

expenses under Pennsylvania title 42, Chapter [5]801^[1] – Controlled Substance Forfeitures. Specifically, I am requesting complete documentation in each year from 1/1/2008 to present which shows the following information:

- Records of what items were forfeited under this Act, for example, vehicles, real property, cash and/or cash equivalent, or any other item of value. This documentation should identify the property, the date the property . . . was seized, value of item and context of the forfeiture (seized from whom, where and why). [“Item 1”]
- After the item was forfeited, documentation that shows how it was processed, whether that was sale, reutilization, or distribution to other law enforcement agenc[ies] or personnel. Documentation should identify the property, what was done with the item (sold or distributed), date sold/distributed, who the item was distributed to if it was distributed, and how much the item was sold for if it was sold. [“Item 2”]
- Any documentation of a policy, formal or information, that governs the use and/or disposal of forfeited assets by the DA’s office. For example, a policy that guides the decision to sell forfeited property for profit and later use, or use the property. [“Item 3”]
- Records of the amount of funds taken in by the agency in a given year as a result of civil asset forfeiture, whether that be through cash forfeitures or sale of forfeited property. This documentation should show the amount of funds coming into the agency’s forfeiture account, where the funds originated and when it was received. [“Item 4”]
- Records that show how forfeited property proceeds were spent, i.e. officer training, equipment, funding programs, etc., and records that illustrate how these expenditures comply with the Act’s mandate that forfeited funds be used for combating substance abuse. [“Item 5”]
- Forfeiture account balances at the end of each year, and for 2018, as of the date of this request. [“Item 6”]

Please note that I am not requesting a copy of the audit sent to the Attorney General’s Office each year, as required by 42 Pa.C.S. §5803(j), Act 13 of 2017.

2. On September 18, 2018, the DA’s Office invoked a thirty-day extension of time to respond to Requestor’s request.
3. On October 18, 2018, the DA’s Office denied Requestor’s request stating two

¹ The request referenced chapter 6801; however, this chapter was repealed and replaced by Chapter 5801 on July 1, 2017.

reasons: (1) that Items “1, 2, 4, 5, and 6 seek documents that would be prepared for the Attorney General’s audit” and that “pursuant to 42 Pa.C.S.A. § 5803 et seq., this information is not to be disseminated and shall remain confidential;” and (2) that the records responsive to Items 1, 2, 4, 5, and 6 are criminal investigative records pursuant to 65 P.S. § 67.708(b)(16) and also noncriminal investigative records pursuant to 65 P.S. § 67.708(b)(17), and therefore exempt from access under the Right to Know Law (“RTKL”).

4. Requestor appealed the denial to the Office of Open Records (“OOR”) challenging the DA’s Office’s denial of producing records responsive to Items 1, 2, 4, 5, and 6, but not challenging Item 3.²
5. The OOR invited both parties to supplement the record and directed the DA’s Office to notify any third parties of their ability to participate in the appeal. The DA’s Office provided two affidavits in support of its position along with a copy of the Attorney General’s guidelines pertaining to 42 Pa.C.S. §§ 5801 et seq. (“Forfeiture Act”). On January 7, 2019, the OOR issued a final determination granting Requestor’s appeal and directing the DA’s Office to provide all responsive records within thirty days.
6. On February 6, 2019, the DA’s Office appealed the OOR’s final determination as to Items 1, 2, and 5, seeking to have the final determination reversed. One month after the final determination and over three weeks after the appeal of the DA’s Office, Lancaster County sought to intervene by file a nunc pro tunc petition to intervene. The County attached to its petition certain right to know requests that the County had

² As noted by the OOR Appeals Officer, Requestor did not appeal the denial of Item 3 of the request, therefore Requestor has waived any objections regarding the DA Office’s response to Item 3.

received regarding purchase orders with Lancaster Toyota Mazda. The County and the DA's Office came to different positions on whether the documents could be produced; however, there is no appeal regarding these requests pending before the court.

7. The DA's Office responded in opposition to the County's petition to intervene. Thereafter, this court scheduled a status conference on April 11, 2019, to establish a briefing timeline and address the appeal in an orderly fashion. Prior to that conference, the parties agreed, and the court entered the agreement as an order, that the County would file its brief in support of the petition to intervene by April 30, 2019, and the DA's Office would have twenty days to respond. Once the court decided the motion to intervene, the DA's Office would have thirty days to file its brief on its appeal from the OOR's decision, Respondents would then have thirty days to respond, and the DA's office would have twenty days to reply.
8. At the April 11, 2019, status conference, the DA's Office provided additional records to Requestor and offered to allow LNP, but not Requestor, to review all of the civil forfeiture records in the DA's Office. The court then stayed the case for two weeks to allow Requestor to review the produced documents. Requestor and LNP were unsatisfied with the documents produced and unsatisfied with the offer of the DA's Office to review all civil forfeiture records. Requestor notified the court of his position, after which the County filed its brief in support of its petition to intervene which the court ultimately granted.
9. The court held a hearing on August 23, 2019, to allow the parties to supplement the record, to explain what, if any, records exist that still have not been produced, and to

address specific areas of disagreement remaining between the parties.

