IN THE COURT OF COMMON PLEAS
CENTRE COUNTY, PENNSYLVANIA

STACY PARKS MILLER, DISTRICT ATTORNEY, Plaintiff, v. COUNTY OF CENTRE, SEAN P. MCGRAW, ESQ., ANDREW SHUBIN ATTORNEY AT LAW, P.C. dba THE LAW OFFICE OF ANDREW SHUBIN, BERNARD F. CANTORNA, ESQ., BRYANT & CANTORNA, P.C., and JOHN DOES 1-5, Defendants.	:	No.

RULE TO SHOW CAUSE

AND NOW, this _____ day of March, 2015, upon consideration of the petition for special injunctive relief of Plaintiff, Centre County District Attorney Stacy Parks Miller, a rule is hereby entered upon Defendants, County of Centre, Sean P. McGraw, Esq., Andrew Shubin Attorney at Law, P.C. dba The Law Office of Andrew Shubin, Bernard F. Cantorna, Esq., and Bryant & Cantorna, P.C. (collectively, "Defendants"), to show cause why said petition should not be granted.

Rule returnable: March ____, 2015 at ____ _.m., at _____.

Pending a hearing on said petition, Defendants are ordered to: (1) immediately return to the District Attorney all materials and compilations of materials obtained and/or created from materials obtained in response to Right-To-Know requests for materials related to the District Attorney; (2) to destroy all remaining electronic and hard copies of same; and (3) for all pending and future Right-To-Know requests for materials related to the District Attorney, Defendants are

enjoined from doing anything other than forwarding such requests to the District Attorney for review and processing under applicable statutes.

BY THE COURT:

_____

J.

IN THE COURT OF COMMON PLEAS
CENTRE COUNTY, PENNSYLVANIA

STACY PARKS MILLER, DISTRICT ATTORNEY, Plaintiff, v. COUNTY OF CENTRE, SEAN P. MCGRAW, ESQ., ANDREW SHUBIN ATTORNEY AT LAW, P.C. dba THE LAW OFFICE OF ANDREW SHUBIN, BERNARD F. CANTORNA, ESQ., BRYANT & CANTORNA, P.C., and JOHN DOES 1-5, Defendants.	:	No.

ORDER

AND NOW, this _____ day of March, 2015, upon consideration of the petition for injunctive relief of Plaintiff, Centre County District Attorney Stacy Parks Miller, consideration of any response submitted by Defendants, County of Centre, Sean P. McGraw, Esq., Andrew Shubin Attorney at Law, P.C. dba The Law Office of Andrew Shubin, Bernard F. Cantorna, Esq., and Bryant & Cantorna, P.C. (collectively, "Defendants"), and a hearing on the merits, it is hereby ORDERED and DECREED that the petition for injunctive relief is GRANTED.

The Court finds that Plaintiff: (1) has a clear right to relief and is likely to succeed on the merits of her claims; (2) has no adequate remedy at law and will suffer irreparable harm and loss absent the requested injunctive relief; (3) the requested injunctive relief is appropriate and necessary to prevent immediate and irreparable injury; (4) greater injury will be inflicted upon Plaintiff by the denial of injunctive relief than would be inflicted upon Defendants by the granting of such relief; (5) the requested relief will maintain the *status quo ante* pending trial on

the merits in that it will obligate the Defendants to follow the law and the County's own Right-To-Know policy; (6) the public interest will be served by the requested injunctive relief in that it is consistent with the Right-To-Know law and the Criminal History Record Information Act; and (7) the requested relief is reasonably related to abating the risk of harm to Plaintiff.

IT IS FURTHER ORDERED that Defendants shall:

1. Immediately return to the District Attorney all materials and compilations of materials obtained and/or created from materials obtained in response to Right-To-Know requests for materials related to the District Attorney;

2. Destroy all remaining electronic and hard copies of same;

3. For all pending and future Right-To-Know requests for materials related to the District Attorney, Defendants are enjoined from doing anything other than forwarding such requests to the District Attorney for review and processing under applicable statutes; and

4. Cease accessing in any fashion the emails of the District Attorney, Assistant District Attorneys, or emails sent to the District Attorney's Office. The only exception to this requirement is that Defendants may access emails sent directly to them by the District Attorney, Assistant District Attorneys, or the District Attorney's Office, and may access emails sent to them by third parties to which the District Attorney, Assistant District Attorneys, or the District Attorney's Office is an original recipient.

5. Plaintiff need only post a nominal bond of _____.

This Order shall remain in effect until further Order of Court.

BY THE COURT:

_____

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PETITION FOR SPECIAL AND/OR PRELIMINARY INJUNCTION

Plaintiff, Centre County District Attorney Stacy Parks Miller, petitions the Court for injunctive relief under Pa.R.C.P. 1531. Specifically, DA Parks Miller seeks to preserve the status quo with an order enjoining Defendants Centre County, Sean P. McGraw, Esq., Andrew Shubin Attorney at Law, P.C. dba The Law Office of Andrew Shubin, Bernard F. Cantorna,

Esq., and Bryant & Cantorna, P.C. from violating the Right-To-Know law, 65 P.S. § 67.101 et seq., and the Criminal History Records Information Act ("CHRIA"), 18 Pa.C.S. § 9101, et seq., by illegally intercepting Right-to-Know requests and disseminating telephone and text message records to the public. DA Parks Miller also seeks an order to recover materials illegally disseminated.

In support of her Petition, DA Parks Miller states the following:

1. Plaintiff, Stacy Parks Miller, is the twice-elected District Attorney for Centre County.

2. Defendant, Centre County, is a political subdivision with offices located at 420 Holmes Street, Bellefonte, PA 16823.

3. Defendant, Sean P. McGraw, Esq. is an attorney associated with Defendant Law Office of Andrew Shubin, with offices located at 333 South Allen Street, State College, PA 16801.

4. Defendant, Bernard F. Cantorna, Esq. is an attorney associated with Defendant Bryant & Cantorna, P.C., with offices located at 1901 E. State College Ave., State College, PA 16801.

5. Contemporaneously with this Petition, DA Parks Miller filed a Complaint for declaratory and injunctive relief and damages necessitated by the Defendants' wrongful and illegal release of records of mobile telephone calls and text messaging of the elected District Attorney and Assistant District Attorneys. The Complaint is attached as Exhibit "A." The release disclosed the phone numbers of several law enforcement personnel in violation of the Right-To-Know law, which strikes a balance between public access and the need to maintain law enforcement confidentiality and explicitly prohibits the disclosure of law enforcement phone

numbers. The Defendants' actions also violated CHRIA, which prohibits the disclosure of law enforcement investigative information.

6. Certain actors within Centre County, including its Solicitor Louis Glantz, County Commissioners Steven G. Dershem and C. Chris Exarchos, and County Administrator Timothy Boyde, conspired with certain members of the defense bar, including attorneys Sean P. McGraw, Bernard F. Cantorna and others, to illegally release the District Attorney's Office phone and texting records, ostensibly under the Pennsylvania Right-to-Know Law. Attorneys McGraw and Cantorna filed the illegally disclosed documents of public record on the criminal docket, ostensibly to advance their law practices and their criminal defense clients' cases.

7. In reality, the County actors sought to embarrass the District Attorney, the District Attorney's Office, and certain members of the Centre County judiciary that the County actors considered to be political adversaries. This is why the County actors orchestrated the Right-to-Know requests and release of the phone and text information without even notifying the affected law enforcement and judicial personnel. This itself violates the Right-to-Know Law, circumvents the safeguards that the legislature built into the law, and was intended to prevent the affected law enforcement and judicial personnel from asserting valid public safety exceptions to disclosure under the Right-to-Know Law.

8. The County actors' conduct also violated CHRIA, which prohibits the disclosure of law enforcement protected information, including investigative and intelligence information, the Right-to-Know Law itself, DA Parks Miller's privacy rights, and the County's own written policy for handling Right-to-Know requests dating to January 2009.

