clerk Miller affirms that she immediately contacted NPC and verbally requested replacement mail-in ballots, which were ultimately sent to the County. Chief Clerk Miller states that there are no responsive purchase orders or canceled checks for the replacement mail-in ballots provided for the 2022 Primary by NPC. Chief Clerk Miller further attests that NPC, Inc. covered the cost of the replacement mail-in ballots due to

the defect. Hence, the reason for there not being a canceled check for payment to NPC for the replacement ballots.

In her affidavit, Chief Clerk Miller noted one exception to what was originally provided in the December 2, 2022, response to Mr. Stoltzfus. Upon review of the records provided, it was discovered that there was an invoice and purchase order for Brenneman, Inc. for 4,100 "voter registration ballots." While the invoice and the purchase order do not specifically indicate that these documents were related to the replacement mail-in ballots, in her affidavit Chief Clerk Miller indicates that these documents may be related to mail-in ballots. Therefore, the County is including these in our response. These two documents are attached collectively to this response and incorporated as "Exhibit D."

In addition to Chief Clerk Miller's affidavit, the County includes the affidavit of County Right to Know Officer Tammy Bender. In her affidavit, attached hereto and incorporated as "Exhibit E", RTK Officer Bender affirms that she contacted the County Controller's Office and requested all purchase orders and cancelled checks to the County's mail-in ballot printing vendor, NPC. RTK Officer Bender further affirms that there were no purchase orders or cancelled checks regarding replacement mail-in ballots for the primary 2022.

In consideration of the foregoing, the affidavits from the Lancaster County Voter Registration Chief Clerk and Right to Know Officer Tammy Bender, and attachments hereto, the County respectfully requests that this appeal be denied.

If you need additional information or further explanation, please contact me at your convenience. Thank you for your consideration of the County's position.

Sincerely,

Jacquelyn Pfursich

Jacquelyn E. Pfursich
County Solicitor

Enclosures (via email)
cc: Phil Stoltzfus

EXHIBIT A

Gonzalez, Kacie #398

From: noreply@civicplus.com
Sent: Tuesday, October 25, 2022 7:36 PM
To: County Open Records
Subject: [EXTERNAL] Online Form Submittal: County of Lancaster Open Records Request Form

RECEIVED
2022 OCT 26 AM 8:5

County of Lancaster Open Records Request Form

Request submitted by:	Email
Requestor's First Name	Phil
Requestor's Last Name	Stoltzfus
Requestor's Address1	*Field not completed.*
Requestor's Address2	*Field not completed.*
Requestor's City	*Field not completed.*
Requestor's State	*Field not completed.*
Requestor's Zip	*Field not completed.*
Requestor's Phone Number	*Field not completed.*
Requestor's Fax Number	*Field not completed.*
Requestor's Email Address	pstoltzfus4506@gmail.com
Records Requested:	On May 18, 2022, Lancaster County Board of elections and NPC CEO Chip Gallaher issued a joint statement stating there was a printing error in the mail in ballots for the 2022 primary election in Lancaster County, PA. My request therefore includes: 1. The original purchase order for all the mail in ballots for the 2022 primary election, including quantities and pricing. 2. The invoice for the above order. 3. A copy of the cancelled check or record of payment for this order. 4. The requisition and/or any written correspondence relating to an order for the emergency printing of new mail in ballots to replace the one's that were printed incorrectly by NPC. 5. The purchase order for the replacement ballots, including vendor and costs for these replacement ballots. 6. The invoice for this replacement order listed in item #5.

	7. The cancelled check or record of payment for the invoice for #5.
Please check one of hte following boxes:	I am only requesting a copy of the documents identified above.
If you are requesting a copy of the documents identified above, please check one of the following boxes:	Other format (please specify below)
Specify format requested - if something other than paper	Scan and email please
Acknowledgement	I agree

Email not displaying correctly? View it in your browser.

EXHIBIT B

County of Lancaster

Open Records Office
150 North Queen Street
Suite #714
Lancaster, PA 17603
Phone: 717-735-1584
Fax: 717-824-8520
www.co.lancaster.pa.us

County Commissioners
Ray D'Agostino
Joshua G. Parsons
John Trescot

Open Records Officer
Tammy L. Bender

November 2, 2022

VIA EMAIL ONLY TO:
Pstoltzfus4506@gmail.com
Phil Stoltzfus

Re: Right to Know Request Number #398-2022

Dear Mr. Stoltzfus:

Thank you for writing to the County of Lancaster Office of Open Records with your request for information pursuant to the Pennsylvania Right to Know Law.

