

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

JEFFREY STROEHMANN,	:	CV-22-00574
Petitioner	:	
vs.	:	
	:	
LYCOMING COUNTY OFFICE OF	:	
VOTER SERVICES,	:	
Respondent	:	<i>RTKL Review</i>

**OPINION AND ORDER**

AND NOW, this 2<sup>nd</sup> day of November 2022, the Court issues the following OPINION and ORDER addressing Petitioner’s Motion to Compel Discovery filed October 24, 2022.

***BACKGROUND***

On March 21, 2022, Petitioner filed a request seeking information from Respondent under Pennsylvania’s Right-to-Know Law (“RTKL”). On March 30, 2022, Respondent denied Petitioner’s RTKL Request. Petitioner appealed this denial to the Office of Open Records (“OOR”). On May 26, 2022, the OOR issued a Final Determination granting Petitioner’s request with regard to some of the information sought but affirming Respondent’s denial with regard to other information. Petitioner timely sought judicial review of this denial, and after a conference with counsel this Court scheduled an evidentiary hearing on Petitioner’s request for review for November 30, 2022.

***MOTION TO COMPEL DISCOVERY***

On October 24, 2022, Petitioner filed a Motion to Compel Discovery, averring that it had served a discovery request on Respondent on October 7, 2022 but

Respondent refused to provide discovery. In refusing, Respondent stated “this matter is a statutory appeal, to which the rules of civil procedure do not apply... The scope of appeal is limited to determining whether the records requested are public.”

In his Motion to Compel Discovery, Petitioner notes that Rules of Civil Procedure concerning discovery “apply to any civil action or proceeding brought in or appealed to any court which is subject to these rules.”<sup>1</sup> Petitioner argues that this case is a civil matter in that Petitioner appealed the OOR’s final determination to the Court of Common Pleas, and is thus clearly within the scope of the Rules concerning discovery. Petitioner cites *Bowling v. Office of Open Records*,<sup>2</sup> which Petitioner contends establishes that “courts reviewing pending cases under Pennsylvania’s Right to Know Law are free to consider any relevant evidence and argument when evaluating the legitimacy of a Right to Know request,” not limited to the record below.<sup>3</sup> Finally, Petitioner asserts that because the question of whether a document is shielded from public disclosure “is a factual one,” with the RTKL “requir[ing] a court to make factual findings,” discovery is necessary to allow the parties to establish a factual record.

The Court heard argument on Petitioner’s Motion to Compel on November 1, 2022. Counsel for Petitioner reiterated the arguments in the motion, stressing that *Bowling* established that courts reviewing OOR final determinations must conduct a *de novo* review, the scope of which is necessarily broad. To forbid discovery in such

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<sup>1</sup> Pa. R.C.P. 4001(a).

<sup>2</sup> *Bowling v. Office of Open Records*, 75 A.3d 453 (Pa. 2013).

<sup>3</sup> Petitioner’s Motion to Compel Discovery, ¶15 (emphasis in original).

a circumstance, counsel argued, would both undermine the court's ability to conduct a full review and frustrate the due process rights of the parties. Counsel for Respondent again argued that the Rules of Civil Procedure, including those related to discovery, do not apply to RTKL appeals. Counsel agreed that the Court has authority to take whatever steps are necessary to ensure that the hearing in an RTKL appeal is conducted fairly, expeditiously, and efficiently, but argued that the allowance of full-fledged discovery is at odds with these goals.

### **ANALYSIS**

In addressing Petitioner's Motion to Compel Discovery, the Court must first determine whether the Rules of Civil Procedure regarding discovery apply to RTKL appeals and, if not, whether the Court nonetheless has the authority to order some manner of discovery. Unless the law categorically forbids discovery in RTKL appeals, the Court must then address Petitioner's specific requests under the appropriate standard.

#### **A. Applicability of Rules of Civil Procedure to RTKL Appeals**

The Court agrees with Respondent that the Rules of Civil Procedure, including the Rules governing discovery, do not apply to RTKL appeals.

