



# **Hollidaysburg Community Watchdog**

**511 Allegheny St.**

**Suite 1**

**Hollidaysburg, PA 16648**

**814-696-2606**

*May 20, 2022*

**The Office of Open Records  
33 Market St. 16/F  
Harrisburg, PA 17101**

## **Open Records Appeal**

### *The jurisdiction and parties*

1. This is an appeal under §1101 of the Open Records Law, which specifies jurisdiction with the Office of Open records.
2. The Requesters are Bryan King and Hollidaysburg Community Watchdog. The Watchdog is a community organization based in neighboring Blair County that works to enhance transparency and deter misconduct in local government.
3. The respondent is the County of Bedford, Pennsylvania, governed and controlled by its Board of Commissioners.

### *The request and initial response*

4. The Requesters submitted a right-to-know request (“the RTK”) on April 5, 2022, intended to elicit all salient information about an apparently failed taxpayer-funded 1.3MW solar energy project announced in 2018, which the County had said would begin generating electricity for the Bedford County Courthouse, the Bedford County Correctional Facility and the Bedford Public Library in June 2019.
5. The request (dated April 4, 2022 but sent April 5, 2022) was worded as follows<sup>1</sup>:
  1. All records referring to the taxpayer-funded installation of solar panels, solar arrays, solar generators or associated technologies from January 1, 2016 through April 1, 2022. Taxpayer funding sources include all state, county and municipal entities in the state of Pennsylvania. Records include (but are not limited to) correspondence, meeting minutes, grant

---

<sup>1</sup> Watchdog Right-to-Know request, April 5, 2022

applications, permits, and contracts.

2. All records referencing grant applications — including (but not limited to) applications, correspondence, meeting minutes — from the County, or any County-affiliated agency, to the PA Department of Community and Economic Development, between January 1, 2016 and April 1, 2022.

6. The County acknowledged the request promptly, within an hour of receipt of the RTK, and requested a 30-day extension, to which the Requesters had no objection.<sup>2</sup>

### *The County's response*

7. The County's first response, received via email on May 5, contained the following material:

- a) A cover letter dated May 3, 2022, in which county Open Records Officer Debra Brown wrote: "Since the previous commissioner held the records, I have been having problems pulling everything together and need at least an additional week to see if there is additional information pertaining to your request." Despite that statement, Ms. Brown closes the correspondence with, "Please be advised that this correspondence will serve to close this record with our office as permitted by law."

- b) A PowerPoint presentation dated December 13, 2017 from RER Energy promoting the project, containing general information about the benefits of solar power, and also including projected cost savings of the proposed project and a timeline of six to nine months for its completion.

- c) A letter dated August 28, 2018 from the Bedford County Planning Commission with remarks about certain deficiencies in a seven-page land development plan "prepared by BL Companies for Developer RER Energy Group". Only two of the seven pages referenced land development plan were provided in the County response. The letter also mentions a "County Review Application", which was not provided in the response at all.

- d) Two (out of seven) pages of a "Final Land Development Plan, Bedford County Jail Solar Field", presumably revised in accordance with the Planning Commission's recommendations, issued October 18, 2018 and revised on October 29, 2018.

8. The Requesters replied by email on May 11, 2022, noting that they regarded the response as insufficient, and that they "had proof of the existence of a number of responsive documents that your response fails to mention, including email communication (notably but not exclusively with BREC, Penelec and township supervisors), invoices and receipts from law firms and other providers, applications, and other materials directly pertaining both to the failed solar projects, and also the solar-related PUC litigation the County initiated (and funded) against BREC, then abandoned." The County sent no substantive reply.<sup>3</sup>

---

<sup>2</sup> Email thread Watchdog and Debra Brown April 5, 2022: Right to Know Request

<sup>3</sup> Email thread Watchdog and Debra Brown May 11, 2022: Right to Know Response

