

NOTICE OF DEADLINES

The appeal has been docketed by the OOR and it has been assigned to an Appeals Officer. The docket number and the Appeals Officer's contact information are included in the attachments you received along with this notice.

The Final Determination is currently due on **February 7, 2022**.

The timeline for this RTKL appeal may be extended by the OOR during the appeal. This extension will allow the OOR the flexibility it requires to protect due process and to ensure that the agency and requester, along with any third parties, have a full and fair opportunity to meaningfully participate in the appeal.

Evidence, legal argument and general information to support your position must be submitted within seven (7) business days from the date of this letter, unless the Appeals Officer informs you otherwise. *Note: If the proceedings have been stayed for the parties to submit a completed mediation agreement, the record will remain open for seven (7) business days beyond the mediation agreement submission deadline.*

Submissions in this case are currently due on **December 16, 2021**.

If you are unable to meaningfully participate in this appeal under the above deadlines, please notify the Appeals Officer as soon as possible.

Due to delays in U.S. mail, we urge agencies and requesters to use email for all communications with the OOR to the extent possible.

Presently, the OOR is receiving postal mail on a limited basis. Accordingly, we urge agencies and requesters to use email for all communication with the OOR to the extent possible.

If you have any questions about this notice or the underlying appeal, please contact the Appeals Officer. The OOR is committed to working with agencies and requesters to ensure that the RTKL appeal process proceeds as fairly and as smoothly as possible.

December 7, 2021

Via Email Only:

Ms. Susan Spicka
Education Voters of PA
412 North Third Street
Harrisburg, PA 17101
sspicka@educationvoterspa.org

Via Email Only:

Jennifer Clarke
Agency Open Records Officer
Commonwealth Charter Academy Charter
School
One Innovation Way
Harrisburg, PA 17110
jclarke@ccaeducate.me

**RE: OFFICIAL NOTICE OF APPEAL - Spicka and Education Voters of PA v. Commonwealth
Charter Academy Charter School OOR Dkt. AP 2021-2799**

Dear Parties:

Review this information and all enclosures carefully as they affect your legal rights.

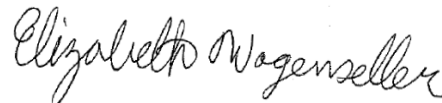
The Office of Open Records (“OOR”) received this appeal under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101, et seq. on December 7, 2021. A binding Final Determination (“FD”) will be issued pursuant to the timeline required by the RTKL, **please see the attached information for more information about deadlines.**

Notes for both parties (more information in the enclosed documents):

- The docket number above must be included on all submissions related to this appeal.
- Any information provided to the OOR must be provided to all parties involved in this appeal. Information that is not shared with all parties will not be considered.
- All submissions to the OOR, other than *in camera* records, will be public records. Do not include any sensitive information- such as Social Security numbers.

If you have questions about this appeal, please contact the assigned Appeals Officer (contact information enclosed), providing a copy of any correspondence to all parties involved in this appeal.

Sincerely,



Elizabeth Wagenseller
Executive Director

Enc.: Description of RTKL appeal process
Assigned Appeals Officer contact information
Entire appeal as filed with OOR

The Right-to-Know Law Appeal Process

Please review this information carefully as it affects your legal rights.

The Office of Open Records (“OOR”) has received the enclosed appeal, which was filed under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101, et seq. A binding Final Determination will be issued by the OOR pursuant to the statutory timeline, subject to the notice of deadlines enclosed herein. If you have any questions, please contact the Appeals Officer assigned to this case. Contact information is included on the enclosed documents.

Submissions to the OOR **Both parties may submit evidence, legal argument, and general information to support their positions to the assigned Appeals Officer.** Please contact the Appeals Officer as soon as possible.

Any information provided to the OOR must be provided to all parties involved in this appeal. Information submitted to the OOR will not be considered unless it is also shared with all parties.

Include the docket number on all submissions.

The agency may assert exemptions on appeal even if it did not assert them when the request was denied (*Levy v. Senate of Pa.*, 65 A.3d 361 (Pa. 2013)).

Generally, submissions to the OOR — other than *in camera* records — will be public records. Do not include sensitive or personal information, such as Social Security numbers, on any submissions.

Agency Must Notify Third Parties

If records affect a legal or security interest of a third party; contain confidential, proprietary or trademarked records; **or** are held by a contractor or vendor, **the agency must notify such parties of this appeal immediately and provide proof of that notice by the record closing date set forth above.**

Such notice must be made by: (1) Providing a copy of all documents included with this letter; **and** (2) Advising relevant third parties that interested persons may request to participate in this appeal by contacting the Appeals Officer assigned to this case (see 65 P.S. Â§ 67.1101(c)).