9. Disclosure policies recently proffered by the Count of Common Pleas for Centre County do not address law enforcement records, and do not require the County actors to

recognize the legal requirement that Right-To-Know requests relating to DA Parks Miller's office must be directed to the District Attorney's office for consideration. In fact, the proffered policy itself violates the law by failing to permit any input from the District Attorney into what may or may not be legally protected records, instead cutting the District Attorney and all other elected row officers entirely out of the process in direct contravention of the Right-To-Know law. In addition, the proffered policy fails to remedy the County actors' prior and ongoing illegal release of such materials.

10. DA Parks Miller therefore seeks in her complaint declaratory relief regarding the illegality of the County's practices, and injunctive relief requiring the County to follow the law going forward, including implementing Right-To-Know procedures that comply with CHRIA, and requiring all in possession of improperly procured records to return them, plus an award of damages, costs, and attorney's fees incurred in bringing this action.

11. Pending adjudication of her Complaint, DA Parks Miller seeks temporary and preliminary injunctive relief.

12. The Centre County Policy Manual beginning at page 112 contains a Right-To-Know Policy. The policy, which has been in place since January 2009, *explicitly* identifies the District Attorney as the person to whom requests for District Attorney's records must be addressed, directs the receiving agency to follow statutory exclusions under the Right-To-Know law, and references appellate options where requests are denied by the "independently elected officials listed above," including the District Attorney. The policy is attached to the Complaint as Exhibit "A."

13. From September 8 through September 11, 2014, the District Attorney tried and convicted Jaylene McClure for grievously injuring a four month old infant entrusted to her care.

The infant suffered a fractured skull, brain swelling and other critical injuries. McClure was sentenced to 10 to 20 years' incarceration. McClure was represented by Defendant, attorney Bernard Cantorna.

14. Attorney Cantorna had a personal relationship with Defendant McClure and acknowledged in public that he was "too close to the case."

15. Attorney Cantorna publicly expressed strong beliefs prior to trial he would prevail at trial. When a jury convicted McClure, Cantorna was vocally angry and placed blame for losing on the Court, on trial rulings, and on a characterization that the District Attorney held him too strictly to evidentiary rulings and the rules of evidence. Cantorna ignored that cross-examination exposed his "experts" as unhelpful, to say the least, to the Defendant's theory of the case, prompting a third expert to leave before testifying to avoid being the target of cross-examination by the District Attorney.

16. Attorney Cantorna is a close confidant of and comrade to County Solicitor Louis Glantz. Glantz and Cantorna are close personal friends, associates and have been office mates, sharing a building in which to practice law, for many years.

17. DA Parks Miller believes and therefore avers that, in the wake of the McClure conviction, Solicitor Glantz advised Cantorna to submit a Right-To-Know request for phone and email communications between the District Attorney's Office and Judge Bradley Lunsford, who presided over the McClure trial, with the materials gained from the request to form the basis for a post-conviction challenge in the McClure case.

18. Indeed, on October 23, 2014, Cantorna submitted a Right-To-Know request to the County and the District Attorney seeking information about phone and email communications between Judge Lunsford, the District Attorney, and two Assistant District Attorneys.

19. Despite the County's Right-To-Know policy and the fact that the District Attorney's Office has funded staff phones with drug forfeiture proceeds for nearly a decade, the County answered Cantorna's Right-To-Know request for telephone records, thereby denying DA Parks Miller an opportunity to object to the request.

20. DA Parks Miller believes and therefore avers that the County, under the direction of Solicitor Glantz, Administrator Boyde, and Commissioners Dershem and Exarchos, authorized the procurement of the requested materials from County email systems and the third-party phone carrier, and the creation of records to assist Cantorna, as well as their release to Cantorna in violation of the County Right-To-Know policy, the Right-to-Know law, and CHRIA.

21. As planned, with the assistance of the County actors, Cantorna used the materials gained in the request to file a motion to overturn the conviction in the McClure case. Cantorna attached of public record to that motion the materials illegally obtained with the assistance of the County actors. Despite the provisions of the Right-To-Know law and the County policy, Cantorna's filing was DA Parks Miller's first opportunity to see what the County illegally produced. Despite the provisions of the Right-To-Know law and the County policy, Cantorna's filing was DA Parks Miller's first opportunity to see what the County illegally produced.

22. Similarly, Attorney McGraw, who was serving as counsel for a defendant in a criminal case, submitted a Right-To-Know request for text messaging records of members of the District Attorney's Office and member of the Centre County judiciary. Mr. McGraw intended to argue, and later did argue in a publicly filed motion to which he attached the illegally obtained records, that the records demonstrated bias against his client.

23. DA Parks Miller believes and therefore avers that Solicitor Glantz advised McGraw to route the request to Administrator Boyde for processing in order to avoid review and objection by the District Attorney.

24. Again, Administrator Boyde, in consultation with County Solicitor Glantz and Commissioners Dershem and Exarchos, failed to notify DA Parks Miller of the Right-To-Know request and forward the request to her as required by their own written Right-To-Know policy. DA Parks Miller never even saw Attorney McGraw's request until it (and the materials illegally produced by the County) were attached to his court filing. The County actors had no valid purpose or legal authority for hiding the request from DA Parks Miller, and as with the Cantorna request, intended to use the request to embarrass DA Parks Miller as part of a larger effort to drive her from office. For similar reasons, the County actors also failed to notify members of the Centre County judiciary whose phone records were included in the Right-to-Know requests. The county officials are sworn to uphold the law, and their violation of it is intolerable.

25. Because the County actors hid the requests from her, DA Parks Miller was unable to assert any of the various law enforcement and public safety exceptions that prohibit disclosure of the materials that Mr. McGraw sought.

26. Disregarding their own policy, CHRIA, and the multiple Right-To-Know exemptions applicable to the requested materials, the County affirmatively sought and obtained the requested information from the cellular telephone carrier, created a document compiling the information, and then disclosed it to Mr. McGraw, who attached the materials to public court filings. The Right to Know Law specifically states that holders of records are not expected to seek the creation of records beyond those in their possession.

27. The District Attorney and Assistant District Attorneys use their mobile phones for many purposes in the course of representing the Commonwealth. Prosecutors must coordinate with law enforcement, confidential informants, undercover police officers, witnesses, crime victims, and others to investigate crimes, build cases, and prosecute crimes before the Court. At times, prosecutors must interact with the Court, *inter alia*, to coordinate approval of search warrants (sealed or unsealed), Wiretap Act approvals, arrest warrants, preliminary arraignments, the presentation of uncontested orders in cases, and various other purposes. Whether by phone call, texting, or email, communication using the office-issued mobile phones is part and parcel of modern prosecution work. As discussed below, the Right-To-Know law and CHRIA are crafted to shield much of this investigative material from public disclosure for public safety reasons that should be obvious.

28. Astonishingly, the County actors' methodology permitted county employees, the Commissioners and Louis Glantz and Tim Boyde to sift through and see the phone records of prosecutors participating in active criminal investigations, speaking to undercover officers whose numbers are confidential while they are obtaining warrants and speaking with victims and witnesses.

29. The County also unlawfully directly accessed the District Attorney's emails and usurped the privacy and confidentiality of ongoing criminal investigations in that manner, perhaps to keep watch to see if they, themselves, might be the targets of criminal investigations. The careless way in which the County actors handled this information would certainly have permitted such improper monitoring to occur.

30. Solicitor Glantz and Administrator Boyde trolled through confidential emails and phone records, reading sensitive and privileged emails about ongoing criminal investigations so

they – not the District Attorney or some other law enforcement officer – could determine what would constitute emails relating to ongoing investigations.

31. This practice revealed identities of people under investigation to non-law enforcement persons in the executive branch of government.

32. When they learned that their phone numbers appeared in the response to the Right-To-Know requests, on March 13, 2015, certain affected members of the Centre County judiciary convened a meeting with the Administrative Office of the Pennsylvania Courts ("AOPC"), and Centre County Solicitor Glantz and Administrator Boyde.

33. During that March 13 meeting Solicitor Glantz and Administrator Boyde presumably received a lesson in the actual provisions of the Right-To-Know law, if not the County's own written policy for implementing that law. At best, Solicitor Glantz and Administrator Boyde were unfamiliar with the law. At worst, they willfully and recklessly disregarded it. It is difficult to imagine that the County's ranking Administrator and its Solicitor would be unaware of the County's own Right-To-Know policy.