Rule 4001(a) states that the discovery Rules "apply to any civil action or proceeding brought in or appealed to any court which is subject to" the Rules of Civil Procedure, but does not itself specify what exactly is "subject to" the Rules. Petitioner argues that the plain language of Rule 4001(a) clearly establishes its applicability to the instant matter. On its face, however, Rule 4001(a) is

grammatically ambiguous, as it is unclear to which noun the phrase “which is subject to” applies. It is possible to read Rule 4001(a) as applying the Rules governing discovery to “any civil action or proceeding brought or appealed,” as long as that action or proceeding is presently before “any court which is subject to” the Rules of Civil Procedure. It is also possible, however, to read Rule 4001(a) as applying the Rules governing discovery to “any civil action or proceeding... which is subject to the Rules of Civil Procedure,” as long as that civil action or proceeding to which the Rules apply has been “brought or appealed to any court....”

The structure of Pennsylvania’s court system, and other portions of the Rules of Civil Procedure, show that the latter interpretation is correct. The question of whether the Rules of Civil Procedure apply in a given circumstance depends not on the court but on the nature of the action. For example, the courts of common pleas hear both tort actions (to which the Rules of Civil Procedure generally apply) and criminal actions (to which the Rules of Civil Procedure do not apply). It does not make sense to ask whether a particular *court* is subject to the Rules of Civil Procedure; rather, the structure of the Rules and the court system require the court to ask whether a particular *action* is governed by the Rules of Civil Procedure. Rule 4001(a) does not say whether a RTKL appeal is such an action.

A long line of cases, however, addresses the applicability of the Rules of Civil Procedure to statutory appeals such as RTKL appeals. In *Shultz v. Board of Sup’rs of Jackson Tp.*,<sup>4</sup> the Commonwealth Court addressed discovery requests in a case

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<sup>4</sup> *Shultz v. Board of Sup’rs of Jackson Tp.*, 505 A.2d 1127 (Pa. Cmwlth. 1986).

involving the Right-to-Know Act (“RTKA”), the predecessor to the RTKL. In *Shultz*, the requestors submitted interrogatories to the agency, which refused to answer partly on the ground that “discovery is not available under the [RTKA].”<sup>5</sup> The court of common pleas held that discovery was available in RTKA appeals under the Rules of Civil Procedure, though it denied most of the requests on other grounds.<sup>6</sup> On appeal, the Commonwealth Court reversed this determination, reasoning as follows:

“[P]ursuant to the Rules, discovery is available in ‘any civil action or proceeding at law or in equity brought in or appealed to any court which is subject to [the] rules’ ... [H]owever, our Supreme Court noted that Section 4 of the [RTKA], which provides for an appeal from the denial of access to information, constitutes the *exclusive* remedy for a person denied the right to examine and inspect public records. Moreover, we have also held the civil procedure rules to be inapplicable in other matters concerning statutory appeals. By analogy, we believe that the Rules, including the discovery rules which are a part thereof, do not apply to proceedings under the [RTKA]. We conclude, therefore, that the common pleas court erred in holding that discovery is available to parties proceeding under the [RTKA].”<sup>7</sup>

Four years later, the Supreme Court of Pennsylvania agreed that the Rules of Civil Procedure do not generally apply to statutory appeals:

“[The] Rules of Civil Procedure are applicable to all actions which were formally asserted in assumpsit or trespass and other forms of action where we incorporate the rules by reference.... In those special actions where we have not incorporated the rules by reference, they cannot be mandatorily imposed upon the trial courts or parties who litigate such matters.”<sup>8</sup>

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<sup>5</sup> *Id.* at 1128.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Appeal of Borough of Churchill*, 575 A.2d 550, 553 (Pa. 1990). In *Appeal of Borough of Churchill*, the Supreme Court of Pennsylvania held that the Rules of Civil Procedure do not apply to tax assessment appeals – or to any statutory appeal unless explicitly incorporated – and stated that in the absence of Rules demanding or forbidding the filing of exceptions in such cases, “[p]ermitting or refusing to accept exceptions is as much within the trial court’s

In 2008, the legislature enacted the RTKL, replacing the RTKA. Whereas the RTKA required requestors to demonstrate that the requested information was publicly accessible, the RTKL shifted the burden to agencies to establish that the requested information is not a public record. Like the RTKA, however, the RTKL does not incorporate the Rules of Civil Procedure, either generally or related to discovery, and does not provide its own procedure by which parties may request discovery during judicial review of an OOR final determination.<sup>9</sup>

