

Laura C. Dennis, Esq.  
Luzerne County  
Open Records Office  
200 North River St.  
Wilkes-Barre, PA 18711

Todd Tarselli/BY-8025  
SmartCom/PaDOC  
P.O. Box 33028  
St. Petersburg, FL 33733

September 7, 2020

RE:Right to Know Request

Dear Mrs. Laura Dennis,

Please be advised this is my third letter submitted to this office without a response. I re-submit the following:

I request the following information under the Pa. Right to Know Law.

On August 6, 2012, Judge Thomas Burke appointed Jeffrey A. Yelen (100 Citizens Bank Center, 8 West Market St., Wilkes-Barre, PA 18701-1885) as "Conflict Counsel" to represent Todd Tarselli in a PCRA (juvenile life without parole appeal)(Com v Tarselli 295 of 1992).

Please inform me the following:

- 1.What office allocated funds for Mr. Jeffrey A. Yelen in 2012 to represent defendant Todd Tarselli?
- 2.How much money was paid to conflict counsel Jeffrey A. Yelen for this appeal?

Should this request be denied please provide the office I may file an appeal.

Thank you in advance for your time and consideration.

Sincerely,

  
Todd Tarselli

Laura C. Dennis, Esq.  
Luzerne County  
Open Records Office  
200 North River St.  
Wilkes-Barre, PA 18711

Todd Tarselli/BY-8025  
SmartCom/PaDOC  
P.O. Box 33028  
St. Petersburg, FL 33733

September 7, 2020

RE: Right to Know Request

Dear Mrs. Laura Dennis,

Please be advised this is my third letter submitted to this office without a response. I re-submit the following:

I request the following information under the Pa. Right to Know Law.

On July 23, 2013, Judge Thomas Burke appointed Robert Rutner, Esq. (SNB Plaza, 108 N. Washington Ave., Ste. 700, Scranton, PA 18503) as "Conflict Counsel" to represent Todd Tarselli in a PCRA (juvenile life without parole appeal)(Com v Tarselli 295 of 1992).

Please inform me the following:

1. What office allocated funds for Mr. Robert Rutner in 2013 to represent defendant Todd Tarselli?
2. How much money was paid to conflict counsel Robert Rutner for this appeal?

Should this request be denied please provide the office I may file an appeal.

Thank you in advance for your time and consideration.

Sincerely,

  
Todd Tarselli



**pennsylvania**  
OFFICE OF OPEN RECORDS

**FINAL DETERMINATION**

<b>IN THE MATTER OF</b>	:	
	:	
<b>TODD TARSELLI,</b>	:	
<b>Requester</b>	:	
	:	
<b>v.</b>	:	<b>Docket No.: AP 2020-2038</b>
	:	
<b>LUZERNE COUNTY,</b>	:	
<b>Respondent</b>	:	

The Office of Open Records (“OOR”) received the above-captioned appeal under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 et seq. Upon review of the file, the appeal is dismissed for the following reason:

On July 14, 2020 and July 29, 2020, Todd Tarselli (“Requester”) submitted identical RTKL requests (“Requests”) to Luzerne County (“County”), seeking information relating to the allocation of funds for his legal representation in a 2012 case, among other things. The County did not respond within five business days, and the Requests were, therefore, deemed denied on July 21, 2020 and August 5, 2020, respectively. 65 P.S. § 67.901.

On October 1, 2020, the Requester appealed to the OOR.<sup>1</sup> Section 1101(a)(1) of the RTKL states that a requester may appeal to the OOR “within 15 business days of the mailing date of the

---

<sup>1</sup> Pursuant to the Governor’s Proclamation of Disaster Emergency, the OOR stayed this appeal for a week to ensure that both parties were able to meaningfully participate on appeal, given the restrictions of the COVID-19 pandemic. Available at: <https://www.governor.pa.gov/wp-content/uploads/2020/03/20200306-COVID19-Digital-Proclamation.pdf> (last accessed on November 6, 2020). This appeal was postmarked October 1, 2020. Pursuant to the

agency's response or within 15 business days of a deemed denial." 65 P.S. § 67.1101(a)(1). Therefore, appeals of the County's denials on July 21, 2020 and August 5, 2020 were required to be filed no later than August 11, 2020 and August 26, 2020, respectively. Because the instant appeal was filed on October 1, 2020, the appeal is **dismissed as untimely**.