The Commonwealth Court has held that “the burden [is] on third-party contractors... to prove by a preponderance of the evidence that the [requested] records are exempt.” (*Allegheny County Dep't of Admin. Servs. v. A Second Chance, Inc.*, 13 A.3d 1025, 1042 (Pa. Commw. Ct. 2011)).

A third party's failure to participate in a RTKL appeal before the OOR may be construed as a waiver of objections regarding release of requested records.

NOTE TO AGENCIES: If you have questions about this requirement, please contact the Appeals Officer immediately.

Statements of Fact & Burden of Proof

Statements of fact must be supported by an affidavit or attestation made under penalty of perjury by a person with actual knowledge. Statements of fact or allegations submitted without an affidavit may not be considered.

Under the RTKL, the agency has the burden of proving that records are exempt from public access (see 65 P.S. § 67.708(a)(1)). **To meet this burden, the agency must provide evidence to the OOR.**

The law requires the agency position to be supported by sufficient facts and citation to all relevant sections of the RTKL, case law, and OOR Final Determinations.

An affidavit or attestation is required to prove that records do not exist.

Sample affidavits are on the OOR website, openrecords.pa.gov.

Any evidence or legal arguments not submitted or made to the OOR may be waived.

Preserving Responsive Records

The agency must preserve all potentially responsive records during the RTKL appeal process, including all proceedings before the OOR and any subsequent appeals to court.

Failure to properly preserve records may result in the agency being sanctioned by a court for acting in bad faith.

See *Lockwood v. City of Scranton*, 2019-CV-3668 (Lackawanna County Court of Common Pleas), holding that an agency had “a mandatory duty” to preserve records after receiving a RTKL request. Also see generally *Uniontown Newspapers, Inc. v. Pa. Dep’t of Corr.*, 185 A.3d 1161 (Pa. Commw. Ct. 2018), holding that “a fee award holds an agency accountable for its conduct during the RTKL process...”

Mediation

The OOR offers a mediation program as an alternative to the standard appeal process. To participate in the mediation program, both parties must agree in writing.

The agency must preserve all potentially responsive records during the RTKL appeal process. Mediation is a voluntary, informal process to help parties reach a mutually agreeable settlement. The OOR has had great success in mediating RTKL cases.

If mediation is successful, the requester will withdraw the appeal. This ensures that the case will not proceed to court — saving both sides time and money.

Either party can end mediation at any time.

If mediation is unsuccessful, both parties will be able to make submissions to the OOR as outlined on this document, and the OOR will have no less than 30 calendar days from the conclusion of the mediation process to issue a Final Determination.

Parties are encouraged to consider the OOR's mediation program as an alternative way to resolve disputes under the RTKL.



pennsylvania
OFFICE OF OPEN RECORDS

APPEALS OFFICER:

Bina Singh, Esq.

CONTACT INFORMATION:

Commonwealth of Pennsylvania
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234

FACSIMILE:

(717) 425-5343

EMAIL:

binsingh@pa.gov

**Preferred method of contact and
submission of information:**

EMAIL

**Please direct submissions and correspondence related to this appeal to the above Appeals Officer.
Please include the case name and docket number on all submissions.**

**You must copy the other party on everything you submit to the OOR. The Appeals Officer cannot
speak to parties individually without the participation of the other party.**

The OOR website, <https://openrecords.pa.gov>, is searchable and both parties are encouraged to review
prior final determinations involving similar records and fees that may impact this appeal.

The OOR website also provides sample forms that may be helpful during the appeals process. OOR staff
are also available to provide general information about the appeals process by calling (717) 346-9903.



pennsylvania

OFFICE OF OPEN RECORDS

IN THE MATTER OF

**SUSAN SPICKA,
Requester**

v.

**COMMONWEALTH CHARTER
ACADEMY CHARTER SCHOOL,
Respondent**

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Docket No.: AP 2021-2799

This correspondence confirms the above-referenced Requester’s agreement to an additional thirty (30) day extension of time to issue a Final Determination in this matter as indicated in the Requester’s appeal form. Accordingly, pursuant to 65 P.S. § 67.1101(b)(1), the Office of Open Records will now issue a Final Determination in the above-captioned matter on or before February 7, 2022.

REQUEST TO PARTICIPATE BEFORE THE OOR

Please accept this as a Request to Participate in a currently pending appeal before the Office of Open Records. The statements made herein and in any attachments are true and correct to the best of my knowledge, information and belief. I understand this statement is made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities.

NOTE: The requester filing the appeal with the OOR is a named party in the proceeding and is NOT required to complete this form.