10. The DA's Office presented testimony from Lancaster County District Attorney Craig Stedman ("DA Stedman") and Detective John Burkhart, head of the Drug Task Force ("DTF"). The Respondents presented the testimony of Carter Walker and the Intervenor presented the testimony of Tammy Bender, an employee of the County of Lancaster who handles RTKL requests.
11. *Conditional Offer for Inspection:* Throughout this dispute, the DA's Office has offered to allow LNP reporters, but not Requestor himself, to come to the DA's Office and view the unredacted records on the condition that there be no publication of any materials which are exempted from disclosure or would jeopardize safety or investigations.
12. Requestor and LNP maintain that this offer does not comply with the Pennsylvania RTKL in that the offer for inspection specifically precludes Requestor and does not comply with 65 P.S. § 67.302(b) which states that access to a public record may not be denied due to "the intended use of the public record by the requester unless otherwise provided by law."
13. Requestor testified that, through this RTKL request, he seeks to obtain all financial records related to assets seized under the Forfeiture Act to understand how these monies are being obtained and spent so that he may report to his readers about the function and actions of their local government.
14. *Documents Produced:* The DA's Office has produced 355 pages³ of records in an

³ The DA's Office states in Petitioner's Reply Brief that it produced 376 total pages, contained in Attachments A-G, in response to the September 7, 2018 RTKL request. Upon review of Attachments A-G, the Court finds that Attachments C and E are not responsive to the RTKL request as Attachment C is nineteen page record of York County's response to Carter Walker's York County RTKL request and Attachment E is a two-page record of

attempt to satisfy this RTKL request. These records consist of:

- a. Eighty-six pages of letters from the Lancaster County Controller indicating the DA Office's compliance with Controlled Substances Forfeiture Act and County Asset Forfeiture forms from 1999 to 2018 prepared by the Lancaster County Controller which contain categorical summaries of annual income, expenses, account balances, amount of cash forfeitures, and value of items sold;
- b. Two hundred twenty-one pages of records of items sold at the annual Drug Task Force auction for the years 2012 through 2018;
- c. Thirty-eight pages of letters from local community service organizations that acknowledge receipt of funds from the DA's Office for various programs;
- d. Seven pages containing a list of names and corresponding docket numbers of individual owners of forfeited property for a timeframe of approximately two years; and
- e. Three pages of a letter from the Lancaster County Controller regarding the lease of the 2016 Toyota Highlander, audits of DTF funds utilized by the DA's Office, and an issue regarding mileage reimbursement to the DA's Office.

15. Because of the subsequent record disclosures by the DA's Office, the cooperation among the parties, and the availability of civil forfeiture records in the Lancaster County Prothonotary's Office, the case is much different from when the OOR reviewed it in January 2019.

16. *Stipulations:* The parties stipulated at the August 23, 2019, hearing that Item 1 is

Dauphin County's response to Carter Walker's Dauphin County RTKL request. Accordingly, the court finds that twenty-one of the asserted 376 total pages are documents that are irrelevant and nonresponsive to the September 7, 2018, request, thereby reducing the total page count of record produced to 355.

satisfied insofar as the civil forfeiture records are available for inspection and/or reproduction in the Lancaster County Prothonotary's Office. Requestor stated that Items 4 and 6 have been satisfied by the documents produced by the DA's Office on April 11, 2019. The parties agree that only Items 2 and 5 remain at issue.

17. *Drug Task Force Ledgers:* Detective John Burkhart testified that all cash seized through drug forfeiture goes through the civil asset forfeiture procedure before it is permitted to be utilized or spent by the DTF. Cash seized through civil asset forfeiture is deposited into an account maintained by the Lancaster County Treasurer. If the DTF requires cash disbursements to be used for undercover operations, it requests \$10,000 at a time and then the \$10,000 is deposited into a safe maintained by the DTF and to which only two detectives have access. All requests or withdrawals of any of the \$10,000 cash used in undercover operations are recorded in a ledger maintained by the DTF.
18. The DA's Office made no argument that these ledgers would be excluded from being produced for Requestor in response to Item 2. The court finds that the DA's Office is required to produce these ledgers to Requestor under the request in Item 2.
19. *Drug Task Force Auction Records:* The DA's Office produced auction records from 2012 to 2018. The DA's Office credibly attests that the independent auction company who maintains the DTF auction records reports that records for the years 2008 to 2011 no longer exist.
20. The DTF holds a public auction through a contractor, traditionally on the third Saturday in May, where items obtained via the civil asset forfeiture process are auctioned to the general public. These auctions generate auction records of who