In *Allegheny County Dept. of Administrative Services v. A Second Chance, Inc.*, the Commonwealth Court addressed the applicability of certain Rules of Civil Procedure to the RTKL.<sup>10</sup> Addressing the appropriate standard to intervene in a RTKL appeal, the Court definitively stated “[t]he intervention rules in the Pennsylvania Rules of Civil Procedure are not applicable to statutory appeals.... In the absence of authority governing the process of intervention in an appeal from an Open Records decision to the trial court, the trial court has discretion to rule on the matter.”<sup>11</sup> In so holding, the Court cited *Churchill*, the Supreme Court of Pennsylvania case stating that the Rules of Civil Procedure generally did not apply to statutory appeals. Two years later, in *Borough of West Easton v. Mezzacappa*, the Commonwealth Court emphatically confirmed that “[t]he Pennsylvania Rules of

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discretion as is the right to ask counsel to submit a brief covering a particular question of law.”

<sup>9</sup> In fact, the RTKL does not contain the word “discovery” in any of its fifty-two sections.

<sup>10</sup> *Allegheny County Dept. of Administrative Services v. A Second Chance, Inc.*, 13 A.3d 1025 (Pa. Cmwlth. 2011).

<sup>11</sup> *Id.* at 1033 (Pa. Cmwlth. 2011) (internal citations omitted).

Civil Procedure do not apply to statutory appeals, such as an appeal under the RTKL.”<sup>12</sup>

Petitioner cites *Bowling* to suggest that discovery is appropriate in RTKL cases, but *Bowling* does not reach this question. In *Bowling*, the Supreme Court of Pennsylvania addressed the appropriate standard of review and scope of review that courts should employ when reviewing OOR final determinations in RTKL cases.<sup>13</sup> With regard to the standard of review, the Supreme Court noted that the RTKA had long been understood to compel reviewing courts to give deference to the agency determinations below.<sup>14</sup> The Court held that both the specific language and the structure of the RTKL,<sup>15</sup> however, meant that reviewing courts were “the ultimate finders of fact” and thus required “to conduct full *de novo* reviews of appeals from decisions made by” the OOR.<sup>16</sup> With regard to the scope of review, the Supreme Court held that reviewing courts “have the authority to expand their record to fulfill their statutory role” beyond that established before the OOR.<sup>17</sup>

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<sup>12</sup> *Borough of West Easton v. Mezzacappa*, 74 A.3d 417, 420 (Pa. Cmwlth. 2013).

<sup>13</sup> *Bowling*, 75 A.3d at 455.

<sup>14</sup> *Id.* at 456.

<sup>15</sup> In particular, the Court noted that most agency determinations are reviewed under a deferential standard because the adjudication before the agency contains safeguards meant to ensure both parties receive due process. The RTKL, though, is atypical in that it does not require the OOR to take evidence or hold a hearing, and even allows the OOR officer to consult with counsel for the agency without providing for similar consultation with counsel for the requester. Thus, the Court concluded, a *de novo* review of an expanded record at the judicial review stage is necessary to safeguard the due process rights of RTKL requesters.

<sup>16</sup> *Id.* at 474.

<sup>17</sup> *Id.* at 476. The Court noted that § 67.1303(b) of the RTKL states that “[t]he record before a court shall consist of the request, the agency’s response, the appeal... the hearing transcript, if any, and the final written determination of the appeals officer.” Noting that the RTKL allows *but does not require* the OOR to conduct a hearing, take evidence, or even issue a final written determination, the Court held that the description of the “record” in

Like the RTKL, the lengthy opinion in *Bowling* does not contain the word “discovery.” Nonetheless, Petitioner argues that *Bowling*’s guarantee of “the broadest scope of review” allows the reviewing court to consider all relevant evidence, and suggests that the due process concerns underlying *Bowling* require a formal discovery process. Without such procedures, Petitioner contends, a requester will be forced to go into an evidentiary hearing before a reviewing court without an understanding of the agency’s position or evidence, risking unfair surprise and jeopardizing due process.

