

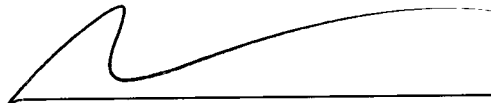
IN THE COMMONWEALTH COURT OF PENNSYLVANIA

ERIK ARNESON, individually and in his official capacity as Executive Director of the Office of Open Records, and SENATE MAJORITY CAUCUS,	:	
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Petitioners,	:	No. ___ MD 2015
	:	
v.	:	
	:	
	:	
THOMAS W. WOLF, in his official capacity as Governor of the Commonwealth of Pennsylvania, DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT, and OFFICE OF OPEN RECORDS,	:	
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	:	
Respondents.	:	

NOTICE TO PLEAD

To: GOVERNOR THOMAS W. WOLF, DEPARTMENT OF
COMMUNITY AND ECONOMIC DEVELOPMENT, and OFFICE OF OPEN
RECORDS,

You are hereby notified to file a written response to the enclosed petition
for review within thirty (30) days from service hereof or a judgment may be
entered against you.



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	:	
Respondents.	:	

**PETITION FOR REVIEW IN THE NATURE OF A COMPLAINT FOR
MANDAMUS AND DECLARATORY RELIEF**

Petitioners, by and through the undersigned counsel, do hereby bring this petition for review in the nature of a complaint for mandamus and declaratory relief, and in support thereof, aver as follows:

I. JURISDICTION

1. Petitioners file this petition in the Court’s original jurisdiction seeking a writ of mandamus and declaratory judgment under the Declaratory Judgments Act, 42 Pa.C.S. § 7531, *et seq.*

2. This Court has jurisdiction under Section 761(a) of the Judicial Code, 42 Pa.C.S. § 761(a)(1)-(2).

II. PARTIES SEEKING RELIEF

3. Petitioner Erik Arneson is the rightful Executive Director of the Office of Open Records. He brings this action in his individual and official capacity.

4. Petitioner the Senate Majority Caucus is one of two subparts of the Pennsylvania Senate and is an integral constituent of the Senate.

III. GOVERNMENT UNIT WHOSE ACTION IS IN ISSUE

5. Respondent Thomas W. Wolf is the Governor of the Commonwealth of Pennsylvania. This action is brought against Governor Wolf in his official capacity as Governor.

6. Respondent Department of Community and Economic Development (DCED) is a department within the Executive Branch of government, and is the department within which the Office of Open Records is administratively housed.

7. Respondent Office of Open Records is an independent agency created by Act 3 of 2008. Petitioner Erik Arneson specifically seeks, among other things, a writ of mandamus to restore him as the Executive Director of the Office of Open Records. This requested relief makes the Office of Open Records a necessary party to this matter.

IV. GENERAL STATEMENT OF MATERIAL FACTS

8. Act 3 of 2008 marked a total and necessary overhaul of the existing open records laws, resulting in the Right-to-Know Law (RTKL). 65 P.S. §§ 67.101-67.3104.

9. For the first time, government agencies and officials bore the burden to show that a record was not subject to access, as opposed to a requester having to prove that it was. 65 P.S. § 67.305.

10. As part of the overhaul, the Legislature created an independent, quasi-judicial watchdog agency administratively housed in the Department of Community and Economic Development to both guide and oversee implementation of the law: the Office of Open Records (OOR). 65 P.S. § 67.1310.

11. Among the many responsibilities of the office, the OOR serves as an independent, adjudicatory body, hearing open records appeals from citizens denied access to records by local and Commonwealth agencies. 65 P.S. §§ 67.503(a), 67.1101, 67.1102.

12. Among the Commonwealth agencies whose appeals are heard by the OOR is the Governor's Office. 65 P.S. § 67.102 (“COMMONWEALTH AGENCY.’ Any of the following: ... (i) The Governor’s Office.”).

13. By statute, the independent OOR is headed by an Executive Director. 65 P.S. § 67.1310(b).

14. The Executive Director is appointed by the Governor and is entitled to serve a fixed six-year term, which is conspicuously not coterminous with the four-year term of the appointing Governor. 65 P.S. § 67.1310(b).

15. A second fixed six-year term is also permitted. 65 P.S. § 67.1310(b).

16. The Executive Director has a number of exclusive duties under the law, both judicial and administrative in nature.

17. Judicially, the Executive Director is required to (1) appoint the appeals officers, who effectively serve as the judges in RTKL appeals; and (2) monitor cases appealed to the OOR. 65 P.S. § 1310(d)-(e).