- purchases a forfeited item.
21. At the auction, the DTF sells vehicles, articles of clothing, tools, televisions and other electronics, and jewelry.
 22. The DTF auction bidder registration forms contain the names, home addresses, and driver's license numbers of all individuals who registered to bid at the DTF auction.
 23. No notice is provided to those who register for a bidder number that their name, address, or other personal information may be obtained by a RTKL request to the Lancaster County District Attorney's Office.
 24. Requestor seeks the auction bidder registration information that would identify who bought which items at the DTF auction.
 25. The DA's Office is not willing to produce these bidder records absent a court order, because the bidder registration forms contain the bidder's name, home address, and driver's license number and those bidders were not formally notified that this information could be disseminated by virtue of registering to bid at a DTF auction.
 26. *Forfeited Property Spreadsheets:* Requestor seeks to obtain spreadsheets created and maintained by the DA's Office since July 1, 2017, that track items of forfeited property and how those items are disposed of.
 27. The DA's Office is willing to turn over these spreadsheets, but not the most recent year's due to how the DA's Office interprets the Pennsylvania Attorney General Guidelines regarding the confidentiality of audit and other confidential records prior to those records being submitted by the Attorney General to the Pennsylvania legislature on or before November 30 of each year.
 28. *Item 5 Request:* Requestor maintains that the records produced by the DA's Office in

- relation to Item 5 are markedly insufficient as Requestor desires to obtain specific receipts, vouchers, and other detailed proof of where civil forfeiture funds are spent and for what purpose.
29. The DA's Office maintains that it has fully complied with the requests in Item 5 as drafted by Requestor. Further, it is the DA's Office's position that items relating to criminal and noncriminal investigative records and records used in the preparation of the Attorney General audit are prohibited from dissemination under section 67.708(b)(16) and (17) of the Forfeiture Act and the Attorney General Guidelines and rules concerning the audit.
30. DA Stedman credibly testified that no list exists explaining how each purchase made with civil forfeiture funds complies with the Forfeiture Act, but asserted that the DA's Office has nevertheless satisfied Item 5, Part 2, having produced for Requestor the Controller's audit compliance letters as well as a series of letters relating to community outreach and crime prevention programs which received civil forfeiture funds from the DA's Office.
31. Item 5, Part 1, as written, merely requests records of categorical spending—not itemized records or receipts of specific expenditures.
32. Item 5, Part 2, as written, requests records that “illustrate” compliance, and cannot be read as seeking exhaustive records that conclusively prove the DA's Office's compliance with the Forfeiture Act's mandate. DA Stedman credibly testified that no other records exist to satisfy this request other than the letters already produced.
33. DA Stedman testified regarding what the parties have referenced as the “six boxes” of records sitting in the DA's Office on the 5th Floor of the Lancaster County

Courthouse. DA Stedman testified that these boxes—now more than six—contain unredacted financial records that relate to criminal records (but contain no police reports).

34. These boxes of records contain the names of undercover officers and confidential informants, vehicles, wiretap surveillance information, location of storage facilities and the DTF, equipment utilized by the DTF, and information relating to the circumstances surrounding undercover operations. DA Stedman testified credibly that the only individual that would be able to properly redact these records would be the head of the DTF, as he alone understands the context of all the operations and could recognize contextual information that could possibly be used to identify officers, informants, and operations.
35. Redacting such records to ensure officer and public safety would be very burdensome to the DA's Office.
36. The OOR Appeals Officer found that "Requester seeks records of financial accounts." Both parties credibly testified that the records generally sought are financial records.
37. All parties have now briefed their positions on the substance of the appeal and testified as to their positions on Items 2 and 5.

II. STANDARD OF REVIEW

Section 67.1302 of the RTKL provides that:

a requester or local agency may file a petition for review . . . with the court of common pleas for the county where the local agency is located. The decision of the court shall contain findings of fact and conclusions of law based upon the evidence as a whole. The decision shall clearly and concisely explain the rationale for the decision.

65 P.S. § 67.1302(a). The courts of common pleas "are the ultimate finders of fact and . . . are to conduct full *de novo* reviews of appeals from decisions made by RTKL appeals officers,

allowing for the adoption of the appeals officer’s factual findings and legal conclusions when appropriate.” Bowling v. Office of Open Records, 75 A.3d 453, 474 (Pa. 2013). Further, this court has the authority to expand the record to fulfill its statutory role. Id. at 476.

III. LAW

A. The Right To Know Law’s Framework

Section 703 of the RTKL places the initial burden on the one requesting records to “identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested.” 65 P.S. § 67.703; see also Mollick v. Twp. of Worcester, 32 A.3d 859, 871 (Pa. Cmwlth. 2011) (“[I]t is the requestor’s responsibility to tell an agency what records he or she wants.”). A RTKL request is insufficiently specific under section 703 where the request is “subject to multiple interpretations” as to what records are being sought. Pa. Hous. Fin. Agency v. Ali, 43 A.3d 532, 534 (Pa. Cmwlth. 2012). The Commonwealth Court set forth a three-part balancing test to evaluate whether a request is sufficiently specific, examining whether the request identified: “(1) the subject matter of the request; (2) the scope of documents sought; and (3) the timeframe for which records are sought.” Pa. Dep’t of Educ. v. Pittsburgh Post–Gazette, 119 A.3d 1121, 1124 (Pa. Cmwlth. 2015). The scope of documents sought may be overbroad where the request requires files to be reviewed and judgments to be made as to the relation of the documents to the specific request. Id. at 1125; Dep’t of Env’tl. Prot. v. Legere, 50 A.3d 260, 265 (Pa. Cmwlth. 2012).