34. As a result of the March 13 meeting, on Monday, March 16, 2015, President Judge Kistler issued an order directing the County to actually notify the persons whose records are affected by Right-To-Know requests, deny all pending or future Right-To-Know requests directly or indirectly relating to members of the Centre County judiciary, and direct such requests to the court administrator as the Right-To-Know officer for the Court of Common Pleas. The order also directed Solicitor Glantz and Administrator Boyde to provide to the Court all received Right-To-Know requests and responses to those requests. Similarly, Judge Kistler's order directed Solicitor Glantz and Administrator Boyde to deny all Right-To-Know requests directed at or relating to the District Attorney and route those requests to the District Attorney.

35. However, bowing to pressure from the very County actors whose illegal disclosures gave rise to the controversy in the first place, Judge Kistler rescinded his March 16 order, and is presently working to replace it with a watered-down policy that essentially preserves the opportunity for the County actors to continue their illegal dissemination of exempted materials.

36. DA Parks Miller believes and therefore avers that the County actors have received and responded to other Right-To-Know requests in a similar fashion, and that multiple individuals and/or entitles might be in possession of materials for which the Right-To-Know law and CHRIA prohibit disclosure, and that similar requests are likely to issue in the future as the County actors continue their personally and politically-motivated efforts against her. Motivations notwithstanding, the County actors are in violation of two state statutes and are putting and continuing to put the safety of the public and law enforcement officials at risk in their handling of law enforcement sensitive records.

ARGUMENT FOR INJUNCTIVE RELIEF

37. The purpose of a preliminary injunction is to preserve the *status quo* as it exists or as it existed before the acts complained of, thereby preventing irreparable injury or gross injustice which might occur before the merits of a case can be heard and determined. American Express Travel Related Services Co., Inc. v. Laughlin, 623 A. 2d 854, 856 (Pa. Super. 1993); Township of Clinton v. Carmat, Inc., 432 A.2d 238, 239 (Pa. Super. 1981).

38. The criteria governing the issuance of a preliminary injunction are well settled. An injunction is warranted when the moving party demonstrates: (1) that the injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages; (2) that greater injury would result from refusing an injunction than from granting it,

and, concomitantly, that issuance of an injunction will not substantially harm other interested parties in the proceedings; (3) that a preliminary injunction will probably restore the parties to their status as it existed immediately prior to the alleged wrongful conduct; (4) that the activity it seeks to restrain is actionable, that its right to relief is clear, and that the wrong is manifest, or, in other words, that it is likely to prevail on the merits; (5) that the injunction it seeks is reasonably suited to abate the offending activity; and (6) that a preliminary injunction will not adversely affect the public interest. Warehime v. Warehime, 860 A.2d 41, 46-47 (Pa. 2004).

39. Those requirements are satisfied here. The requested injunctive relief is warranted.

District Attorney Parks Miller Has a Clear Right of Action and Is Likely To Succeed on the Merits of Her Claims

40. To obtain a preliminary injunction under Pennsylvania law, a movant must demonstrate that the activity she seeks to restrain is actionable, that her right to relief is clear, and that the wrong is manifest, or, in other words, that she is likely to prevail on the merits. Summit Towne Centre, Inc. v. Shoe Show of Rocky Mount, Inc., 828 A.2d 995, 1001 (Pa. 2003).

41. Here, the Defendants have plainly violated the Right-To-Know law and CHRIA.

42. Under the Right-to-Know law, when an agency produces a record that is not a public record or financial record, it is required to notify "any third party provided the records to the agency, the person that is the subject of the record, and the requester." 65 P.S. § 67.707(a).

43. The fact that a government employee's cellular telephone is provided by the government and that government business may be discussed over a personal cellular telephone does not make that telephone any less "personal" within the meaning of the Right-to-Know law. Commonwealth Office of the Governor v. Raffle, 65 A.3d 1105, 1111 (Pa. Commw. 2013).

44. Under the Right-to-Know Law, records "containing all or part of a person's …cellular or personal telephone number" are completely exempt from disclosure. 65 P.S. § 67.708(b)(6)(i)(A).

45. The Right-To-Know law requires all agencies to designate an open-records officer, who is tasked with handling record requests. 65 P.S. § 67.502(a)(1), (b). The statute further obliges agency employees who receive requests to forward the requests to the agency's open-records officer. 65 P.S. § 67.703.

46. Employees of an agency shall be directed to forward requests for records to the open-records officer. Commonwealth v. Office of Open Records, 103 A.3d 1276, 1280 (Pa. 2014). Where the request is initially misdirected, it should be routed to "other appropriate persons within the agency or to appropriate persons in another agency." 65 P.S. § 67.502(b)(1).

47. As indicated in the County policy, the County already designated the District Attorney as the open records officer for requests pertaining to the District Attorney's Office. Exhibit "A." The records requests at issue here, and all future similar requests, should have been and, going forward, should be directed to the District Attorney. That is the *status quo* to be requested here, as distinct from what has been happening.

48. The Pennsylvania Right-To-Know Law contains various exceptions to the disclosure of records. Examples pertinent to the present case include exceptions for: cellular or personal telephone numbers, personal email addresses, internal predecisional deliberations, confidential proprietary information, records related to criminal investigations (complaints, investigative materials, correspondence, records identifying confidential sources, victim information). 65 P.S. § 67.708(b).

49. The law enforcement exception applies to documents related to both completed and ongoing investigations undertaken by an agency in the performance of its official duties. PG Publishing Company v. County of Washington, 638 A.2d 422 (Pa. Cmwlth. 1994); Gutman v. Pennsylvania State Police, 612 A.2d 553 (Pa. Cmwlth. 1992). The exclusion for information relating to police investigations applies not only to active investigations, but also to any records related to completed investigations. Commonwealth v. Mines, 680 A.2d 1227 (Pa. Cmwlth. 1996), appeal denied 690 A.2d 238, *certiorari* denied 117 S.Ct. 1477.

50. Under the Right-To-Know law, when an agency produces a record that is not a public record or financial record, it is required to notify "any third party provided the records to the agency, the person that is the subject of the record, and the requester." 65 P.S. § 67.707(a).

51. Here, the County actors even compiled phone records to tailor a report to be used to overturn valid criminal convictions. Yet the Right-To-Know law explicitly states that the agency is not obligated to do so: "When 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 Pa.C.A. § 67.705. That provision precludes a requester from being able to "shanghai" government employees to create a record when one does not exist and take them away from carrying out their normal responsibilities. Pennsylvania State Police v. McGill, 83 A.3d 476, 481 (Pa. Commw. 2014).

52. Here, the County actors were willingly "shanghaied" by criminal defense attorneys. In addition to keeping the District Attorney in the dark about the records requests, the County actors obtained call history information from the phone carriers, reviewed the historical call records, astonishingly compiled the call histories into spreadsheets, and analyzed those

spreadsheets to identify the calls of interest. The County actors were essentially deputized as defense paralegals working to overturn valid criminal convictions!

53. The County's Right-To-Know policy tracks the Right-To-Know law with respect to obtainable materials and exclusions from disclosure, and also identifies the District Attorney as the Right to Know Officer for requests for materials related to the District Attorney's Office, and was obviously authored by someone who wanted the County to be in compliance with the law and adopted by county commissioners who desired the same. Yet the County has failed to give the notices that it is required to give under 65 P.S. § 67.707(a) and its own policy, and compiled, created, and released materials in violation of both the Right-To-Know law and the County's own policy in aid of convicted criminals and their lawyers.

54. Under CHRIA, "[i]t [is] the duty of every criminal justice agency within the commonwealth to maintain complete and accurate criminal history record information." 18 Pa.C.S. § 9111. This information is maintained in a central repository for the use of criminal justice agencies. Id. at §§ 9106, 9121.

55. Criminal history record information is defined as: Information collected by criminal justice agencies concerning individuals, and arising from the initiation of a criminal proceeding consisting of identifiable descriptions, dates and notations of arrests, indictments, information or other formal criminal charges and any dispositions arising therefrom. The term does not include intelligence information, investigative information or treatment information, including medical and psychological information or information and records specified in Section 9104. 18 Pa.C.S. § 9102.