OOR Docket No: _____

Today's date: _____

Name: _____

PUBLIC RECORD NOTICE: ALL FILINGS WITH THE OOR WILL BE PUBLIC RECORDS AND SUBJECT TO PUBLIC ACCESS WITH LIMITED EXCEPTION. IF YOU DO NOT WANT TO INCLUDE PERSONAL CONTACT INFORMATION IN A PUBLICLY ACCESSIBLE RECORD, PLEASE PROVIDE ALTERNATE CONTACT INFORMATION IN ORDER TO RECEIVE FUTURE CORRESPONDENCE RELATED TO THIS APPEAL.

Address/City/State/Zip _____

E-mail _____

Fax Number: _____

Name of Requester: _____

Address/City/State/Zip _____

Telephone/Fax Number: _____ / _____

E-mail _____

Name of Agency: _____

Address/City/State/Zip _____

Telephone/Fax Number: _____ / _____

E-mail _____

Record at issue: _____

I have a direct interest in the record(s) at issue as (check all that apply):

- An employee of the agency
- The owner of a record containing confidential or proprietary information or trademarked records
- A contractor or vendor
- Other: (attach additional pages if necessary) _____

I have attached a copy of all evidence and arguments I wish to submit in support of my position.

Respectfully submitted, _____ (must be signed)

Please submit this form to the Appeals Officer assigned to the appeal. Remember to copy all parties on this correspondence. The Office of Open Records will not consider direct interest filings submitted after a Final Determination has been issued in the appeal.

From: no-reply@openrecordspennsylvania.com
To: sspicka@educationvoterspa.org
Subject: [External] PA Office of Open Records - Appeal Confirmation
Date: Tuesday, December 7, 2021 10:20:30 AM
Attachments: [oor_logo_email.png](#)

ATTENTION: This email message is from an external sender. Do not open links or attachments from unknown sources. To report suspicious email, forward the message as an attachment to CWOPA_SPAM@pa.gov.



You have filed an appeal of an agency's response to a request for records under the Right-to-Know Law.

Name:	Susan Spicka
Company:	Education Voters of PA
Address 1:	412 N. Third Street
Address 2:	
City:	Harrisburg
State:	Pennsylvania
Zip:	17101
Phone:	717-331-4033
Email:	sspicka@educationvoterspa.org
Agency (list):	Commonwealth Charter Academy Cyber Charter School
Agency Address 1:	One Innovation Way
Agency Address 2:	
Agency City:	Harrisburg
Agency State:	Pennsylvania

Agency Zip: 17110

Agency Phone: 717-710-3300

Agency Email: jclarke@ccaeducate.me

Records at Issue in this Appeal: 1. An invoice or other documentation that shows the cost of the parade balloon that was used in the November 2021 6abc Dunkin' Donuts Thanksgiving parade in Philadelphia. 2. An invoice or other documentation that shows the cost to enter CCA group in the November 2021 6abc Dunkin' Donuts Thanksgiving parade in Philadelphia. 3. An invoice or other documentation that shows the cost of promotional spot for CCA during the November 2021 6abc Dunkin' Donuts Thanksgiving parade in Philadelphia.

Request Submitted to Agency Via: e-mail

Request Date: 11/29/2021

Response Date: 12/06/2021

Deemed Denied: No

Agency Open Records Officer: Jennifer Clarke

Attached a copy of my request for records: Yes

Attached a copy of all responses from the Agency regarding my request: Yes

Attached any letters or Yes

**notices
extending the
Agency's time
to respond to
my request:**

Agree to 30 Days
**permit the
OOR
additional
time to issue a
final
determination:**

Interested in No
**resolving this
issue through
OOR
mediation:**

Attachments:

- 11-29-2021 CCA Parade Balloon RTK.pdf
- Spicka 112921 RTK Request Response-CA-R90YCX0P (1).pdf

I requested the listed records from the Agency named above. By submitting this form, I am appealing the Agency's denial, partial denial, or deemed denial because the requested records are public records in the possession, custody or control of the Agency; the records do not qualify for any exemptions under § 708 of the RTKL, are not protected by a privilege, and are not exempt under any Federal or State law or regulation; and the request was sufficiently specific.



Standard Right-to-Know Law Request Form

Good communication is vital in the RTKL process. Complete this form thoroughly and retain a copy; it may be required if an appeal is filed. You have 15 business days to appeal after a request is denied or deemed denied.

SUBMITTED TO AGENCY NAME: Commonwealth Charter Academy (Attn: AORO)

Date of Request: 11/29/2021 Submitted via: Email U.S. Mail Fax In Person

PERSON MAKING REQUEST:

Name: Susan Spicka Company (if applicable): Education Voters of PA

Mailing Address: 412 N. 3rd St.