In responding to a proper request, an agency may assert that no such records exist or that an exception applies to any disclosure. For example, an agency cannot be required to create records that do not currently exist even if such records existed at a certain point in time. Section 705 of the RTKL provides that, “[w]hen responding to a request for access, 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.” 65 P.S. § 67.705. An agency may also raise an exception to disclosure. The agency has the burden to establish both that records do not exist and that any exception to disclosure applies.

B. Civil Asset Forfeiture Records and the RTKL

The RTKL establishes a framework whereby citizens may request documents from government agencies within the Commonwealth of Pennsylvania. “Unless otherwise provided by law, a public record, legislative record or financial record shall be accessible for inspection and duplication” 65 P.S. § 67.701(a). Among other things, the RTKL explains the procedures for requests of records, redaction of records, and exceptions from production. If the RTKL conflicts with any other state law, the RTKL does not apply. 65 P.S. § 67.3101.1. All parties agreed at August 23, 2019 hearing that the RTKL does not conflict with laws regarding civil asset forfeiture.

With respect to asset forfeitures, the DA’s Office is required by law to prepare an annual audit of forfeited property. See 42 Pa. C.S. § 5803(j). The DA’s Office, in conjunction with the County Controller, must submit the audit to the Pennsylvania Attorney General by September 30 of each year. Id. The audit must include the following information:

- (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.

Id. The legislature directed the Attorney General to “adopt procedures and guidelines, which shall be public, governing the release of information by . . . the district attorney to protect the confidentiality of forfeited property or proceeds used in ongoing law enforcement activities.” 42 Pa. C.S. § 5803(k)(2).

C. 42 Pa.C.S. § 5803 Asset Forfeiture

The language used by the legislature in Section 5803 subparagraphs (j) and (k) indicates that “[t]he [annual] audit shall not be made public,” and anticipates that certain information related to asset forfeiture will be released by Pennsylvania district attorneys. The legislature’s intent is not entirely clear from subparagraph (k) as to whether there is a direction to publicly release information or release information to the legislature. Subparagraphs (j) and (k) provide in relevant part:

(j) Annual audit of forfeited property.--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. By September 30 of each year, the county shall report all forfeited property and proceeds obtained under this chapter and the disposition of the property during the preceding year to the Attorney General. The Attorney General and each district attorney shall maintain and create appropriate records to account for the property forfeited in a fiscal year and the use made of the property forfeited.

....

(k) Annual report and confidential information.--The Attorney General shall annually submit a report to the Appropriations Committee and Judiciary Committee of the Senate and to the Appropriations Committee and Judiciary Committee of the House of Representatives specifying the forfeited property or proceeds of the forfeited property obtained under this chapter during the fiscal year beginning July 1, and the following shall apply:

- (1) The report shall include all information required under subsection (j) subject to the limitations provided under paragraph (2).

(2) The 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.

D. Right to Privacy Under the Pennsylvania Constitution

Pennsylvania recognizes the right to privacy in Article I, Section 8 of the Pennsylvania Constitution, and Pennsylvania courts often invoke this right to privacy to give greater protection to our citizens than that guaranteed by the United States Constitution. Sapp Roofing Co. v. Sheet Metal Workers' Int'l Ass'n, Local Union No. 12, 713 A.2d 627, 630 (Pa. 1998). There is a constitutional right to privacy in one's home address, which has been recognized in connection with RTKL requests. Pa. State Educ. Ass'n v. Dep't of Cmty. & Econ. Dev., 148 A.3d 142 (Pa. 2016) (“PSEA”). This right to informational privacy guaranteed by the Pennsylvania Constitution “may not be violated unless outweighed by a public interest favoring disclosure.” Id. at 158. “[W]hen evaluating claims involving constitutional privacy interests related to RTKL requests for personal information, courts must ‘apply a balancing test, weighing privacy interests and the extent to which they may be invaded, against the public benefit which would result from disclosure.’” Id. at 153 (quoting Times Pub. Col, Inc. v. Michel, 633 A.2d 1233, 1239 (Pa. Cmwlth. 1993)).

IV. DISCUSSION

In its initial posture, this case required interpretation of the RTKL and a determination of whether the RTKL law protects all supporting documents of an audit when it prohibits the release of the audit. However, during the pendency of this appeal, the DA’s Office has voluntarily produced 352 pages of documents and contends that because there has been full compliance, there is no need for the court to make any legal determination on other issues now

tangential to the appeal. Requestor counters that the dispute involves straightforward legal questions and that the produced documents do not fully satisfy its request. The court notes that the conflict in this case centers around the crossroad of two important yet competing interests: (1) Requestor's interest in shedding light on government functions that involve the procurement and expenditure of large sums of money for the benefit of public safety, and (2) the DA's Office's interest in maintaining the security and confidentiality of operations necessary to enforce the law and protect the public. After hearing the testimony and arguments of the Requestor, DA's Office, and Intervenor, the court finds that there are six issues of law and fact that the court must decide involving requested Items 2 and 5. These issues are:

Item 2 Issues:

- a. Does Item 2, as written, properly request the DTF auction bidder registration information?
- b. Is the information contained in the bidder registration form a public record subject to disclosure given a bidder's right to privacy protected by the Pennsylvania Constitution?
- c. Do the Attorney General Guidelines related to the Forfeiture Act mandate that that information contained in the DA's Office's spreadsheet tracking items of forfeited property for the most recent year not be disclosed until after the Pennsylvania Office of Attorney General reports to the legislature?