56. The three categories of information excluded from the definition of "criminal history information" comprise what CHRIA describes as "protected information" that is not

usually reported to the central repository for state-wide access. Id. at § 9106(a). Accordingly, the criminal justice agency that collected the protected information may only disseminate it to its authorized members (i.e., not defense attorneys or vendetta-driven politicians), and upon specified request, other criminal justice agencies. 18 Pa.C.S. § 9106(c).

57. "Investigative information" assembled as a result of the performance of any inquiry, formal or informal, into a criminal incident or an allegation of criminal wrongdoing and may include *modus operandi* information. 18 Pa.C.S. § 9102. Indicative of its sensitive nature, CHRIA prohibits the inclusion of investigative information in the central law enforcement repository. 18 Pa.C.S. § 9106(a).

58. "What distinguishes 'criminal history record information' from 'investigative information' is that the former arises from the initiation of a criminal proceeding, i.e., an arrest, whereas the latter is composed of information assembled as a result of the performance of an inquiry into a crime that is still under investigation." Dep't of Auditor Gen. v. Pennsylvania State Police, 844 A.2d 78, 82 (Pa. Commw. Ct. 2004) (finding that Megan's Law registry of sexual offenders constituted information assembled by PSP as a result of the performance of inquiries into unsolved Megan's Law offenses, making it "investigative information" under CHRIA, which the Auditor General was not entitled to).

59. CHRIA violations are punishable by civil penalties. 18 Pa.C.S. § 9181.

60. In addition CHRIA provides that the Attorney General "or any other individual or agency" may bring suit to "enjoin any criminal justice agency, noncriminal justice agency, organization or individual violating the provisions of this chapter or to compel such agency, organization or person to comply with the provisions of this chapter." 18 Pa.C.S. § 9183(a).

Irreparable Harm Will Result Absent Court Intervention

61. The phone and email records include information identifying law enforcement personnel, crime victims, and witnesses, including confidential informants.

62. The Defendants, who are not law enforcement officers, simply have no business trolling through law enforcement records.

63. In addition to violating the Right-to-Know law and CHRIA, dissemination of such information presents a real and immediate danger to the individuals identified in the materials.

64. Given that the Defendants have already plainly ignored the County Right-To-Know policy, the statute it purports to implement, and CHRIA, an injunction is necessary to abate the present and otherwise irreparable harm.

The Balance of Harms Favors Injunctive Relief

65. Denying the requested relief would cause greater harm than granting it. The requested injunctive relief will merely enforce (or, more accurately, prevent the immediate violation of) the Right-To-Know law and CHRIA. Defendants will simply be barred from further breaking the law. Thus, any harm to Defendants would be self-inflicted. Merrill Lynch v. Napolitano, 85 F. Supp.2d 491, 498 (E.D. Pa. 2000) ("Significantly, any harm that [defendant] would suffer would be self-inflicted . . . The self-inflicted nature of the harm suffered by the wrongdoer [defendant] weighs heavily in favor of granting preliminary injunctive relief.").

66. The balance of harms therefore strongly favors granting injunctive relief. The balance of harms strongly favors the issuance of an injunction to put the parties in the position they were in before the wrongful conduct occurred. Walter v. Stacy, 837 A.2d 1205, 1209 (Pa. Super. Ct. 2003).

The Requested Relief Seeks Preservation of the *Status Quo*

67. A primary purpose of a preliminary injunction is to preserve the *status quo* until a decision can be made on the merits. Acierno v. New Castle County, 40 F.3d 645 (3d Cir. 1994).

68. In this case, the requested injunctive relief will preserve the *status quo* by preventing Defendants from further violating the law, returning the illegally disseminated materials, and ceasing the further dissemination of the materials.

The Requested Relief is Reasonably Tailored to the Concerns at Issue and Consistent with the Public Interest

69. The requested injunction will simply bar the Defendants from breaking the law and require them to remedy (to the extent possible) the illegal dissemination of the materials at issue.

70. An injunction that seeks to enforce the Right-To-Know law and CHRIA is obviously consistent with the public interest.

WHEREFORE, Plaintiff, Centre County District Attorney Stacy Parks Miller, in her capacity as the elected chief law enforcement officer of Centre County, requests that the Court enter the accompanying proposed orders for temporary and preliminary injunctive relief.

Respectfully submitted,

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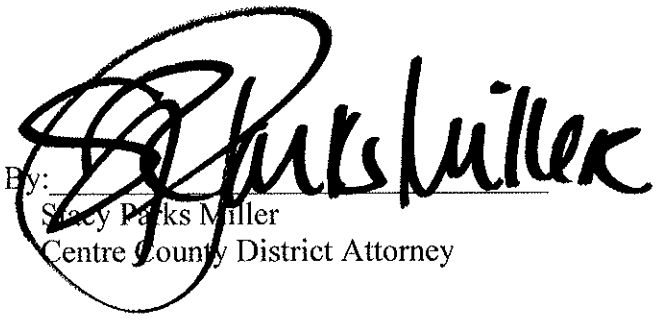
Attorneys for Plaintiff, Centre County District Attorney Stacy Parks Miller

Dated: March 23, 2015

VERIFICATION

The undersigned verifies that she has read the foregoing Petition and its factual allegations are true and correct to the best of her knowledge, information and belief. This Verification is made subject to the penalties of 18 Pa. C.S.A. §4904, relating to unsworn falsification to authorities.



By: _____
Stacy Parks Miller
Centre County District Attorney

Date: March 23, 2015

EXHIBIT – VERIFIED COMPLAINT

ROGERS CASTOR
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IN THE COURT OF COMMON PLEAS
CENTRE COUNTY, PENNSYLVANIA

STACY PARKS MILLER, DISTRICT ATTORNEY, Plaintiff, v. COUNTY OF CENTRE, SEAN P. MCGRAW, ESQ., ANDREW SHUBIN ATTORNEY AT LAW, P.C. dba THE LAW OFFICE OF ANDREW SHUBIN, BERNARD F. CANTORNA, ESQ., BRYANT & CANTORNA, P.C., and JOHN DOES 1-5, Defendants.	:	No.

COMPLAINT

Plaintiff, Centre County District Attorney Stacy Parks Miller, states the following for her Compliant against Defendants, Centre County, Sean P. McGraw, Esq., Andrew Shubin Attorney at Law, P.C. dba The Law Office of Andrew Shubin, Bernard F. Cantorna, Esq., Bryant & Cantorna, P.C., and John Does 1-5:

Preliminary Statement

1. This is an action for declaratory and injunctive relief and damages necessitated by the Defendants' wrongful and illegal release of emails and records of mobile telephone calls and text messaging of the elected District Attorney and Assistant District Attorneys. The release disclosed the phone numbers of several law enforcement personnel in violation of the Right-To-Know Law, 65 P.S. § 67.101 et seq., which strikes a balance between public access and the need to maintain law enforcement confidentiality and explicitly prohibits the disclosure of law enforcement phone numbers. The Defendants' actions also violated the Criminal History Records Information Act ("CHRIA"), 18 Pa.C.S. § 9101, et seq., which prohibits the disclosure of law enforcement investigative information.

2. Certain actors within Centre County, including its Solicitor Louis Glantz, County Commissioners Steven G. Dershem and C. Chris Exarchos, and County Administrator Timothy Boyde, conspired with certain members of the defense bar, including attorneys Sean P. McGraw, Bernard F. Cantorna and others, to illegally release the District Attorney's Office phone and texting records, ostensibly under the Pennsylvania Right-to-Know Law. Attorneys McGraw and Cantorna filed the illegally disclosed documents of public record on the criminal docket, ostensibly to advance their law practices and their criminal defense clients' cases.

3. In reality, the County actors sought to embarrass the District Attorney, the District Attorney's Office, and certain members of the Centre County judiciary that the County actors considered to be political adversaries. This is why the County actors orchestrated the Right-to-Know requests and release of the phone and text information without even notifying the affected law enforcement and judicial personnel. This itself violates the Right-to-Know Law, circumvents the safeguards that the legislature built into the law, and was intended to prevent the

affected law enforcement and judicial personnel from asserting valid public safety exceptions to disclosure under the Right-to-Know Law.