City: Harrisburg State: PA Zip: 17101 Email: sspicka@educationvoterspa.org

Telephone: 717-331-4033 Fax: _____

How do you prefer to be contacted if the agency has questions? Telephone Email U.S. Mail

RECORDS REQUESTED: *Be clear and concise. Provide as much specific detail as possible, ideally including subject matter, time frame, and type of record or party names. RTKL requests should seek records, not ask questions. Requesters are not required to explain why the records are sought or the intended use of the records unless otherwise required by law. Use additional pages if necessary.*

1. An invoice or other documentation that shows the cost of the parade balloon that was used in the November 2021 6abc Dunkin' Donuts Thanksgiving parade in Philadelphia.
2. An invoice or other documentation that shows the cost to enter CCA group in the November 2021 6abc Dunkin' Donuts Thanksgiving parade in Philadelphia.
3. An invoice or other documentation that shows the cost of a promotional spot for CCA during the November 2021 6abc Dunkin' Donuts Thanksgiving parade in Philadelphia.

DO YOU WANT COPIES? Yes, printed copies (*default if none are checked*)
 Yes, electronic copies preferred if available
 No, in-person inspection of records preferred (*may request copies later*)

Do you want certified copies? Yes (*may be subject to additional costs*) No
RTKL requests may require payment or prepayment of fees. See the Official RTKL Fee Schedule for more details.

Please notify me if fees associated with this request will be more than \$100 (or) \$_____.

ITEMS BELOW THIS LINE FOR AGENCY USE ONLY

Tracking: _____ Date Received: _____ Response Due (5 bus. days): _____

30-Day Ext.? Yes No (If Yes, Final Due Date: _____) Actual Response Date: _____

Request was: Granted Partially Granted & Denied Denied Cost to Requester: \$_____

Appropriate third parties notified and given an opportunity to object to the release of requested records.



December 6, 2021

Susan Spicka
Education Voters of PA
412 N. 3rd St.
Harrisburg, PA 17101

Via email at sspicka@educationvoterspa.org

Dear Ms. Spicka:

On November 29, 2021, Commonwealth Charter Academy (CCA) received your request for records under the Right to Know Law (RTKL). You requested:

1. An invoice or other documentation that shows the cost of the parade balloon that was used in the November 2021 6abc Dunkin' Donuts Thanksgiving parade in Philadelphia.
2. An invoice or other documentation that shows the cost to enter CCA group in the November 2021 6abc Dunkin' Donuts Thanksgiving parade in Philadelphia.
3. An invoice or other documentation that shows the cost of promotional spot for CCA during the November 2021 6abc Dunkin' Donuts Thanksgiving parade in Philadelphia.

CCA does not have any records responsive to your request as written.

To the extent CCA has records relating to the November 2021 6abc Dunkin' Donuts Thanksgiving parade in Philadelphia, the records would reveal a trade secret and confidential proprietary information and be exempt from access. *See* 65 P.S. § 67.708(b)(11). This includes records of third-parties. *See* 65 P.S. § 67.707(b).

Among other types of legally protected trade secrets or proprietary information, the Commonwealth Court of Pennsylvania has construed the RTKL as excluding the following information from disclosure. *Crouthamel v. Department of Transportation*, 207 A.3d 432, 439 (Pa. Cmwlth. 2019) (“[C]ertain business and marketing information including the costing and pricing information of an employer’s product or services, an employer’s business plans, marketing strategies, and financial projections and the terms of specific customer accounts including contract expiration dates and revenues generated.”)

The expansive list of protected types of commercially-sensitive information cited by the Court encompasses the information sought in your request, much of which would be contained or revealed, in whole or in part, in invoices relating to advertising, public relations, and communications. This includes information in invoices or documentation from media companies.



You have a right to appeal the denial of your request in writing to: Office of Open Records, 333 Market St., 16th Floor, Harrisburg, PA 17101-2234. Appeals can also be filed online at the Office of Open Records website, <https://www.openrecords.pa.gov>.

If you choose to file an appeal, you must do so within 15 business days of the mailing date of this letter. See 65 P.S. § 67.1101. Please note that a copy of your original Right-to-Know request and this letter must be included when filing an appeal. More information about how to file an appeal under the Right-to-Know Law is available at the Office of Open Records website, <https://www.openrecords.pa.gov>.

Best Regards,

Jennifer Clarke

Jennifer Clarke
Open Records Office
jclarke@ccaeducate.me
717-710-3327

CC: Phil Murren, CCA Solicitor