On October 26, 2022, the County of Lancaster Open Records Office received your request as follows:

1. The original purchase order for all the mail in ballots for the 2022 primary election, including quantities and pricing.

2. The invoice for the above order.

3. A copy of the cancelled check or record of payment for this order.

4. The requisition and/or any written correspondence relating to an order for the emergency printing of new mail in ballots to replace the one's that were printed incorrectly by NPC.

5. The purchase order for the replacement ballots, including vendor and costs for these replacement ballots.

6. The invoice for this replacement order listed in item #5.

7. The cancelled check or record of payment for the invoice for #5.

The County is invoking a time extension until December 2, 2022, to review and respond to your request in accordance with Section 902(a)(7) of the Pennsylvania Right to Know Law. Specifically, the extent or nature of your request precludes the County from providing a response within five business days.

Sincerely,

Tammy L. Bender
Open Records Officer
Lancaster County, Pennsylvania

County of Lancaster

County Commissioners
Ray D'Agostino
Joshua G. Parsons
John Trescot

Open Records Officer
Tammy L Bender

Open Records Office
150 North Queen Street
Suite #714
Lancaster, PA 17603
Phone: 717-735-1584
Fax: 717-824-8520
www.co.lancaster.pa.us

December 2, 2022

VIA EMAIL ONLY TO:
Pstoltzfus4506@gmail.com
Phil Stoltzfus

Re: Right to Know Request Number #398-2022

Dear Mr. Stoltzfus:

Thank you for writing to the County of Lancaster Office of Open Records with your request for information pursuant to the Pennsylvania Right to Know Law.

On October 26, 2022, the County of Lancaster Open Records Office received your request as follows:

1. The original purchase order for all the mail in ballots for the 2022 primary election, including quantities and pricing.

2. The invoice for the above order.

3. A copy of the cancelled check or record of payment for this order.

4. The requisition and/or any written correspondence relating to an order for the emergency printing of new mail in ballots to replace the ones that were printed incorrectly by NPC.

5. The purchase order for the replacement ballots, including vendor and costs for these replacement ballots.

6. The invoice for this replacement order listed in item #5.

7. The cancelled check or record of payment for the invoice for #5.

The County is invoked a time extension until December 2, 2022, to review and respond to your request in accordance with Section 902(a)(7) of the Pennsylvania Right to Know Law. Specifically, the extent or nature of your request precludes the County from providing a response within five business days.

Your request has been granted in part and denied in part as follows:

1. Request 1 above is granted in that the purchase order you are requesting is attached hereto.

2. Request 2 above is granted in that the invoice you are requesting is attached hereto.

3. Request 3 above is granted in that the attached ledger documents the payment made by the County related to the invoice noted in Request 2.

4. Request 4 above is granted in that I am attaching the Credit Memo issued by NPC which addresses the issue of reprinting ballots due to an error.

5. Request 5 is denied in accordance with the Pennsylvania Right to Know Law Section 705 in that an agency shall not be required to create a record in a manner in which the agency does not currently compile, maintain, format or organize the record. By way of further response, after a thorough search of the County's records, no records were found within the scope of this portion of your request.

6. Request 6 above is granted in that attached is a Credit Memo from NPC which addresses the issue of reprinting of ballots due to an error.

7. Request 7 above is denied in accordance with the Pennsylvania Right to Know Law Section 705 in that an agency shall not be required to create a record in a manner in which the agency does not currently compile, maintain, format or organize the record. By way of further response, after a thorough search of the County's records, no records were found within the scope of this portion of your request.

You have a right to appeal this denial of information in writing to Liz Gerloff Wagenseller, Executive Director, Office of Open Records, 333 Market Street, 16th Floor, Harrisburg, PA 17126-0333. If you choose to file an appeal, you must do so within 15 business days of the mailing date of this letter, as outlined in Section 1101 of the Right to Know Law. An appeal must be submitted in writing either by mail, fax (717-425-5343), or email (openrecords@pa.gov). The appeal must include a copy of your original request and this response letter and must state the grounds upon which you assert that the record is a public record and must address any grounds stated by the agency for denying the request.

Please be advised this correspondence will serve to close this record with our office as permitted by law.