18. The Executive Director further monitors all draft outgoing Final Determinations of the OOR, exercising independent judgment on the drafts prepared by the appeals officers, free from pressures by the parties or other officials within the Executive Branch. The Executive Director then responds to the appeals officers with edits and/or direction to be implemented before the Final Determinations are issued, which edits and/or direction are sometimes based on legal principles not previously considered and sometimes contrary to the draft Final Determinations as originally prepared by the appeals officers.

19. On the administrative side, the Executive Director has the duty to ensure that the obligations of the OOR are carried out and the duty to control the

appropriation of the OOR, which appropriation “shall be under the jurisdiction of the executive director.” 65 P.S. § 67.1310(d)-(f).

20. On January 13, 2015, then-Governor Tom Corbett appointed Petitioner Erik Arneson as the second ever Executive Director of the OOR. *See* Jan. 13, 2015 letter (attached as Exhibit A).

21. Executive Director Arneson received his fixed six-year commission on the same date, designating his term as January 13, 2015 through January 13, 2021. *See* Commission (attached as Exhibit B).

22. Executive Director Arneson took the oath of office on January 16, 2015. *See* Oath (attached as Exhibit C).

23. Since his lawful appointment, Executive Director Arneson has fulfilled the duties of the post, including through the date of this petition.

24. Despite Executive Director Arneson’s six-year appointment, newly inaugurated Governor Tom Wolf purported to “terminate” Arneson’s appointment, “effective immediately,” by letter dated January 20, 2015, which was delivered to Arneson by messenger on January 22 at approximately 2:10 PM. *See* Jan. 20, 2015 letter (attached as Exhibit D).

25. Governor Wolf did not cite any displeasure with Executive Director Arneson’s performance or cite to any “cause” for his removal.

26. Instead, despite Governor Corbett's lawful use of his appointment power to fill an empty seat at the OOR, Governor Wolf baldly stated that the lawful process "lacked transparency, was of questionable timing and appears to have been rushed through." *See id.*

27. In a twist of irony, Governor Wolf removed the head of the independent, quasi-judicial agency that oversees his office due to his purported concern about the trust of Pennsylvania's citizens in state government. *See id.*

28. In spite of Governor Wolf's unlawful power grab, and in spite of being unceremoniously stripped of his ID/access card, office key, parking pass, and computer, as well as his pay and benefits, Executive Director Arneson reported to work on Friday, January 23.

29. Unless this Court directs otherwise, he will continue to do so to fulfill his quasi-judicial and administrative duties, which are statutorily committed to him under the RTKL for a fixed six-year term.

30. Upon information and belief, Governor Wolf has not appointed a new Executive Director.

31. Governor Wolf's and DCED's actions in this matter violate separation of powers principles in the Pennsylvania Constitution and also violate the Right-to-Know Law.

V. STATEMENT OF THE RELIEF SOUGHT

COUNT I- MANDAMUS
(Petitioner Erik Arneson against all Respondents)

32. The foregoing Paragraphs are incorporated by reference as if set forth in full herein.

33. “[M]andamus is employed to require ‘. . . the performance of a particular duty . . . [which] results from the official station of the party to whom it is directed or from operation of law.’” *Gernert v. Lindsay*, 2 Pa. Commw. 576, 579 (1971).

34. “There is no question that mandamus is the appropriate remedy where the vacancy resulting from illegal ouster has not been filled.” *Gernert*, 2 Pa. Commw. at 582.

35. Mandamus is appropriately used to effect reinstatement of a public official who was wrongfully removed from his lawful office. *See Gernert*, 2 Pa. Commw. at 582.

36. Petitioner Erik Arneson was the lawfully appointed Executive Director of the Office of Open Records.

37. Petitioner Arneson remains the only person lawfully entitled to fulfill the office of Executive Director.

38. No other person has been appointed to fulfill the office of Executive Director.

39. The ouster of Petitioner Arneson by Governor Wolf and DCED from the office of Executive Director was prohibited by the Pennsylvania Constitution and the Right-to-Know Law.

40. Therefore, Petitioner Arneson is entitled to relief in mandamus.

COUNT II-DECLARATORY JUDGMENT
(Petitioners Erik Arneson and Senate Majority Caucus against all Respondents)

41. The foregoing Paragraphs are incorporated by reference as if set forth in full herein.

42. A party may obtain a declaration of existing legal rights, duties, or status of parties by filing a petition under the Declaratory Judgments Act, 42 Pa.C.S. §§ 7531, *et seq.*

43. The purpose of the Declaratory Judgments Act is to “settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations, and is to be liberally construed and administered.” *See Bayada Nurses, Inc. v. Dep’t of Labor & Indus.*, 8 A.3d 866, 874 (Pa. 2010) (citing 42 Pa.C.S. § 7541(a)).