Due process, however, does not require any particular discovery procedure, such as that described in the Rules of Civil Procedure.<sup>18</sup> Rather, as the Supreme Court of Pennsylvania explained in *Bowling*, due process principles “mandate that each party be provided an opportunity to present and cross-examine witnesses, present evidence, and make argument.” Although discovery is a *means* by which the court and parties may protect these rights, it is not an *end* in itself integral to due process. *Bowling* held that the RTKL must be construed in a manner that guarantees due process, but *did not* mention discovery – either as contemplated by the Rules of Civil Procedure or in general – as a component of this guarantee.

In summary, the Rules of Civil Procedure do not apply to statutory appeals unless explicitly incorporated. Judicial review of an OOR final determination in a

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§ 67.1303(b) was not meant to be exhaustive. Thus, the Court concluded, it is well within a reviewing court’s authority to accept additional evidence, review documents *in camera*, or otherwise expand the record in order to make required findings of fact.

<sup>18</sup> The Superior Court of Pennsylvania has stated that “[t]he purpose of discovery is to expedite litigation....” *Boyle v. Steiman*, 631 A.2d 1025, 1031.



RTKL action is a statutory appeal. The RTKL does not explicitly incorporate the Rules of Civil Procedure regarding discovery, and case law pertaining to both the RTKA and RTKL conclusively establishes that the Rules of Civil Procedure do not apply to the RTKL. Thus, the discovery provisions of Rules 4001 *et sub.* are not applicable to this proceeding.

**B. Court's Authority to Order Discovery**

Pennsylvania has long recognized “[t]he general, inherent power of all courts to regulate their own practice, without control, on the grounds of expediency....”<sup>19</sup> In the absence of specific rules, matters such as “[p]ermitting or refusing to accept exceptions” or “ask[ing] counsel to submit a brief covering a particular question of law” are “within the trial court’s discretion....”<sup>20</sup>

In this Court’s September 28, 2022 Order scheduling the evidentiary hearing in this case, the Court directed each party to “provide the other with a list of the witnesses it intends to call, along with a brief summary of the nature of each witness’s expected testimony....” In doing so, the Court exercised its inherent authority to regulate the case before it by ordering a form of discovery.

Respondent readily agrees that the Court has the power to regulate its practice in this manner, and therefore has the authority to order some form of

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<sup>19</sup> *Churchill*, 575 A.2d at 554 (citing *Vanatta v. Anderson*, 3 Binney 417 (1811)).

<sup>20</sup> *Id.* Rejecting the Commonwealth Court’s attempt to impose uniform practice on trial courts in the absence of rules governing statutory appeals, Justice Papadakos, writing for a majority of the Supreme Court of Pennsylvania, mused that “we have never imposed this step [of inviting exceptions in tax assessment cases] on the trial courts but have merely recognized that if they feel that such a practice is beneficial to them, who are we to interfere with the trial court’s regulation of the practice before it.”

discovery. Characterizing the focus of *Bowling* as the need to protect due process while ensuring efficient resolution of RTKL disputes, Respondent suggests that the Court's authority in such actions is appropriately limited to those actions necessary to ensure fairness. Respondent avers that directing the exchange of witness lists and summaries of expected testimony promotes this goal, as does the scheduling of a full-day hearing during which the parties may cross-examine witnesses, present evidence, and make argument. Respondent contends that permitting wholesale discovery, however, is neither necessary to ensure fairness nor consistent with the procedural scheme of the RTKL.

Petitioner correctly notes that *Bowling* allows courts to conduct "the broadest scope of review," encompassing evidence and documents not contained in the record below, in order to make all necessary factual findings. Relying on this language, Petitioner urges the Court to exercise its discretion to compel Respondent to answer its discovery requests. Petitioner argues that if the Court does not order Respondent to provide the requested discovery, Petitioner will be unable to ensure that the record contains all of the information the Court needs to make the necessary findings of fact. However, *Bowling* does not suggest that a reviewing court may expand the scope of the question before it: whether particular agency records fall within a specific statutory exception to public disclosure.

In situations to which the discovery Rules apply, "a party may obtain discovery regarding any matter... which is relevant to the subject matter involved in the pending action" and either admissible or "reasonably calculated to lead to the

discovery of admissible evidence.”<sup>21</sup> Even in civil trials covered by the Rules of Civil procedure, in which discovery typically lasts months, parties are not entitled to discover information that is not ultimately likely to lead to relevant, admissible evidence. In an RTKL appeal, which does not contemplate a formal discovery process, it is vital that the court limit any discretionary discovery to those matters plainly relevant to the ultimate issue, lest the normally streamlined process of judicial review devolve into a morass of disputes over documents only tangentially related to the exceptions to public disclosure of agency records.