Item 5 Issues:

- a. Does Item 5, Part 1, as written, properly request all financial records in the possession of the DA's Office related to drug forfeiture spending?
- b. If the financial documents in the possession of the DA's Office related to drug

forfeiture spending were requested with the proper specificity, what exemptions, if any, under the Pennsylvania RTKL or other state law would prohibit their disclosure?

- c. Does Item 5, Part 2, as written, properly request exhaustive records that show exactly how monies were used, or does it merely request any records that illustrate their use?

The court will address the issues below.

A. Does Item 2, as written, properly request the DTF auction bidder registration information?

The language of Item 2 reads:

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

The request specifically asks for “date sold/distributed, who the item was distributed to if it was distributed, and how much the item was sold for if it was sold.” The request distinguishes between property distributed [to other law enforcement agencies or personnel] and property sold. The request seeks the identity of persons or agencies to whom any items were distributed, but does not use similar language seeking the identity of purchasers of items sold. Accordingly, by its own terms, the request in Item 2 does not request the identities of the purchasers of forfeited items subsequently sold at auction. However, because this issue is one quickly capable of repetition, the court will address the auction bidders’ right to privacy under the Pennsylvania Constitution.

B. Is the information contained in the bidder registration form a public record subject to disclosure given a bidder's right to privacy protected by the Pennsylvania Constitution?

Notwithstanding the limiting language of the request in Item 2, it is important to understand the nature of the DTF auction bidder registration forms and whether these forms are public records subject to disclosure should the bidder registration forms be properly requested. The DTF auction is a public auction that has traditionally taken place on the third Saturday in May, where items obtained via the civil asset forfeiture process are auctioned to the general public. Such items include vehicles, articles of clothing, tools, televisions and other electronics, and jewelry. The bidder registration forms contain the names, home addresses, and driver's license numbers of all individuals who registered to bid at DTF auctions. No notice is provided to those who register for a bidder number that their names, addresses, or other personal information may be obtained by a RTKL request to the Lancaster County District Attorney's Office.

Article One, Section One of the Pennsylvania Constitution confers upon citizens a right to privacy. Once the constitutional right of informational privacy is triggered, courts no longer review a records-request matter under the RTKL, but rather review the matter under the Pennsylvania Constitution and tests espoused in Reese v. Pennsylvanians for Union Reform, 173 A.3d 1143, 1159 (Pa. 2017), and PSEA. If the right to privacy is outweighed by a public interest favoring disclosure, only then may the matter proceed under the RTKL.

In PSEA, the Pennsylvania Supreme Court described the "right to informational privacy" as "the right of the individual to control access to, or the dissemination of, personal information about himself or herself." PSEA, 148 A.3d at 150. A balancing test weighs privacy interests and the extent to which they may be invaded against the public benefit which would result from disclosure. Reese, 173 A.3d at 1159. The RTKL was "designed to promote access to official

government information in order to prohibit secrets, scrutinize the actions of public officials, and make public officials accountable for their actions.” Governor's Office of Admin. v. Purcell, 35 A.3d 811, 820 (Pa. Cmwlt. 2011) (emphasis added).

The public interest advanced by Requestor is one of government transparency in how civil forfeiture funds are obtained and expended. To this end the general auction records of what was sold and for how much are relevant under RTKL to show the “money trail” leading in and out of the Lancaster County District Attorney’s Office. The requested disclosure of the names and home addresses of private bidders at the yearly DTF auction is not closely related to the official duties of the DA’s Office and does not provide insight into its official actions. The Commonwealth Court has held that “the disclosure of personal information such as home addresses [of public employees], reveals little, if anything about the workings of government[.]” Governor's Office of Admin. v. Campbell, 202 A.3d 890, 896 (Pa. Cmwlt. 2019) (alteration in original) (quoting PSEA, 148 A.3d at 145).

The constitutional protections at issue in this case are further bolstered as the information sought does not pertain to government employees, but to private individuals who bid on items being auctioned and who were provided no notice of the potential dissemination of their personal information. The court holds that the privacy interest of the individual bidders outweighs the public interest in disclosing the information contained in the bidder registration forms. See Pa. Liquor Control Bd. v. Beh, No. 153 C.D. 2018, 2019 WL 3209994, at *10 (Pa. Cmwlt. July 17, 2019) (holding that requester's intended purpose of making certain that PLCB acted in conformity with Liquor Code requirements was outweighed by applicants' and licensees' constitutionally mandated right of informational privacy to “their personally identifiable street address information”). Accordingly, these bidder registration forms are not public records as

defined by the RTKL and not subject to disclosure to Requestor.