4. The County actors' conduct also violated CHRIA, which prohibits the disclosure of law enforcement protected information, including investigative and intelligence information, the Right-to-Know Law itself, DA Parks Miller's privacy rights, and the County's own written policy for handling Right-to-Know requests dating back to January 2009.

5. Disclosure policies recently proffered by the Count of Common Pleas for Centre County do not address law enforcement records, and do not require the County actors to recognize the legal requirement that Right-To-Know requests relating to DA Parks Miller's office must be directed to the District Attorney's office for consideration. In fact, the proffered policy itself violates the law by failing to permit any input from the District Attorney into what may or may not be legally protected records, instead cutting the District Attorney and all other elected row officers entirely out of the process in direct contravention of the Right-To-Know law. In addition, the proffered policy fails to remedy the County actors' prior and ongoing illegal release of such materials.

6. DA Parks Miller therefore seeks declaratory relief regarding the illegality of the County's practices, and injunctive relief requiring the County to follow the law going forward, including implementing Right-To-Know procedures that comply with CHRIA, and requiring all in possession of improperly procured records to return them, plus an award of damages, costs, and attorney's fees incurred in bringing this action.

Parties and Venue

7. Plaintiff, Stacy Parks Miller, is the twice-elected District Attorney for Centre County.

8. Defendant, Centre County, is a political subdivision with offices located at 420 Holmes Street, Bellefonte, PA 16823.

9. Defendant, Sean P. McGraw, Esq. is an attorney associated with Defendant Law Office of Andrew Shubin, with offices located at 333 South Allen Street, State College, PA 16801.

10. Defendant, Bernard F. Cantorna, Esq. is an attorney associated with Defendant Bryant & Cantorna, P.C., with offices located at 1901 E. State College Ave., State College, PA 16801.

11. John Does 1-5 are individuals or entities in possession of the illegally disclosed materials, but whose identities are presently unknown to DA Parks Miller.

12. Venue is proper in this Court under Pa.R.C.P. 1006(a)(1) and 2103(b), in that the Defendants are located in Centre County and the claims asserted arise from actions that occurred in Centre County.

Facts

13. The Centre County Policy Manual beginning at page 112 contains a Right-To-Know Policy. The policy, which has been in place since January 2009, *explicitly* identifies the District Attorney as the person to whom requests for District Attorney's records must be addressed, directs the receiving agency to follow statutory exclusions under the Right-To-Know law, and references appellate options where requests are denied by the "independently elected officials listed above," including the District Attorney. The policy is attached as Exhibit "A."

14. From September 8 through September 11, 2014, the District Attorney tried and convicted Jaylene McClure for grievously injuring a four month old infant entrusted to her care. The infant suffered a fractured skull, brain swelling and other critical injuries. McClure was

sentenced to 10 to 20 years' incarceration. McClure was represented by Defendant, attorney Bernard Cantorna.

15. Attorney Cantorna had a personal relationship with Defendant McClure and acknowledged in public that he was "too close to the case."

16. Attorney Cantorna publicly expressed strong beliefs that he would prevail at trial. When a jury convicted McClure, Cantorna was vocally angry and placed blame for losing on the Court, on trial rulings, and on a characterization that the District Attorney held him too strictly to evidentiary rulings and the rules of evidence. Cantorna ignored that cross-examination exposed his "experts" as unhelpful, to say the least, to the Defendant's theory of the case, prompting a third expert to leave before testifying to avoid being the target of cross-examination by the District Attorney.

17. Attorney Cantorna is a close confidant of and comrade to County Solicitor Louis Glantz. Glantz and Cantorna are close personal friends, associates and have been office mates, sharing a building in which to practice law, for many years.

18. DA Parks Miller believes and therefore avers that, in the wake of the McClure conviction, Solicitor Glantz advised Cantorna to submit a Right-To-Know request for phone and email communications between the District Attorney's Office and Judge Bradley Lunsford, who presided over the McClure trial, with the materials gained from the request to form the basis for a post-conviction challenge in the McClure case.

19. Indeed, on October 23, 2014, Cantorna submitted a Right-To-Know request to the County and the District Attorney seeking information about phone and email communications between Judge Lunsford, the District Attorney, and two Assistant District Attorneys.

20. Despite the County's Right-To-Know policy and the fact that the District Attorney's Office has funded staff phones with drug forfeiture proceeds for nearly a decade, the County answered Cantorna's Right-To-Know request for telephone records, thereby denying DA Parks Miller an opportunity to object to the request.

21. DA Parks Miller believes and therefore avers that the County, under the direction of Solicitor Glantz, Administrator Boyde, and Commissioners Dershem and Exarchos, authorized the procurement of the requested materials from County email systems and the third-party phone carrier, and the creation of records to assist Cantorna, as well as their release to Cantorna in violation of the County Right-To-Know policy, the Right-to-Know law, and CHRIA.

22. As planned, with the assistance of the County actors, Cantorna used the materials gained in the request to file a motion to overturn the conviction in the McClure case. Cantorna attached of public record to that motion the materials illegally obtained with the assistance of the County actors. Despite the provisions of the Right-To-Know law and the County policy, Cantorna's filing was DA Parks Miller's first opportunity to see what the County illegally produced.

23. Similarly, Attorney McGraw, who was serving as counsel for a defendant in a criminal case, submitted a Right-To-Know request for text messaging records of members of the District Attorney's Office and member of the Centre County judiciary. Mr. McGraw intended to argue, and later did argue in a publicly filed motion to which he attached the illegally obtained records, that the records demonstrated bias against his client.

24. DA Parks Miller believes and therefore avers that Solicitor Glantz advised McGraw to route the request to Administrator Boyde for processing in order to avoid review and objection by the District Attorney.

25. Again, Administrator Boyde, in consultation with County Solicitor Glantz and Commissioners Dershem and Exarchos, failed to notify DA Parks Miller of the Right-To-Know request and forward the request to her as required by their own written Right-To-Know policy. DA Parks Miller never even saw Attorney McGraw's request until it (and the materials illegally produced by the County) were attached to his court filing. The County actors had no valid purpose or legal authority for hiding the request from DA Parks Miller, and as with the Cantorna request, intended to use the request to embarrass DA Parks Miller as part of a larger effort to drive her from office. For similar reasons, the County actors also failed to notify members of the Centre County judiciary whose phone records were included in the Right-to-Know requests. The county officials are sworn to uphold the law, and their violation of it is intolerable.

26. Because the County actors hid the requests from her, DA Parks Miller was unable to assert any of the various law enforcement and public safety exceptions that prohibit disclosure of the materials that Mr. McGraw sought.

27. Disregarding their own policy, CHRIA, and the multiple Right-To-Know exemptions applicable to the requested materials, the County affirmatively sought and obtained the requested information from the cellular telephone carrier, created a document compiling the information, and then disclosed it to Mr. McGraw, who attached the materials to public court filings. The Right to Know Law specifically states that holders of records are not expected to seek the creation of records beyond those in their possession.

28. The District Attorney and Assistant District Attorneys use their mobile phones for many purposes in the course of representing the Commonwealth. Prosecutors must coordinate with law enforcement, confidential informants, undercover police officers, witnesses, crime victims, and others to investigate crimes, build cases, and prosecute crimes before the Court. At times, prosecutors must interact with the Court, *inter alia*, to coordinate approval of search warrants (sealed or unsealed), Wiretap Act approvals, arrest warrants, preliminary arraignments, the presentation of uncontested orders in cases, and various other purposes. Whether by phone call, texting, or email, communication using the office-issued mobile phones is part and parcel of modern prosecution work. As discussed below, the Right-To-Know law and CHRIA are crafted to shield much of this investigative material from public disclosure for public safety reasons that should be obvious.

29. Astonishingly, the County actors' methodology permitted county employees, the Commissioners and Louis Glantz and Tim Boyde to sift through and see the phone records of prosecutors participating in active criminal investigations, speaking to undercover officers whose numbers are confidential while they are obtaining warrants and speaking with victims and witnesses.