Ultimately, the Court has the power to order some discovery in this case, but is free to exercise its discretion as to the appropriate scope of discovery. The opportunity to present evidence, cross-examine witnesses, and make argument at the November 30, 2022 hearing is sufficient to guarantee the parties’ due process rights as required by *Bowling*; therefore, the Court’s primary consideration when deciding how to exercise its inherent authority to conduct its affairs is ensuring the efficient and orderly resolution of the issues at hand. Mindful that an RTKL appeal presents the narrow question of whether agency records fall within a particular exception to public disclosure, the Court will evaluate each of Petitioner’s discovery requests to determine if granting that request will facilitate the efficient resolution of the ultimate issue.

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<sup>21</sup> Pa. R.C.P. 4003.1(a), (b).

### **C. Petitioner's Discovery Requests**

Petitioner's October 7, 2022 Request for Production of Documents seeks fourteen categories of discovery:

- "1. Any and all statements and communications... between [Respondent] and members of the Department of State regarding Right to Know Requests served between November 2020 and October 2022, for materials relating to the November 2020 general election.
2. Any and all statements and communications... between [Respondent] and the Lycoming County Commissioners regarding Right to Know Requests served between November 2020 and October 2022, for materials relating to the November 2020 general election.
3. Any and all statements and communications... between [Respondent] and voting machine manufacturers regarding Right to Know Requests served between November 2020 and October 2022, for materials relating to the November 2020 general election.
4. Any and all statements and communications... between [Respondent] and any federal and state politicians, regarding Right to Know Requests served between November 2020 and October 2022, for materials relating to the November 2020 general election.
5. Reports, communications, and/or documents prepared by any and all experts who will testify at the [November 30, 2022 hearing].
6. Any and all documents and communications substantiating Respondent's claim that the ballot images requested in Petitioner's Right to Know Request constitute the contents of the ballot box.
7. Any and all documents and communications substantiating Respondent's claims that CVRs requested are the 'digital equivalent' of the ballot box.

8. Any and all documents and communications substantiating Respondent's claim that the release of the CVRs would violate the confidentiality of Lycoming County voters.
9. Copies of any and all user manuals for the operation of ClearBallot, ClearVote electronic voting equipment used in Lycoming County in the November 2020 election.
10. Copies of documents created, submitted, or prepared, outlining Lycoming County's certification of the voting results for the November 2020 general election.
11. Copies of specimen ballots prepared and posted for the November 2020 general election.
12. Any documents... pertaining to conferences or meetings sponsored by the Department of State, attended by [the Director of Elections for Lycoming County] following the November 2020 election [dealing with] Right to Know Requests filed with the November 2020 election.
13. Any documents... pertaining to conferences or meetings sponsored by any other organizations, attended by [the Director of Elections for Lycoming County] following the November 2020 election [dealing with] Right to Know Requests filed with the November 2020 election.
14. Any [items] which [Respondent] plan[s] to have marked for identification, introduce[d] into evidence, or [used to] question a witness at the [November 30, 2022 hearing]."

The remainder of this section will address each of these requests in light of the principles discussed above.

**1. Requests 1 through 4**

Petitioner's first four requests seek all statements and communications between Respondent and various third parties concerning "Right to Know requests served between November 2020 and October 2022, for materials relating to the

November 2020 general election.” The Court will deny these requests for two reasons.

First, the requests are extremely broad with regard both to time and the scope of documents sought. Requiring Respondent to go through all of its records over a twenty-three month span to find all “statements and communications” concerning RTKL requests would risk imposing a burden inconsistent with the goals of the RTKL. Second, and more importantly, the information sought is not relevant to the question before the Court: whether the Election Code, as incorporated by the RTKL, shields “[a]ll [non-mail-in] ballot images from the 2020 general election” and the “[d]igital copy of the... CVR” from public disclosure. To answer this question, the Court will need to make factual findings about what those items consist of and then make a legal determination as to whether they fall into the Election Code’s exception to public disclosure. The ballot images and CVR are specific items, and the Election Code is a provision of law with a defined meaning. The contents of communications between Respondent and various parties regarding Respondent’s handling of RTKL requests concerning the 2020 general election will not change either the factual or legal considerations surrounding the ultimate issue in this case. Certainly, the contents of Respondents’ communications may provide insight into how they view the relevant considerations, but these are matters for argument. Petitioner is on notice of Respondent’s position as to why the requested documents are not discoverable: they are, Respondent contends, either the contents of ballot boxes or

their “digital equivalent.” Petitioner is not entitled to advance notice of the specific arguments or strategies Respondent intends to employ to show this.