Additionally, even if this request were to pass constitutional muster and the bidder registration forms were found to be public records subject to disclosure, 65 P.S. § 67.708(b)(6)(1)(a) and arguably (b)(1)(ii) require that the names, home addresses, and driver's license numbers of the bidders would have to be redacted by the DA's Office under 65 P.S. § 67.708(c) before dissemination to the Requestor. See City of Harrisburg v. Prince, 186 A.3d 544, 557 (Pa. Cmwlth. 2018) (holding that even if the contested record were deemed to be a financial record, it includes personal financial information such as donors' names, home addresses, and telephone numbers that would also properly be redacted by the Agency), appeal granted, 197 A.3d 1170 (Pa. 2018); Dep't of Conservation & Nat. Res. v. Office of Open Records, 1 A.3d 929, 942 (Pa. Cmwlth. 2010) (upholding Agency's decision to redact the names and home addresses of nongovernmental contractors in request for certified payroll records).

C. Do the Attorney General Guidelines related to the Forfeiture Act mandate that the information contained in the spreadsheet tracking items of forfeited property for the most recent year not be disclosed until after the Pennsylvania Office of Attorney General reports to the legislature?

Upon review of 42 Pa. C.S. § 5803 subparagraphs (j) and (k), the legislature only limits the release of asset forfeiture information by not making public (1) the audit; and (2) forfeited property or proceeds used in ongoing law enforcement activities requiring confidentiality. The legislature gives no explanation as to why the audit is not to be made public, but when read in conjunction with subparagraph (k)(2), it is reasonable to conclude that it is to protect the confidentiality of ongoing law enforcement activities. The Attorney General Guidelines ("the Guidelines") support this interpretation.

Requestor specified in his request, "Please note that I am not requesting a copy of the audit sent to the Attorney General's Office each year, as required by 42 Pa.C.S. § 5803(j), Act 13

of 2017.” In light of this, the only potential issue regarding the Guidelines is whether the information pertains to forfeited property or proceeds used in ongoing law enforcement activities requiring confidentiality.

The Guidelines are just that – guidelines. They are not substantive law and have not been promulgated in accordance with Pennsylvania’s Administrative Procedures Act. Agency regulations must be promulgated pursuant to the notice and comment procedures contained in the Commonwealth Documents Law in order to have the force and effect of law; however, an agency may also set forth guidelines in “statements of policy.” Mulberry Square Elder Care & Rehab. Ctr. v. Dep’t of Human Servs., 191 A.3d 952, 963 (Pa. Cmwlth. 2018). Accordingly, the Guidelines have no force of law in determining whether information must be released under the RTKL.

Notwithstanding, the Guidelines support release of all asset forfeiture records that do not compromise confidentiality of information related to forfeited property or proceeds actively being used in ongoing law enforcement activities. This is particularly true when no conflict exists between § 5801 and a request has been made under the RTKL. The court can find nothing in the Guidelines related to the Asset Tracking System that indicates there are timeframes where the information found in the Asset Tracking System may not be disclosed in a RTKL request. The Guidelines do state that “The District Attorney may notate on the Asset Tracking system the word ‘confidential’ if the District Attorney determines that without the notation law enforcement activities would be jeopardized.” This corresponds to the noted requirements in both the RTKL and Civil Asset Forfeiture laws that ongoing law enforcement activity remain confidential. The “Purpose” section of the Guidelines shows that the guidelines are intended to address statutory reports to the Appropriations and Judiciary Committees of both the Senate and the House of

Representatives and to provide guidance to district attorneys when faced with releasing information related to forfeited property or proceeds. Part b. of the Guidelines explains the intent is to:

Provide the Attorney General and the District Attorneys procedures and guidelines for governing the release of information to protect the confidentiality of forfeited property or proceeds, subject to 42 Pa.C.S.A §5801 et seq. and used in ongoing law enforcement activities.

The Guidelines go on to explain:

d. The District Attorney and Attorney General shall maintain proper documentation on all property forfeited under this Act and the disposition thereof and shall not release information that could identify, among other confidential matters, police officers, informants and/or targets of law enforcement activities.

e. The District Attorney and the Attorney General may release all other forfeiture matters which will not jeopardize law enforcement activities in his/her county or any other county.

The parties all agree that no conflict exists between the RTKL and §5801. Accordingly, the Pennsylvania RTKL requires that financial records containing information related to ongoing law enforcement activities must be disclosed to a requester subject to appropriate redaction to protect ongoing investigations, covert law enforcement activity, and public and private safety. Therefore, when examined through the lenses of the RTKL, the Guideline's "may" becomes a non-discretionary "shall." The DA's Office is required to provide to the requestor the spreadsheets from July 1, 2017, to September 7, 2018, that track forfeited assets and their subsequent disposition subject to appropriate redaction.

D. Does Item 5, Part 1, as written, properly request all financial records in the possession of the DA's Office related to drug forfeiture spending?

Item 5, Part 1, requests "Records that show how forfeited property proceeds were spent, i.e. officer training, equipment, funding programs, etc. . . ." The DA's Office interpreted this language as requesting records of categorical spending, like officer training, equipment, and

funding programs, and not requesting individualized receipts, invoices, or vouchers of every expenditure in each category. Requestor testified that he made this request with the intention of obtaining detailed vouchers and receipts, though he concedes that he did not specifically use the words “receipt” or “voucher” in his request.