The file is now closed and no further action will be taken. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to the Luzerne County Court of Common Pleas. 65 P.S. § 67.1302(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond according to court rules as per Section 1303 of the RTKL. However, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.<sup>2</sup> This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: November 9, 2020**

*/s/ Joy Ramsingh*

---

APPEALS OFFICER  
JOY RAMSINGH

Sent to: Todd Tarselli/BY8025 (via U.S. Mail);  
Laura Dennis, Esq. (via email only)

---

"prison mailbox rule," the OOR finds that the appeal was filed on this date. *See Commonwealth v. Jones*, 700 A.2d 423, 426 (Pa. 1997).

<sup>2</sup> *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).



**pennsylvania**  
OFFICE OF OPEN RECORDS

**FINAL DETERMINATION**

<b>IN THE MATTER OF</b>	:	
	:	
<b>TODD TARSELLI,</b>	:	
<b>Requester</b>	:	
	:	
<b>v.</b>	:	<b>Docket No.: AP 2020-2039</b>
	:	
<b>LUZERNE COUNTY,</b>	:	
<b>Respondent</b>	:	

On September 8, 2020, Todd Tarselli (“Requester”) submitted a RTKL request (“Request”) to Luzerne County (“County”), pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking information relating to the allocation of funds for his legal representation in a 2012 case, among other things. The County did not respond within five business days, and the Request was, therefore, deemed denied on September 14, 2020. 65 P.S. § 67.901.

On October 1, 2020, the Requester appealed to the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure.<sup>1</sup> The OOR invited both parties to supplement the record and directed the County to notify any third parties of their ability to participate in this appeal. *See* 65 P.S. § 67.1101(c).

---

<sup>1</sup> Pursuant to the Governor’s Proclamation of Disaster Emergency, the OOR stayed this appeal for a week to ensure that both parties were able to meaningfully participate on appeal, given the restrictions of the COVID-19 pandemic. Available at: <https://www.governor.pa.gov/wp-content/uploads/2020/03/20200306-COVID19-Digital-Proclamation.pdf> (last accessed on November 6, 2020). This appeal was postmarked October 1, 2020. Pursuant to the “prison mailbox rule,” the OOR finds that the appeal was filed on this date. *See Commonwealth v. Jones*, 700 A.2d 423, 426 (Pa. 1997).

On November 2, 2019, the County submitted the affidavits, made under penalty of perjury, of Danielle Cunningham, the County's Senior Budget and Policy Analyst, and John Hakim, the County's Department of Conflict Counsel, who attest that they conducted a search of the County's records and that the requested records were not located. Ms. Cunningham attests:

The request sought documents and information for conflict attorneys for Todd Tarselli, including Jeffery Yelen, Esq. and Robert Butner, Esq. Specifically, it asked who would have funded these positions and how much they were paid.

If there were payments made to these gentlemen through either the Luzerne County Government or Luzerne County Courts, I would have access to this information. I have conducted a search and we do not that information available because our system would only reflect payments from 2013 forward. We do not have the information for payments made in 2012.

I would be the appropriate party to address this request and I am the party that would be responsible for processing this request.

Likewise, Mr. Hakim attests:

The request sought documents and information for conflict attorneys for Todd Tarselli, including Jeffery Yelen, Esq. and Robert Butner, Esq.

Assignments of Conflict Counsel are now performed by the Department of Conflict Counsel. This Department was formed on January 1, 2014. Prior to this date, all assignments for conflict attorneys would have been through the Luzerne County Court system, not Luzerne County government.

The request in this case is misdirected and should be sent to Luzerne County Court system, as the information requested was for a time period during 2012 and 2013. Luzerne County government would not have been the entity that would have processed any payments to Attorneys Butner or Yelen, as the Department of Conflict Counsel did not exist during this time.

I would be the appropriate party to address this request and I am the party that would be responsible for processing this request.

Under the RTKL, an affidavit made under the penalty of perjury may serve as sufficient evidentiary support of the nonexistence of records. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa.

Commw. Ct. 2010). In the absence of any competent evidence that the County acted in bad faith or that the records exist, “the averments in [the affidavits] should be accepted as true.” *McGowan v. Pa. Dep’t of Env’tl. Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014) (citing *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)). Based on the evidence provided, the County has met its burden of proving that the requested records do not exist in the County’s possession, custody, or control. *See Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

For the foregoing reasons, the appeal is **denied**, and the County is not required to take any further action. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to the Luzerne County Court of Common Pleas. 65 P.S. § 67.1302(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond according to court rules as per Section 1303 of the RTKL. However, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.<sup>2</sup> This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: November 9, 2020**

/s/ Joy Ramsingh

---

APPEALS OFFICER  
JOY RAMSINGH

Sent to: Todd Tarselli/BY8025 (via U.S. Mail);  
Laura Dennis, Esq. (via email only)

---

<sup>2</sup> *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

## ATTESTATION

I, Danielle Cunningham, am the Senior Budget and Policy Analyst for Luzerne County. I received a Right to Know request from the Office of Law that was filed on appeal with the Office of Open Records. The request sought documents and information for conflict attorneys for Todd Tarselli, including Jeffery Yelen, Esq. and Robert Butner, Esq. Specifically, it asked who would have funded these positions and how much they were paid.