30. The County also unlawfully directly accessed the District Attorney's emails and usurped the privacy and confidentiality of ongoing criminal investigations in that manner, perhaps to keep watch to see if they, themselves, might be the targets of criminal investigations. The careless way in which the County actors handled this information would certainly have permitted such improper monitoring to occur.

31. Solicitor Glantz and Administrator Boyde trolled through confidential emails and phone records, reading sensitive and privileged emails about ongoing criminal investigations so

they – not the District Attorney or some other law enforcement officer – could determine what would constitute emails relating to ongoing investigations.

32. This practice revealed identities of people under investigation to non-law enforcement persons in the executive branch of government.

33. When they learned that their phone numbers appeared in the response to the Right-To-Know requests, on March 13, 2015, certain affected members of the Centre County judiciary convened a meeting with the Administrative Office of the Pennsylvania Courts ("AOPC"), and Centre County Solicitor Glantz and Administrator Boyde.

34. During that March 13 meeting Solicitor Glantz and Administrator Boyde presumably received a lesson in the actual provisions of the Right-To-Know law, if not the County's own written policy for implementing that law. At best, Solicitor Glantz and Administrator Boyde were unfamiliar with the law. At worst, they willfully and recklessly disregarded it. It is difficult to imagine that the County's ranking Administrator and its Solicitor would be unaware of the County's own Right-To-Know policy.

35. As a result of the March 13 meeting, on Monday, March 16, 2015, President Judge Kistler issued an order directing the County to actually notify the persons whose records are affected by Right-To-Know requests, deny all pending or future Right-To-Know requests directly or indirectly relating to members of the Centre County judiciary, and direct such requests to the court administrator as the Right-To-Know officer for the Court of Common Pleas. The order also directed Solicitor Glantz and Administrator Boyde to provide to the Court all received Right-To-Know requests and responses to those requests. Similarly, Judge Kistler's order directed Solicitor Glantz and Administrator Boyde to deny all Right-To-Know requests directed at or relating to the District Attorney and route those requests to the District Attorney.

36. However, bowing to pressure from the very County actors whose illegal disclosures gave rise to the controversy in the first place, Judge Kistler rescinded his March 16 order, and is presently working to replace it with a watered-down policy that essentially preserves the opportunity for the County actors to continue their illegal dissemination of exempted materials.

37. DA Parks Miller believes and therefore avers that the County actors have received and responded to other Right-To-Know requests in a similar fashion, and that multiple individuals and/or entitles might be in possession of materials for which the Right-To-Know law and CHRIA prohibit disclosure, and that similar requests are likely to issue in the future as the County actors continue their personally and politically-motivated efforts against her. Motivations notwithstanding, the County actors are in violation of two state statutes and are putting and continuing to put the safety of the public and law enforcement officials at risk in their handling of law enforcement sensitive records.

COUNT I – DECLARATORY AND INJUNCTIVE RELIEF

38. DA Parks Miller hereby incorporates by reference the averments contained in the foregoing paragraphs as if restated here.

39. The Declaratory Judgments Act, 42 Pa.C.S. §§ 7531-7541, provides the proper remedy for a dispute regarding a government body's action purportedly under statutory authority. Court of Common Pleas of Lackawanna County v. Pennsylvania Office of Open Records, 2 A.3d 810, 812 (Pa. Commw. 2010).

40. Here, a real and justiciable controversy exists between and among the parties regarding rights and obligations under the Right-To-Know law and CHRIA.

41. Under the Right-to-Know law, when an agency produces a record that is not a public record or financial record, it is required to notify "any third party provided the records to the agency, the person that is the subject of the record, and the requester." 65 P.S. § 67.707(a).

42. The fact that a government employee's cellular telephone is provided by the government and that government business may be discussed over a personal cellular telephone does not make that telephone any less "personal" within the meaning of the Right-to-Know law. Commonwealth Office of the Governor v. Raffle, 65 A.3d 1105 (Pa. Commw. 2013).

43. Under the Right-to-Know Law, records "containing all or part of a person's …cellular or personal telephone number" are completely exempt from disclosure. 65 P.S. § 67.708(b)(6)(i)(A).

44. Because the County actors have already refused to follow their own Right-To-Know policy, and because their actions have already violated CHRIA and the Right-To-Know law itself, declaratory and injunctive relief is necessary.

45. The Right-To-Know law requires all agencies to designate an open-records officer, who is tasked with handling record requests. 65 P.S. § 67.502(a)(1), (b). The statute further obliges agency employees who receive requests to forward the requests to the agency's open-records officer. 65 P.S. § 67.703.

46. Employees of an agency shall be directed to forward requests for records to the open-records officer. Commonwealth v. Office of Open Records, 103 A.3d 1276, 1280 (Pa. 2014). Where the request is initially misdirected, it should be routed to "other appropriate persons within the agency or to appropriate persons in another agency." 65 P.S. § 67.502(b)(1).

47. As indicated in the County policy, since January 2009, the County already designated the District Attorney as the open records officer for requests pertaining to the District

Attorney's Office. Exhibit "A." The records requests at issue here, and all future similar requests, should have been and, going forward, should be directed to the District Attorney.

48. The Pennsylvania Right-To-Know Law contains various exceptions to the disclosure of records. Examples pertinent to the present case include exceptions for: cellular or personal telephone numbers, personal email addresses, internal pre-decisional deliberations, confidential proprietary information, records related to criminal investigations (complaints, investigative materials, correspondence, records identifying confidential sources, victim information). 65 P.S. § 67.708(b).

49. The law enforcement exception applies to documents related to both completed and ongoing investigations undertaken by an agency in the performance of its official duties. PG Publishing Company v. County of Washington, 638 A.2d 422 (Pa. Cmwlth. 1994); Gutman v. Pennsylvania State Police, 612 A.2d 553 (Pa. Cmwlth. 1992). The exclusion for information relating to police investigations applies not only to active investigations, but also to any records related to completed investigations. Commonwealth v. Mines, 680 A.2d 1227 (Pa. Cmwlth. 1996), appeal denied 690 A.2d 238, certiorari denied 117 S.Ct. 1477.

50. Under the Right-To-Know law, when an agency produces a record that is not a public record or financial record, it is required to notify "any third party provided the records to the agency, the person that is the subject of the record, and the requester." 65 P.S. § 67.707(a).

51. In this case, the County actors even compiled phone records to tailor a report to be used to overturn valid criminal convictions. Yet the Right-To-Know law explicitly states that the agency is not obligated to do so: "When 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 Pa.C.A. § 67.705. That provision precludes a requester from being able to "shanghai" government employees to create a record when one does not exist and take them away from carrying out their normal responsibilities. Pennsylvania State Police v. McGill, 83 A.3d 476, 481 (Pa. Commw. 2014).

52. Here, the County actors were willingly "shanghaied" by criminal defense attorneys. In addition to keeping the District Attorney in the dark about the records requests, the County actors obtained call history information from the phone carriers, reviewed the historical call records, astonishingly compiled the call histories into spreadsheets, and analyzed those spreadsheets to identify the calls of interest. The County actors were essentially deputized as defense paralegals working to overturn valid criminal convictions!

53. The County's Right-To-Know policy tracks the Right-To-Know law with respect to obtainable materials and exclusions from disclosure, and also identifies the District Attorney as the Right to Know Officer for requests for materials related to the District Attorney's Office, and was obviously authored by someone who wanted the County to comply with the law and adopted by county commissioners who desired the same. Yet the County has failed to give the notices that it is required to give under 65 P.S. § 67.707(a) and its own policy, and compiled, created, and released materials in violation of both the Right-To-Know law and the County's own policy in aid of convicted criminals and their lawyers.

54. Under CHRIA, "[i]t [is] the duty of every criminal justice agency within the commonwealth to maintain complete and accurate criminal history record information." 18 Pa.C.S. § 9111. This information is maintained in a central repository for the use of criminal justice agencies. Id. at §§ 9106, 9121.