In short, the grant of these requests will not promote the efficient resolution of the issues before the Court, and their denial would not put Petitioner in an unfair posture, or deny Petitioner due process. Therefore, Petitioner’s Requests 1 through 4 are denied.

**2. Request 5**

Petitioner’s fifth request seeks “[r]eports, communications, and/or documents prepared by” any expert witness Respondent intends to call at the hearing. As noted above, the Court has already ordered the parties to “provide the other with a list of the witnesses it intends to call, along with a brief summary of the nature of each witness’s expected testimony” by November 16, 2022. The Court believes this is sufficient to ensure Petitioner has notice of any expert testimony Respondent intends to introduce at the hearing in this matter. Therefore, Petitioner’s Request 5 is granted in part to the extent it is consistent with this Court’s September 28, 2022 Order.

**3. Requests 6 through 8**

Petitioner’s Requests 6 through 8 seek documents substantiating Respondent’s various claims. In other words, these requests seek all documents that Respondent contends support their position, without any limitation in time or scope. In Request 14, addressed below, Petitioner explicitly requests all documents that Respondent intends to utilize at the November 30, 2022 hearing. Therefore, as

to Requests 6 through 8, the Court need only consider those documents which Respondent contends support their positions but which they do not intend to utilize at the hearing.

The Court will not order Respondent to produce these documents in discovery, as their relevance and admissibility is dubious. Presumably, Respondent will introduce as much testimony and evidence as it deems sufficient to prevail on the merits. To the extent Respondent possesses a document that it believes supports its case, yet still chooses not to introduce that document, it is unclear how Petitioner would be entitled to utilize it. Petitioner may present testimony and evidence to contradict Respondent's position, and may of course cross-examine Respondent's witnesses regarding any testimony or evidence put forward by Respondent. There is, however, no mechanism by which Petitioner may introduce evidence "on Respondent's behalf" and then attempt to undermine Respondent's position by attacking that evidence which Respondent did not see fit to introduce.

For those reasons, Petitioner's Requests 6 through 8 are denied.

#### **4. Request 9**

Petitioner's ninth request seeks the user manuals for the voting machines used in the November 2020 general election. Specifics regarding the particular voting machines used, how they work, and the records they create are relevant to the question presented in this case, and therefore the Court believes this information may be helpful to both Petitioner and the Court to ensure that the Court can make all necessary factual findings.



At argument, counsel for Respondent stated that he did not object to the discovery of the user manuals on principle, but needed to determine whether other considerations prevented their disclosure. Specifically, counsel suggested that certain information in the manuals may be confidential and proprietary information exempt from disclosure under the RTKL, or otherwise barred from disclosure by their creator pursuant to the terms of a license agreement. It is also within the realm of possibility, counsel noted, that the disclosure of certain information in the manuals may cause security or infrastructure risks; such a circumstance would shield the manuals themselves from public disclosure under the RTKL.

The Court will grant Request 9 in part. Respondent shall either 1) provide Petitioner with a full copy of the user manuals by November 23, 2022; or 2) provide Petitioner with the portions of the user manuals that Respondent believes are appropriately discoverable (if any) along with an explanation for the withholding of any portions Respondent believes are not discoverable.

#### **5. Request 10**

Petitioner's tenth request seeks documents relating to Respondent's certification of the voting results for the November 2020 general election. The Court finds that any such documents are not relevant to the issue before the Court, which is whether the Election Code shields the items Petitioner seeks under the RTKL from public disclosure. The results of the November 2020 general election are not at issue in this case, and any decisions Respondent made concerning the certification

of election results are irrelevant to whether ballot images and CVRs are “contents of ballot boxes” under the Election Code. Therefore, the Court denies Request 10.