The scope of the documents sought is broad (“records”). The Commonwealth Court has held that an undefined scope, such as “Any and all records, files, or . . . communication(s) of any kind” is too broad. Pa. State Police v. Office of Open Records, 995 A.2d 515, 517 (Pa. Cmwlth. 2010) (“PSP”). Because the records request in Item 5 is subject to multiple reasonable interpretations that produce vastly different results, such request is insufficiently specific and such overbreadth is to be construed against the Requestor. This court does not have the authority to refashion or unilaterally narrow the scope of an overbroad request. Mollick, 32 A.3d at 865.

While the court understands the Requestor’s intent for his request, the language of the request is overbroad and insufficiently specific.

E. If the financial documents in the possession of the DA's Office related to drug forfeiture spending were requested with the proper specificity, what exemptions under Pennsylvania RTKL or other state law would prohibit their disclosure?

Requests for more specific documents, such as emails (Office of the Dist. Attorney of Phila. v. Bagwell, 155 A.3d 1119, 1146 (Pa. Cmwlth. 2017); letters (Legere, 50 A.3d at 265); manuals (PSP, 995 A.2d at 517); and receipts or vouchers are an appropriately narrow scope when coupled with a reasonable timeframe and defined subject matter. While Requestor has not requested financial documents with this proper specificity, the issue, like that of auction bidder information, requires further comment as it is quickly capable of repetition and the court sees no public benefit in refusing to address the additional arguments for nondisclosure raised by the DA’s Office.

Beyond the successful overbreadth argument, the DA’s Office asserts two reasons on

appeal why it should not be required to release the records contained in what all parties have generally referenced as the “six boxes of records”: (1) the requested documents would be prepared for the Attorney General’s audit and so pursuant to the Forfeiture Act, this information is not to be disseminated and shall remain confidential; and (2) the records are exempt as criminal investigative records pursuant to 65 P.S. § 67.708(b)(16) and noncriminal investigative records pursuant to 65 P.S. § 67.708(b)(17).

For the reasons stated in Part IV(C) of this opinion, the court does not find the Attorney General audit argument to have merit. The Guidelines and the language of 42 Pa.C.S. § 5803(j) & (k) only prohibit the release of the annual audit and any records that compromise confidentiality in on-going law enforcement activities. Section 5803 does not preclude the disclosure of any and all underlying records used in preparing the audit, only the audit itself. Had the legislature intended to prevent the release of any records related to forfeiture accounts, it would have used that language. Regarding the concern for confidentiality of ongoing law enforcement activity, the RTKL contains a comprehensive framework regarding the nondisclosure or redaction of records that contain such information, which is addressed below.

The DA’s Office argues the records contained in the “six boxes” are exempted from disclosure under § 67.708(b)(16) of the RTKL as records of an agency relating to or resulting in a criminal investigation and (b)(17) as records of an agency relating to a noncriminal investigation. The parties all testified that the records in dispute are financial records. Because the records are financial records, § 67.708(c) applies and mandates that the records be produced subject to appropriate redaction. 65 P.S. § 67.708(c) reads,

Financial records.--The exceptions set forth in subsection (b) shall not apply to financial records, except that an agency may redact that portion of a financial record protected under subsection (b)(1), (2), (3), (4), (5), (6), (16) or (17). An agency shall not disclose the identity of an individual performing an undercover or covert law

enforcement activity.

Section 67.708(c) clearly encompasses the criminal and noncriminal investigative records as referenced in (b)(16) and (b)(17). Furthermore, the Commonwealth Court has consistently held that a heavy burden in production of documents in compliance with the RTKL does not absolve the agency of the necessity to produce those records. Legere, 50 A.3d at 265 (“[A]n agency's failure to maintain the files in a way necessary to meet its obligations under the RTKL should not be held against the requestor. To so hold would permit an agency to avoid its obligations under the RTKL simply by failing to orderly maintain its records.”).

The court finds the argument that the “six boxes” of financial records are exempted from disclosure under (b)(16) and (b)(17) is without merit.

F. Does Item Five, Part Two, as written, properly request exhaustive records that illustrate how monies were used or does it request any records that illustrate?

In Item 5, Part 2, Requestor requests “records that illustrate how these expenditures comply with the Act’s mandate that forfeited funds be used for combating substance abuse.” The DA’s Office provided letters from the Lancaster County Controller indicating the DA Office’s compliance with the Forfeiture Act and letters from community organizations acknowledging their receipt of funds. The DA’s Office argues that the documents it has provided show how forfeited property proceeds were spent, and that examples of officer training, equipment, and funding programs are provided in the documents. Further, the DA’s Office maintains that they have no other records that “illustrate how . . . forfeited funds [are] used for combating substance abuse.” An agency is not required to guess at the meaning of the RTKL request or envision everything a RTKL request might conceivably encompass. Dep’t of Corr. v. St. Hilaire, 128 A.3d 859, 864 (Pa. Cmwlth. 2015); Askew v. Pa. Office of Governor, 65 A.3d 989, 992 (Pa. Cmwlth. 2013).