55. Criminal history record information is defined as: Information collected by criminal justice agencies concerning individuals, and arising from the initiation of a criminal proceeding consisting of identifiable descriptions, dates and notations of arrests, indictments, information or other formal criminal charges and any dispositions arising therefrom. The term does not include intelligence information, investigative information or treatment information, including medical and psychological information or information and records specified in Section 9104. 18 Pa.C.S. § 9102.

56. The three categories of information excluded from the definition of "criminal history information" comprise what CHRIA describes as "protected information" that is not usually reported to the central repository for state-wide access. Id. at § 9106(a). Accordingly, the criminal justice agency that collected the protected information may only disseminate it to its authorized members (i.e., not defense attorneys or vendetta-driven politicians), and upon specified request, other criminal justice agencies. 18 Pa.C.S. § 9106(c).

57. "Investigative information" assembled as a result of the performance of any inquiry, formal or informal, into a criminal incident or an allegation of criminal wrongdoing and may include *modus operandi* information. 18 Pa.C.S. § 9102. Indicative of its sensitive nature, CHRIA prohibits the inclusion of investigative information in the central law enforcement repository. 18 Pa.C.S. § 9106(a).

58. "What distinguishes 'criminal history record information' from 'investigative information' is that the former arises from the initiation of a criminal proceeding, i.e., an arrest, whereas the latter is composed of information assembled as a result of the performance of an inquiry into a crime that is still under investigation." Dep't of Auditor Gen. v. Pennsylvania State Police, 844 A.2d 78, 82 (Pa. Commw. Ct. 2004) (finding that Megan's Law registry of

sexual offenders constituted information assembled by PSP as a result of the performance of inquiries into unsolved Megan's Law offenses, making it "investigative information" under CHRIA, which the Auditor General was not entitled to).

59. CHRIA violations are punishable by civil penalties. 18 Pa.C.S. § 9181.

60. In addition CHRIA provides that the Attorney General "or any other individual or agency" may bring suit to "enjoin any criminal justice agency, noncriminal justice agency, organization or individual violating the provisions of this chapter or to compel such agency, organization or person to comply with the provisions of this chapter." 18 Pa.C.S. § 9183(a).

61. "A person found by the court to have been aggrieved by a violation of this chapter or the rules or regulations promulgated under this chapter, shall be entitled to actual and real damages of not less than $100 for each violation and to reasonable costs of litigation and attorney's fees. Exemplary and punitive damages of not less than $1,000 nor more than $10,000 shall be imposed for any violation of this chapter, or the rules or regulations adopted under this chapter, found to be willful." 18 Pa.C.S. § 9183(b).

62. The phone records and emails of the District Attorney and Assistant District Attorneys include investigative information, disclosure of which CHRIA prohibits.

63. The rights, status, and legal relations of the parties as defined in the Right-to-Know Act and CHRIA are in dispute. The foregoing evidences a real and justiciable controversy between the parties regarding the respective rights and obligations under those statutes.

64. District Attorney Stacy Parks Miller is entitled to declaratory relief as detailed below.

65. In addition, DA Parks Miller is entitled to injunctive relief, as described below, in that:

a. Injunctive relief will restore the parties to the *status quo* of non-dissemination of the improperly produced materials;

b. DA Parks Miller has a clear right to relief and is likely to succeed on the merits of her request for declaratory relief and invasion of privacy claim;

c. Irreparable harm will result unless future distributions of protected information is prevented and already disseminated information is reclaimed;

d. The proposed injunctive order is reasonably suited to abate the Defendants' offending activities; and

e. The public interest will be served by the order requiring the handling of such materials in accordance with the law already enacted by the legislature.

WHEREFORE, Plaintiff, Centre County District Attorney Stacy Parks Miller respectfully requests that the Court:

a. Enter a judgment declaring that (1) the release and dissemination of the telephone records and emails of the District Attorney to Attorneys Cantorna and McGraw violated the Right-To-Know Law and CHRIA; and (2) the District Attorney is the Open Records Officer for all Right-To-Know requests seeking records related to the District Attorney's Office and must receive such requests for processing under the statute;

b. Enter temporary and permanent injunctive relief directing Defendants return to the District Attorney all materials and compilations of materials obtained and/or created from materials obtained in response to Right-To-Know requests for materials related to the District Attorney, and to destroy all remaining electronic and hard copies of same;

c. For all pending and future Right-To-Know requests for materials related to the District Attorney, enter temporary and permanent injunctive relief enjoining Defendants from

doing anything other than forwarding such requests to the District Attorney for review and processing under applicable statutes;

d. Award her the costs and attorney's fees incurred in bringing this action; and

e. Order such other relief as the Court may deem appropriate.

COUNT II – INVASION OF PRIVACY

66. DA Parks Miller hereby incorporates by reference the averments contained in the foregoing paragraphs as if restated here.

67. A constitutional right of privacy arises under Article I, Sections 1 and 8 of the Pennsylvania Constitution.

68. The right of privacy protects against disclosure of personal matters in which a person has a legitimate expectation of privacy.

69. The right of privacy exists where a person has an actual expectation of privacy and society is prepared to recognize the expectation of privacy as reasonable.

70. District Attorney Stacy Parks Miller had a reasonable expectation that information about her telephone communications would remain private.

71. The expectation of privacy was reasonable given that the Right-To-Know law exempts from disclosure "containing all or part of a person's …cellular or personal telephone number." 65 P.S. § 67.708(b)(6)(i)(A).

72. Moreover, the fact that the Right-To-Know law exempts telephone records from disclosure reflects a societal recognition that the expectation of privacy in those matters.

73. The County's disclosure of records containing information about DA Parks Miller's telephone communications constitutes a violation of her right of privacy under the Pennsylvania Constitution.

74. DA Parks Miller believes and therefore avers that the County knew that its actions would violate her constitutional right of privacy or the County acted with reckless disregard of her constitutional right of privacy.

WHEREFORE, Plaintiff, Centre County District Attorney Stacy Parks Miller respectfully requests that the Court award compensatory damages, costs of suit, attorney's fees, and such other relief as the Court may find appropriate.

Respectfully submitted,

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Attorneys for Plaintiff, Centre County District Attorney Stacy Parks Miller

Dated: March 23, 2015

VERIFICATION

The undersigned verifies that she has read the foregoing Complaint and its factual allegations are true and correct to the best of her knowledge, information and belief. This Verification is made subject to the penalties of 18 Pa. C.S.A. §4904, relating to unsworn falsification to authorities.

By: _____
Kelly Parks Miller
Centre County District Attorney

Date: March 23, 2015

EXHIBIT A

Last Updated: 1/08/2009
Attachments: PA Right to Know Exceptions
Centre County Public Records Request Form

Purpose and Effective Date

On February 14, 2008, Act 3 of 2008 was passed into law amending the Pennsylvania Right to Know Law (Purdons, 65 P.S. §65 et sec.). The Act governs the rights of the public to inspect and obtain copies of public records. The effective date of the Act is January 1, 2009.

Public Records

Public records are defined by the Act.

A record is defined as any information, regardless of form, documenting a transaction or activity of an agency, is created, received, or retained pursuant to law or in connection with a transaction, business, or activity of the agency. It includes documents, papers, letters, maps, books, tapes, photographs, film or sound recordings, information stored or maintained electronically, and a data-processed or image-processed document.

Section 708 outlines a number of items exempted from the Act which are listed in the **PA Right-to-Know Exceptions**

Inspection

The availability of records for public inspection is defined by the Act. Public records are open to inspection and for duplication during normal office hours, 8:30 a.m. to 5:00 p.m. prevailing time, Monday through Friday, except for holidays, subject to the regulations set forth herein.