44. Governor Wolf purported to oust Petitioner Arneson from the office of Executive Director under his alleged power under the Right-to-Know Law.

45. The DCED denied Petitioner Arneson benefits, including pay, in response to the Governor’s actions.

46. Under Pennsylvania law, the Governor can only remove the Executive Director of the Office of Open records for cause.

47. The Governor's action of removing the Executive Director without cause stands to unlawfully increase the power of the Executive Branch at the expense of the other branches of government. The Caucus, as a part of the Senate, is injured by the Governor's attempt to upset the balance of power commanded by the Pennsylvania Constitution.

48. Governor Wolf and the DCED believe that the Executive Director can be removed at the Governor's pleasure.

49. Accordingly, there exists a dispute between Petitioners and Respondents as to whether Governor Wolf has the lawful authority to remove the Executive Director of the Office of Open Records at his pleasure or if the Executive Director can only be removed for cause.

50. Declaratory judgment from the Court would resolve the present controversy between the parties.

51. Therefore, Petitioners are entitled to declaratory judgment to resolve the present dispute.

PRAYER FOR RELIEF

WHEREFORE, Petitioners request that the Court enter judgment in their favor and grant the following relief:

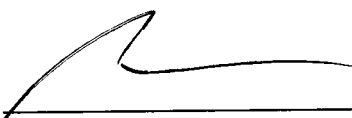
- (1) a writ of mandamus restoring Erik Arneson as the Executive Director of the Office of Open Records;
- (2) backpay and benefits for Erik Arneson;
- (3) enter judgment declaring that the Governor can only remove the Executive Director of the Office of Open Records for cause;
- (4) judgment declaring that the Governor violated the Pennsylvania Constitution by removing Erik Arneson as Executive Director of the Office of Open Records;
- (5) judgment declaring that the Governor violated the Right-to-Know Law by removing Erik Arneson as Executive Director of the Office of Open Records without cause;
- (6) judgment declaring that the DCED violated the Pennsylvania Constitution by denying Erik Arneson the pay, benefits, and access of the Executive Director of the Office of Open Records without cause;
- (7) judgment declaring that the DCED violated the Right-to-Know Law by denying Erik Arneson the pay, benefits, and access of the Executive Director of the Office of Open Records without cause;
- (8) an injunction permanently enjoining the Governor from making any further attempts to remove Erik Arneson as Executive Director without cause;

(9) an injunction permanently enjoining the DCED from interfering with timely payment of Erik Arneson's salary, including back pay, his full access to benefits, and his exercise of the Office of Executive Director of the Office of Open Records without cause; and

(10) Such other and further relief as this Court deems just and proper.

Respectfully submitted,

CONRAD O'BRIEN PC

By: 
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swithers@lambmcerlane.com

Attorneys for Erik Arneson

Dated: January 26, 2015

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Attorneys for Senate Majority Caucus

VERIFICATION

I, Erik Arneson, verify that the statements in the foregoing Petition for Review are true and correct to the best of my knowledge, information and belief. I make this verification subject to 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: 26 Jan 2015

A handwritten signature in black ink, appearing to read 'Erik Arneson', written over a horizontal line.

Erik Arneson

Exhibit A



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF THE GOVERNOR
HARRISBURG

THE GOVERNOR

January 13, 2015

Mr. Erik Arneson
Office of Open Records
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120

Dear Mr. Arneson:

It is with great pleasure that I appoint you to serve as the Executive Director of the Office of Open Records (OOR). This appointment is made pursuant to section 1310(b) of the Right-to-Know Law (RTKL), 65 P.S. § 67.1301(b). The term of office prescribed by the RTKL is six (6) years and until a successor is appointed and qualified, which shall compute from the date of this letter of appointment.

A commission reflecting your appointment will soon be issued and delivered to you, along with instructions for the administration of the constitutional oath of office and the filing of the written oath of office with the Department of State as required by law.

After years of distinguished service to the Senate of Pennsylvania and the people of this Commonwealth, I am confident that you will perform your new responsibilities as the Executive Director of the OOR both honorably and admirably. Best wishes as you embark on a position of public service that is vital to the people of Pennsylvania and the continued success of the Commonwealth's democratic form of government.