**6. Request 11**

Petitioner’s eleventh request seeks copies of specimen ballots<sup>22</sup> prepared in the November 2020 general election. At argument, counsel for Respondent stated he believed he had already provided Petitioner with these items, but counsel for Petitioner stated she had not received them. The form of the physical ballots used in the November 2020 election is directly relevant to the question presented in this case, and providing this limited class of documents will not overly burden Respondent or interfere with the efficient adjudication of the issues. Therefore, the Court will grant Request 11. Respondent shall provide Petitioner with copies of all specimen ballots used in the November 2020 general election in Respondent’s possession by November 23, 2022.

**7. Requests 12 and 13**

Petitioner’s twelfth and thirteenth requests seek all documents and other items pertaining to conferences or meetings, whether sponsored by the Department of State or third parties, dealing with the handling of RTKL requests filed following the November 2020 election. For the reasons discussed in Subsection 1 above, Respondent’s response to RTKL requests generally, or its communication or

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<sup>22</sup> Essentially, sample ballots showing the particular races and questions contested in a given election.

coordination with other entities concerning RTKL requests, is irrelevant to the specific question before the Court. Therefore, the Court denies Requests 12 and 13.

**8. Request 14**

Petitioner's final request seeks all items that Respondent intends to mark, introduce as an exhibit, or utilize to question a witness at the November 30, 2022 hearing. At argument, counsel for Respondent agreed to provide Petitioner with all exhibits it intended to introduce at the November 30, 2022 hearing. Therefore, the Court grants Request 14. Respondent shall provide Petitioner all items it intends to mark for identification, introduce as an exhibit, or utilize to question witnesses at the November 30, 2022 hearing by November 23, 2022.

Consistent with the goals of fair and efficient adjudication of the issues, the Court will likewise order Petitioner to provide Respondent, by November 23, 2022, all items it intends to mark for identification, introduce as an exhibit, or utilize to question witnesses at the November 30, 2022 hearing.

**ORDER**

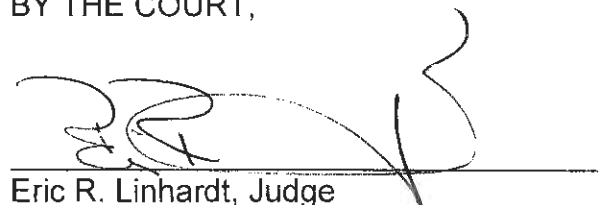
For the foregoing reasons, the Court finds that the Rules of Civil Procedure concerning discovery do not apply to the instant appeal. Nonetheless, the Court has the authority to conduct its affairs to promote the fair and efficient adjudication of the matter before it. Therefore, the Court GRANTS IN PART Petitioner's Motion to Compel Discovery as follows:

- Request 5 is GRANTED IN PART. Consistent with this Court's September 28, 2022 Order, Respondent shall provide Petitioner with the names of all witnesses it intends to call, including expert witnesses, along with a brief summary of the nature of their expected testimony, by November 16, 2022.
- Request 9 is GRANTED IN PART. By November 23, 2022, Respondent shall either 1) provide Petitioner with a full copy of the user manuals for the voting machines used in the November 2020 general election; or 2) provide Petitioner with the portions of the user manuals that Respondent believes are appropriately discoverable (if any) along with an explanation for the withholding of any portions Respondent believes are not discoverable.
- Request 11 is GRANTED. By November 23, 2022, Respondent shall provide Petitioner with copies of all specimen ballots in Respondent's possession used in the November 2020 general election.
- Request 14 is GRANTED. By November 23, 2022, Respondent shall provide Petitioner with all items it intends to mark for identification, introduce as an exhibit, or utilize to question witnesses at the November 30, 2022 hearing.
- All other discovery requests in Petitioner's October 7, 2022 Request for Production of Documents and October 24, 2022 Motion to Compel Discovery are DENIED.

Furthermore, by November 23, 2022, Petitioner shall provide Respondent with all items it intends to mark for identification, introduce as an exhibit, or utilize to question witnesses at the November 30, 2022 hearing.

IT IS SO ORDERED this 2<sup>nd</sup> day of November 2022.

BY THE COURT,



Eric R. Linhardt, Judge

ERL/jcr

cc: Karen Disalvo, Esq.  
Austin White, Esq.  
Gary Weber, Esq. (Lycoming Reporter)