Sincerely,

Tammy L. Bender
Open Records Officer
Lancaster County, Pennsylvania

Attachment

EXHIBIT C

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF OPEN RECORDS

Phil Stoltzfus, Requester	:	
	:	Appeal No. AP 2022-2851
v.	:	
Lancaster County, Pennsylvania	:	

AFFIDAVIT OF CHIEF REGISTRAR/CHIEF CLERK OF ELECTIONS CHRISTA MILLER

I, Christa Miller, of full age, being duly sworn according to law, hereby depose and state as follows:

1. I am the Chief Registrar/Chief Clerk of Elections for the Lancaster County Voter Registration Office and have held this position since March 8, 2021.

2. In my capacity I oversee the Lancaster County Voter Registration Office, its operations, policies, elections and election procedures.

3. In addition, in my capacity, I am the individual in the Lancaster County Voter Registration Office responsible for searching for documents within my office responsive to Right to Know Requests as directed by the Lancaster County Office of Open Records. Through the County Solicitor, the County Open Records Officer notified me of a request from Phil Stoltzfus, who requested the following document which is the request subject to this appeal: "1.The original purchase order for all the mail in ballots for the 2022 primary election, including quantities and pricing; 2. The invoice for the above order; 3. A copy of the cancelled check or record of payment for this order; 4. The requisition and/or any written correspondence relating to an order for the emergency printing of new mail in ballots to replace the ones that were printed incorrectly by NPC; 5. The purchase order for the replacement ballots, including vendor and

costs for these replacement ballots; 6. The invoice for this replacement order listed in item #5; and 7. The cancelled check or record of payment for the invoice for #5."

4. The Lancaster County Open Records Officer requested that I review any information that was maintained by the Voter Registration Office and forward any responsive information within the scope of Mr. Stoltzfus's request to the Open Records Officer.

5. I diligently and thoroughly searched the records held within the Lancaster County Voter Registration Office regarding the requested documents and provided all responsive documentation to the Lancaster County Open Records Officer.

6. On the day of the 2022 Primary Election, it became apparent that some of the mail-in ballots did not have the appropriate election ID code/number and would not scan and tabulate.

7. Upon realization of this defect, I telephoned our mail-in ballot vendor, NPC, to alert them to this defect.

8. On the day of the 2022 Primary Election, NPC, verbally offered to provide a re-print of all mail-in ballots at no cost to the County.

9. I did not complete a purchase order or any other written request for these replacement ballots from NPC.

10. There is no invoice for the replacement ballots from NPC, but rather a Credit Memo which outlined the credit the County received for these defected mail-in ballots.

11. A copy of the credit memo was provided to the Requester.

12. Upon review of the records for this appeal, a quote from Brenneman, Inc. for 4,100 "Voter Registration Ballots" was found along with a corresponding purchase order.

13. While this quote does not specifically indicate that the "Voter Registration Ballots" referenced were, in fact, mail-in ballots, a review of the costs reimbursed to the County by NPC for the mail-in ballot defect suggests that this invoice and purchase order actually referenced mail-in ballots.

14. The County did not pay for the replacement ballots provided by NPC, and therefore there was no cancelled check or record of payment for the replacement ballots provided by NPC.

The above information is true and correct to the best of my information, knowledge and belief, and I am making this statement with the knowledge that it is made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities;

Dated: 1/5/23

Christa L. Miller
Chief Registrar/Chief Clerk of Elections
Lancaster County
Lancaster County, Pennsylvania

EXHIBIT D

Estimate

BRENNEMAN
delivering **results** together

May 18, 2022

Customer Number: 1427

Fax: 717-390-7739

Christa Miller
County Of Lancaster
150 N Queen St
Ste 712
Lancaster PA 17603

Mail: PO Box 579
Brownstown, PA 17508-0579
Ship: 103 Zooks Mill Road
Ephrata, PA 17522-9551
717.299.2847 • 800.222.2423
717.299.4965
www.brennemaninc.com

We are pleased to submit the following **CONFIDENTIAL** estimate.
Please call if you have questions or need to make any changes.

Estimate Number: 58182
Estimate Date: 5/18/2022

Brenneman Contact: Customer Service

Voter Registration Ballots
Stock: 28# White Bond
Ink: 1/1 Black Toner
Size: 8.5 x 14
Finish: trim; shrinkwrap by precinct
Print from supplied files

Estimate Totals:

Quantity:	**4,100**
Price:	**1,176.00**

***NOTICE: **Estimates are subject to change based on paper pricing and availability at time of order.**

Thank you!