Sincerely,

A handwritten signature in black ink that reads "Tom Corbett".

TOM CORBETT
Governor

Exhibit B

Commonwealth of Pennsylvania



Governor's Office

Erik Arneson

of the County of

Lebanon

in the Commonwealth of Pennsylvania

Greetings:

Reposing especial trust and confidence in your prudence, integrity and ability, and under authority of the Constitution and Laws of the said Commonwealth, in such case made and provided, I have appointed and do by these presents commission you to be an

Executive Director for the Office of Open Records

To Have and To Hold the said office, together with all the rights, powers and privileges thereunto belonging, or by law in anywise appertaining, to serve until until January 13, 2021 and until your successor is appointed and qualified, if you shall so long behave yourself well.

This appointment to compute from January 13, 2015.

Given under my hand and the Great Seal of the State, at the City of Harrisburg, this thirteenth day of January in the year of our Lord, two thousand and fifteen and of our Commonwealth the two hundred and thirty-ninth.



Tom Corbett

Governor

Casey A. Aichele

Secretary of the Commonwealth

Exhibit C

COMMONWEALTH OF PENNSYLVANIA



RECEIVED

2015 JAN 16 PM 1:43

Department of State
Bureau of C.E.L.

CONSTITUTIONAL OATH OF OFFICE

COMMONWEALTH OF PENNSYLVANIA)

) SS:

County of Dauphin)

I do solemnly swear (or affirm) that I will support, obey and defend the Constitution of the United States and the Constitution of this Commonwealth and that I will discharge the duties of my office with fidelity.

Erik Arneson

SIGNATURE OF OFFICER

Erik Arneson

NAME OF OFFICER

Executive Director for the Office of Open Records

OFFICER TITLE

Taken, sworn and subscribed before me this 16 day of January A.D. 20 15.

William P. ...
Signature of Person Administering Oath
Judge, Superior Court

(Seal)

NOTE: The foregoing oath shall be administered by some person authorized to administer oaths.

The oaths of STATE OFFICERS, JUSTICES OF THE SUPREME COURT and JUDGES OF THE SUPERIOR AND COMMONWEALTH COURTS shall be filed in the office of the Secretary of the Commonwealth.

The oaths of other judicial and county officers shall be filed with the Prothonotary of the county in which the oath is taken.

Exhibit D



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF THE GOVERNOR
HARRISBURG

THE GOVERNOR

January 20, 2015

Mr. Erik Arneson
Commonwealth of Pennsylvania
Office of Open Records
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225

Re: Executive Director Position, Office of Open Records

Dear Mr. Arneson:

Section 1310(a) of the Pennsylvania Right to Know Law establishes an Office of Open Records ("OOR") in the Department of Community and Economic Development, an Executive Department of the Commonwealth falling within the jurisdiction of the Governor. Further, Section 1310(b) of the Pennsylvania Right to Know Law empowers the Governor to appoint the OOR's Executive Director See 65 P.S. §§ 67.1310(a) and 1310(b).

As you are aware from my office's communications with you last week, I have serious concerns regarding your recent appointment to the OOR Executive Director position by former Governor Corbett. The process leading to your appointment lacked transparency, was of questionable timing and appears to have been rushed through. It is precisely this style of governing that causes Pennsylvania's citizens to become skeptical and lose trust that their state government is acting in their best interest.

Accordingly, I am terminating your employment as the OOR Executive Director – *effectively immediately*. My Administration will engage in a comprehensive and fully transparent executive search process that is open to all interested applicants.

Thank you again for your years of dedicated service to the citizens of the Commonwealth of Pennsylvania.

Respectfully,

A handwritten signature in blue ink that reads "Tom Wolf".

Tom Wolf
Governor

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing document upon the persons and in the manner indicated below, which service satisfies the requirements of Pa.R.A.P. 121:

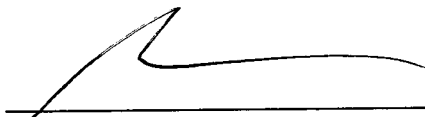
Via Hand Delivery:
Governor Thomas W. Wolf
225 Main Capitol Bldg.
Harrisburg, PA 17120

Via Hand Delivery:
Department of Community and
Economic Development
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225

Via Hand Delivery:
Office of Open Records
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225

Via Hand Delivery
Kathleen Kane, Esq.
Attorney General
15th Floor, Strawberry Square
Harrisburg, Pennsylvania 17120

Dated: January 26, 2015



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