Requestor admits that the letters provided by the DA’s Office “are responsive to Item 5,” though he asserts that the DA’s Office has failed to provide “receipts, or other specific expenditure records,” and that the community organization letters are only “a small fraction of the Office’s expenditure.” Requestor did not request receipts or specific expense records, but only records that “illustrate how these expenditures comply with the Act’s mandate.” An “illustration”⁴ is not an exhaustive, detailed listing of every transaction, but merely an example set of the types of expenditures made.

The court notes that requesting an agency to produce documents that are illustrative of a specific purpose does begin to run afoul of RTKL. Agencies are generally required to produce records as requested, not make judgment calls as to whether a document fulfills one purpose or another. Legere, 50 A.3d 264–65 (stating that where requests require “files to be reviewed and judgments made as to the relation of the documents to the specific request,” such requests are insufficiently⁴ specific); see also Mollick, 32 A.3d at 871; Lambert v. Office of Attorney Gen., No. 740 C.D. 2014, 2015 WL 5254070, at *3 (Pa. Cmwlth. Feb. 17, 2015). If Requestor wishes to seek receipts, vouchers, reports, and other specific financial records to review, he may request them, but the court is wary to impose upon an agency producing documents an additional layer of evaluation to comply with a RTKL request. Requestor, as the journalist, is the person in the better position to review uncurated financial records and attribute whatever meaning he believes the documents to have as he develops his story. For the above-stated reasons, the DA’s Office has complied with the request in Item 5, Part 2 as submitted by Requestor.

⁴ According to Webster’s Dictionary, “to illustrate” is defined as “to make clear by giving or by serving as an example or instance.”

V. CONCLUSION

For the reasons foregoing, the court issues the following Order.

IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

LANCASTER COUNTY DISTRICT	:	
ATTORNEY'S OFFICE,	:	
Petitioner,	:	
	:	
v.	:	No. CI-19-01185
	:	
CARTER WALKER and LNP/LANCASTER,	:	
ONLINE,	:	
Respondents,	:	
	:	
and,	:	
	:	
THE COUNTY OF LANCASTER,	:	
<u>Intervenor,</u>	:	

ORDER

AND NOW, this 12th day of September 2019, upon review of the pleadings, briefs of all parties, and testimony presented at the hearing on August 23, 2019, it is hereby ORDERED:

1. Upon review of the record and the parties' stipulations, Petitioner has completely satisfied the requests for Items 1, 4, and 6 of the Open Records Request dated September 7, 2018.
2. *Item 2* – The appeal of the DA's Office is SUSTAINED IN PART AND DISMISSED IN PART.
 - a. In consideration of the specific language of Item 2 and the privacy considerations of the private parties who purchased items at the Lancaster County Drug Task Force auctions, the Lancaster County Office of District Attorney is not required to produce records that disclose the identities, home addresses, and/or driver's license numbers of the private parties who bid upon property sold at the Lancaster County Drug Task Force auctions.
 - b. With respect to the forfeited items spread sheets from July 1, 2017, to September 7, 2018, the appeal of the DA's Office is DISMISSED. Within thirty (30) days of

the date of this Order, the Lancaster County Office of District Attorney is hereby directed to provide to the requestor the spreadsheets from July 1, 2017, to September 7, 2018, that track forfeited items and their subsequent disposition. This spreadsheet shall be redacted to conform the RTKL specifications as set forth in 65 P.S. § 67.708(b) and (c).

- c. With respect to the cash ledgers, the appeal of the DA's Office is DISMISSED. Within thirty (30) days of the date of this Order, the Lancaster County Office of District Attorney is hereby directed to provide to the requestor the ledgers of cash funds kept in the Drug Task Force safe as testified to by Detective John Burkhart. These ledgers shall be redacted to conform the RTKL specifications as set forth in 65 P.S. § 67.708(b) and (c).
3. *Item 5* – The appeal of the DA's Office is SUSTAINED.
- a. In consideration of the language of the first portion of Item 5 (“Records that show how forfeited property proceeds were spent, i.e. officer training, equipment, funding programs, etc.”), the Lancaster County Office of District Attorney has complied with that portion of the request as written insofar as it provided copies of an accounting of the spending of forfeiture monies across thirteen categories.
 - b. In consideration of the language of the second portion of Item 5 (“records that illustrate how these expenditures comply with the Act's mandate that forfeited funds be used for combating substance abuse.”), the Lancaster County Office of District Attorney has complied with that portion of the request as written insofar as it has provided thirty-five letters from community organizations regarding the receipt of drug forfeiture funds to aid these organizations and their missions and

records from the Lancaster County Controller that use of drug forfeiture funds have complied with the necessary audits.

BY THE COURT:

A handwritten signature in blue ink, appearing to read 'LGB', is positioned above the printed name of the judge.

LEONARD G. BROWN, III, JUDGE

ATTEST:

Copies: Travis S. Anderson, Esq.
Kirby Thomas West, Esq.
Christina L. Hausner, Esq.