Request for Public Records

Agencies may fulfill electronic, verbal, written or anonymous verbal or written requests for access to records under Act 3. If the requester wishes to pursue the relief and remedies provided for in Act 3, the request for access to records must be a written request. Written requests must be addressed as follows:

- Controller's records: Centre County Controller, Willowbank Office Building, 420 Holmes Street, Bellefonte, PA 16823.
- Coroner's records: Centre County Coroner, Willowbank Office Building, 420 Holmes Street, Bellefonte, PA 16823.
- Court records: Centre County Prothonotary/Clerk of Courts, Courthouse, Bellefonte, PA 16823.
- District Attorney's records: Centre County District Attorney, Courthouse, Bellefonte, PA 16823.
- District Magisterial Judges' records: Centre County Court Administrator, Courthouse, Bellefonte, PA 16823.
- Domestic Relations' records: Centre County Court Administrator, Courthouse, Bellefonte, PA 16823.
- Probation and Parole Office records: Centre County Court Administrator, Courthouse, Bellefonte, PA 16823.
- Recorder of Deeds' records: Centre County Recorder of Deeds, Willowbank Office Building Annex, 414 Holmes Street, Bellefonte, PA 16823.
- Register of Wills/Orphan's Court records: Centre County Register of Wills, Willowbank Office Building Annex, 414 Holmes Street, Bellefonte, PA 16823.
- Sheriff's Office records: Centre County Sheriff, Courthouse, Bellefonte, PA 16823.

- Treasurer's Office records: Centre County Treasurer, Willowbank Office Building, 420 Holmes Street, Bellefonte, PA 16823.
- Records of other county government offices: Director of Administrative Services/Chief Clerk or other person designated by the Centre County Commissioners, at Willowbank Office Building, 420 Holmes Street, Bellefonte, PA 16823.

The written request must:

1. Provide the name of the person requesting the records.
2. Provide a mailing address to which a written reply and/or the requested information can be sent.
3. Provide a phone number where the requestor can be contacted.
4. Identify or describe the specific records being sought. The request must be sufficiently specific to enable the County to ascertain which records are being requested, and include the date of the information requested as well as type of information, and the county department which has custody of the record.
5. The signature of the person making the request.
6. The written request does not need to include an explanation of the requestor's reason for the request or of the requestor's intended use of the record(s).
7. Agree to reimburse the cost of reproducing the records requested, and if the cost of reproducing the records exceeds $100, include a deposit equal to the lesser of $100 or 25% of the estimated cost of reproducing the records. The balance shall be due and payable at the time the records are delivered.

A written request for information under the county's Open Records/Right to Know Policy may be filed on the Centre **County Public Record Request Form**, by a letter which contains the required information, or by e-mail.

Each Department authorized to receive and respond to written requests for public records under the Act shall keep a file of written requests received under the provisions of the Pennsylvania Right to Know Law and whether the request was approved, reviewed, or denied, as provided for in the Act, and the date of each action taken.

Record Creation

In the course of responding to a request for access, an agency shall not be required to create a record that 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.

Redaction

The County will grant access to public records according to this Policy and will separate and exclude any records which are not public records or which are otherwise excluded or exempted from the definition of public records. If information which is not subject to access is an integral part of a public record and cannot be separated, the County shall redact that information. Only information subject to the Act will be included in the response.

***The County's* Response and Time for Response**

Once a written request for public records, regardless of the format, the office with custody of the records shall respond to the request within five (5) *business* days in one of the following manners:

The requested records will be provided; or the request will be denied. If a request is denied in whole or in part, the denial will contain a description of the records requested; the reasons for the denial, including citation of supporting legal authority; the name, title, business address, business telephone number, and signature of the person on whose authority the denial is issued; a date of the response, and the procedure to appeal the denial of access under Act 3; or If it is determined that:

1. The requested records require redaction (blacking out of sections of the records that are not public).
2. The requested records require retrieval from remote location.
3. The requested records require legal review.
4. The requestor has not complied with the County's Policy.
5. The requestor refuses to pay the applicable fees set forth by this Policy

The agency which received the written request will send written notice that the request is being reviewed, the reason for the review, and a reasonable date by which a response is expected to be provided. The records must be provided, or a written denial issued, within 35 days of the date the original written request was received.

Certain records may require the agency to notify any third party that is subject of a record or the provider of the record if the agency gives access to any record that is not a public record. If the record was submitted accompanied by a notice of trade secret or proprietary information, the agency notice must be given within five (5) days and the third party has five (5) days to comment on the release. Agency denial may be based on this determination or at the request of the third party.

Appeal of Denial

Upon denial of a written request the requester may file an appeal with the Office of Open Records, or judicial, legislative, or other appeals officer within 15 business days of the mailing date of the agency response or deemed denial. The appeal states the grounds for the asserting openness and addresses the grounds for the agency denial.

The appeals office must make a final written determination, with explanation, within thirty (30) days. Failure to meet that date is a deemed denial.

A third party with direct interest in the record on appeal may join the appeal within 15 days of receiving "actual knowledge" of the appeal but no later than the date the appeals officer issues a decision.

Written request for records denied by the Director of Administrative Services/Chief Clerk may be appealed to the Centre County Board of Commissioners. Written requests denied by independently elected officials listed above, or by the Court Administrator, may be appealed directly to that office.

Judicial Appeal

Appeals from appeals officer determinations for these agencies are taken to the Court of Common Pleas within thirty (30) days of the mailing date of the decision. The petition for review constitutes a stay on the release of documents until a decision is rendered by the court.

Fees

A request for copies of public records or information produced there from must be accompanied by payment of fees to cover the direct cost of duplication as set forth below:

Record Type	**Fee**
Copies:	.25 per page *(A "photocopy" is either a single-sided or one side of a double-sided black-and-white copy of a standard 8.5" x 11 page)*
Certification of a Record:	$1.00 per record, not per page. Please Note that certification fees do not include notarization fees.
Specialized documents:	Actual Cost For example, but not limited to, blue-prints, color copies, non-standard sized documents
Facsimile/Microfiche/Other Media	Actual Cost
Redaction Fee:	No Redaction Fee May be Imposed

Conversion to Paper:	If a record is only maintained electronically or in other non-paper media, duplication fees shall be limited to the lesser of the fee for duplication on paper or the fee for duplication in the original media unless the requestor specifically requests for the record to be duplicated in the more expensive medium. (Sec. 1307 (e).)
Postage Fees	Fees for Postage May Not Exceed the Actual Cost of Mailing

Please Also Be Advised:

Statutory Fees: If a separate statute authorizes an agency to charge a set amount for a certain type of record, the agency may charge no more than that statutory amount. For example, a Recorder of Deeds may charge a copy fee of 50 cents per uncertified page and $1.50 per certified page under 42 P.S. § 21051. Police departments have the authority to charge up to $15 per report for providing a copy of a vehicle accident report. 75 Pa.C.S. §3751 (b)(2). Philadelphia police may charge up to $25 per copy. *Id.* at (b)(3). State police are authorized to charge "$5 for each copy of the Pennsylvania State Police full report of investigation." 75 Pa.C.S. §1956(b).

Inspection of Redacted Records: If a requester wishes to inspect rather than receive a copy of a record and the record contains both public and non-public information, the agency shall redact the non-public information. An agency may not charge the requester for the redaction. However, the Agency may charge for the copies it must make of the redacted material in order for the requester to view the public record. The fee structure outlined above will apply. If, after inspecting the records, the requester chooses to obtain the copies, no additional fee may be charged.

Enhanced Electronic Access: If an agency offers enhanced electronic access to records in addition to making the records accessible for inspection and duplication by a requester, the agency may establish user fees specifically for the provision of the enhanced electronic access, but only to the extent that the enhanced electronic access is in addition to making the records accessible for inspection and duplication by a requester as required by this Act. The user fees for enhanced electronic access may be a flat rate, a subscription fee for a period of time, a per-transaction fee, a fee based on the cumulative time of system access or any other reasonable method and any combination thereof.

Fee Limitations: Except as otherwise provided by statute, the law states that no other fees may be imposed unless the agency necessarily incurs costs for complying with the request, and such fees must be reasonable. No fee may be imposed for an agency's review of a record to determine whether the record is a public record, legislative record or financial record subject to access in accordance with this Act. No fee may be charged for searching for or *retrieval of documents*. An agency may not charge staff time or salary for complying with a RTK request.

Prepayment: Prior to granting a request for access in accordance with this Act, an agency may require a requester to prepay an estimate of the fees authorized under this section if the fees required to fulfill the request are expected to exceed $100.

Once the request is fulfilled and prepared for release, the requester shall submit payment in full before or at the time the records are provided.