If there were payments made to these gentlemen through either the Luzerne County Government or Luzerne County Courts, I would have access to this information. I have conducted a search and we do not that information available because our system would only reflect payments from 2013 forward. We do not have the information for payments made in 2012.

I would be the appropriate party to address this request and I am the party that would be responsible for processing this request.

The purpose of this Attestation, and by my signature below, is to verify under penalty of perjury under the laws of the Commonwealth of Pennsylvania, that the foregoing is true and correct according to my knowledge as the Senior Budget and Policy Analyst for Luzerne County.

Date: \_\_\_\_\_

\_\_\_\_\_  
Danielle Cunningham

## ATTESTATION

I, Danielle Cunningham, am the Senior Budget and Policy Analyst for Luzerne County. I received a Right to Know request from the Office of Law that was filed on appeal with the Office of Open Records. The request sought documents and information for conflict attorneys for Todd Tarselli, including Jeffery Yelen, Esq. and Robert Butner, Esq. Specifically, it asked who would have funded these positions and how much they were paid.

If there were payments made to these gentlemen through either the Luzerne County Government or Luzerne County Courts, I would have access to this information. I have conducted a search and we do not that information available because our system would only reflect payments from 2013 forward. We do not have the information for payments made in 2012.

I would be the appropriate party to address this request and I am the party that would be responsible for processing this request.

The purpose of this Attestation, and by my signature below, is to verify under penalty of perjury under the laws of the Commonwealth of Pennsylvania, that the foregoing is true and correct according to my knowledge as the Senior Budget and Policy Analyst for Luzerne County.

Date: 10/29/2020

Danielle Cunningham  
Danielle Cunningham

ATTESTATION

I, John Hakim, am the head the Department of Conflict Counsel. I received a Right to Know request from the Office of Law that was filed on appeal with the Office of Open Records. The request sought documents and information for conflict attorneys for Todd Tarselli, including Jeffery Yelen, Esq. and Robert Butner, Esq.

Assignments of Conflict Counsel are now performed by the Department of Conflict Counsel. This Department was formed on January 1, 2014. Prior to this date, all assignments for conflict attorneys would have been through the Luzerne County Court system, not Luzerne County government.

The request in this case is misdirected and should be sent to Luzerne County Court system, as the information requested was for a time period during 2012 and 2013. Luzerne County government would not have been the entity that would have processed any payments to Attorneys Butner or Yelen, as the Department of Conflict Counsel did not exist during this time.

I would be the appropriate party to address this request and I am the party that would be responsible for processing this request.

The purpose of this Attestation, and by my signature below, is to verify under penalty of perjury under the laws of the Commonwealth of Pennsylvania, that the foregoing is true and correct according to my knowledge as the head of the Department of Conflict Counsel for Luzerne County.

Date: \_\_\_\_\_

10/29/2020



\_\_\_\_\_  
John Hakim, Esq.

## ATTESTATION

I, John Hakim, am the Chief Counsel for the Office of Indigent Counsel. I received a Right to Know request from the Office of Law that was filed on appeal with the Office of Open Records. The request sought documents and information for conflict attorneys for Todd Tarselli, including Jeffery Yelen, Esq. and Robert Butner, Esq.

The Office of Conflict Counsel is now known as the Office of Indigent Counsel. This Office was formed on January 1, 2014. Prior to this date, all assignments for conflict attorneys would have been through the Luzerne County Court system, not Luzerne County government.

The request in this case is misdirected and should be sent to Luzerne County Court system, as the information requested was for a time period during 2012. Luzerne County government would not have been the entity that would have processed any payments to Attorneys Butner or Yelen, as the Office of Indigent Counsel did not exist during this time.

I would be the appropriate party to address this request and I am the party that would be responsible for processing this request.

The purpose of this Attestation, and by my signature below, is to verify under penalty of perjury under the laws of the Commonwealth of Pennsylvania, that the foregoing is true and correct according to my knowledge as the Chief Counsel for the Office of Indigent Counsel for Luzerne County.

Date: \_\_\_\_\_

\_\_\_\_\_  
John Hakim, Esq.