Prices are subject to review upon receipt of materials.

certified WBENC WOMEN'S BUSINESS ENTERPRISE

OVER 50 YEARS OF SERVICE ESTABLISHED 1969

Purchase Order

County of Lancaster
Purchasing
150 N. Queen Street
Suite 712
Lancaster PA 17603
FAX 717/390-7739

Dispatch via Print

Purchase Order	Date	Revision	Page
0000100751	05/23/2022		1

Payment Term	Freight Terms	Ship Via	Contract Info
Due Now	Destination	Best Way	

Buyer	Phone/Email	Confirming	Blanket
Nathan Strubel	717/299-8259 nstrubel@co.lancaster.pa.us	N	N

Brenneman Printing Inc
PO Box 579
Brownstown PA 17508-0579

Ship To: VR/150/1
Voter Registration
150 N. Queen Street
Suite 117
Lancaster PA 17602

Bill To: Voter Registration
150 N. Queen Street
Suite 117
Lancaster PA 17602
717/299-8296

Vendor E-mail: Lisa.Kline@brennemaninc.com
Supplier: 0000002169 **Vendor FAX:** 717/299-4965 **Tax Exempt?** Y **Tax Exempt ID:** 23-6003055 **Req#** 0000095708

Line-Sch	Item/Description	Quantity	UOM	PO Price	Extended Amt	Due Date
1- 1	ballot reprint - est 58182	1.00	EA	1,176.00	0.00	CLOSED

Item Total 0.00

Total PO Amount 0.00

All shipments, shipping papers, invoices, and correspondence must be identified with our Purchase Order Number. Overshipments will not be accepted unless authorized by Buyer prior to shipment.
Deliveries are only received between the hours of 9AM-12PM and 1PM-3PM unless pre-arranged by the county.

Unauthorized

EXHIBIT E

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF OPEN RECORDS

Phil Stoltzfus, Requester	:	
	:	Appeal No. AP 2022-2851
v.	:	
Lancaster County, Pennsylvania	:	

AFFIDAVIT OF TAMMY BENDER

I, Tammy Bender, hereby declare, pursuant to 18 Pa.C.S. § 4904, that the following statements are true and correct based upon my personal knowledge, information, and belief:

1. I am the Open Records Officer for the County of Lancaster, and I am responsible for responding to Right to Know requests filed with the County. In my capacity as the Open Records Officer, I am familiar with the records of the County and the manner in which they are maintained.

2. On or about October 26, 2022, I received a Request under the Pennsylvania Right to Know Law from Mr. Stoltzfus as follows:

"1. The original purchase order for all the mail in ballots for the 2022 primary election, including quantities and pricing."

"2. The invoice for the above order."

"3. A copy of the canceled check or record of payment for this order.

"4. The requisition and/or any written correspondence relating to an order for the emergency printing of new mail in ballots to replace the ones that were printed incorrectly by NPC."

"5. The purchase order for the replacement ballots, including vendor arid costs for these replacement ballots."

"6. The invoice for this replacement order listed in item #5."

"7. The cancelled check or record of payment for the invoice for #5."

3. On November 2, 2022, the County invoked an extension of time until December 2, 2022, in which to respond, in accordance with the Pennsylvania Right to Know Law Section 907(a)(7).

4. During the course of my search for responsive records, I consulted with Christa Miller, Chief Registrar/Chief Clerk of Elections as I recognized Ms. Miller would have first-hand knowledge of the events and records identified in Mr. Stoltzfus' request.

5. In addition, in an effort to complete a good faith search for all documents related to Mr. Stoltzfus' request, I contacted the County's Controller's office for any responsive records as that office is tasked with paying invoices on behalf of the County.

6. During my search, records responsive to Mr. Stoltzfus' requests in items 1,2,3,4, and 6 were found.

7. At the time of my search I was unable to locate records related to items 5 and 7 of Mr. Stoltzfus's request nor was I informed of any additional documents relating to the remaining items in Mr. Stoltzfus' request.

8. On December 2, 2022, I sent Mr. Stoltzfus by email the County's response along with the responsive records that I was able to find based on a good faith search for responsive records.

Dated: 1-6-23

Tammy Bender
Open Records Officer
Lancaster County, Pennsylvania