9. The County's second response, received on May 16, 2002, contained only a "Developer's Agreement" dated January 22, 2019 (after the official groundbreaking of the project on December 12, 2018), between Bedford Township and Bedford County. The document identifies the Developer as "The County of Bedford", not RER Energy. The document is signed by the County Secretary, Debra Brown and the Chairman of the Board of Commissioners, Josh Lang, but is unsigned by Bedford Township. The document also makes reference to the County's reliance "the Developer's engineer". It does not specify whether the identity of that engineer, which could be BL Companies or another engineer advising the County, no records of any communications or agreements with said engineer are provided.
10. Neither response cited any exceptions or exemptions under §708 of the RTK law, nor did they include affidavits of no record. No written denial under §903 was provided.
11. The Requesters hereby assert that the response was lawfully insufficient. Absent are numerous records concerning the project that the County is obligated to have in its possession under Act 407 of 1963 as administered by the County Records Committee. Such records are obviously required for independent entities to ascertain the reasons for the project's failure. Yet the response contains no affidavit of no record or any written explanation for their absence. Among the obvious omissions:
  - a) The initial grant application and supporting materials submitted to the Commonwealth Finance Authority (CFA), which functions under the auspices of the Pennsylvania Department of Community and Economic Development (DCED). Also absent is any County correspondence with CFA/DCED personnel.
  - b) Meeting minutes and internal correspondence involving County officials with primary reference to the project.
  - c) Contracts, agreements, MOUs, meeting notes, correspondence and other materials reflecting the relationship between the County of Blair and RER Energy (or "Bedford Solar 58"), and substantive planning for the solar project.
  - d) Virtually all the planning & preparation materials associated with permitting and approval of the project, including applications and associated correspondence with state and local agencies and utilities including (but not limited to) Bedford Township, Bedford Borough, the Bedford Rural Electric Co-op and the Department of Environmental Protection.
  - e) All public records referencing the litigation initiated by the Bedford County Board of Commissioners against the Bedford Rural Electric Co-op (see below), along with invoices detailing the legal expenditures associated with the litigation.
12. While we do not specifically fault the professional conduct of the County Open Records Officer, Debra Brown, the Requesters *do* assert that the County's failure to provide a comprehensive response referencing all responsive documents was likely to be intentional, reflecting a bad-faith intent to obscure the information from public view. *McGown v Pa. Dep't of Env'tl. Prot.*, 103 A.3d 374, 382-83 (*Pa. Commw. Ct.* 2014).

## Background and preliminary argument

13. Numerous media articles appearing in late 2018 gave credit to County elected officials for the project, both for facilitating its approval and enabling the \$900,000 DCED grant to fund it. It was claimed the project, slated for completion by March 2019, would save the County \$100,000 in electricity costs the first year, and \$5.3 million in costs over the life of the array.<sup>4</sup>
14. The solar panels were delivered on site in the fall of 2018, and the groundbreaking ceremony for the project was “attended by local leaders and Department of Community and Economic Development (DCED) Secretary Dennis Davin and Department of Environmental Protection (DEP) Executive Deputy Secretary Ramez Ziadeh.”<sup>5</sup> Nonetheless, no project work was completed by the time the Requester’s RTK was submitted on April 5, 2022.
15. In March 2022 the Requesters had received information that solar panels worth hundreds of thousands of dollars had been sitting unattended for more than three years in a field next to the Bedford County Correctional Facility. Their boxes had rotted away, many panels were in direct contact with the soil, thick patches of vegetation surrounded them, and there were tell-tale voids where some stacks of panels appeared to have been stolen.
16. After the Requesters failed to obtain any information from the county by telephone, they wrote a letter to the County cc’d to various officials on April 5, 2022<sup>6</sup>, and soon afterwards submitted their right-to-know request. When no response was received by the end of business that day, the Requesters issued a press release alerting the community to the issue.<sup>7</sup>
17. An initial investigation by the *Altoona Mirror* revealed that the project, though orchestrated by and coordinated with the County, had been funded through Commonwealth grant to a private company called “Bedford Solar 58 LLC”, a shell company controlled by a firm called RER Energy. The project was one of two projects in the county funded by Commonwealth Financing Authority (CFA), which operates under the auspices of the Department of Community and Economic Development (DCED).
18. The *Altoona Mirror* article of April 7, 2022<sup>8</sup> covered much of this. But the neither the reporter nor the Requesters had yet uncovered the real reasons for the project’s abandonment. Nor were either aware of the litigation Bedford County had initiated over the project in the Pennsylvania Public Utility Commission (PUC) against the Bedford Rural Electric Coop (BREC). The county never announced to public or explained this litigation, which only came to light when a whistleblower provided the Requesters email correspondence between Commissioner Barry Dallara and BREC CEO Brooks Shoemaker.<sup>9</sup>

---

<sup>4</sup> (<https://rerenergygroup.com/ground-broken-for-solar-project-millions-projected-in-jail-cost-savings/>)

<sup>5</sup> Petition to the PUC from the Bedford County Board of Commissioners, P-2020-3022537

<sup>6</sup> Watchdog email April 5, 2022 “Bedford Jail solar project”.

<sup>7</sup> Press release “Bedford County Squanders \$900,000 Solar Power Grant.

<sup>8</sup> <https://www.altoonamirror.com/news/local-news/2022/04/stalled-solar-project-spurs-inquiries/>

<sup>9</sup> Email exchange between Commissioner Dallara and BREC CEO Shoemaker, September 24, 2020.

### ***Evidence of Bad Faith***

19. In the April 7 Altoona Mirror Article, Commissioner Dallara's explanation for the project delay is relayed as follows:

When asked why the project has been stalled since 2018, Dallara stated that design work in 2019 took longer than anticipated. "By the time that was done, COVID happened," Dallara said. "In 2019, COVID came out of nowhere and stopped everything for almost two years." In addition to blaming the pandemic, Dallara said that DEP permitting, supply chain issues and inflation further hampered the project's completion.

20. In an April 15, 2022 article in the *Bedford Gazette* reports that Commissioner Dallara said "the county did not expend any funds for the project." It also states that the commissioner "referred all questions to RER Energy".<sup>10</sup>

21. The Requesters will show that much of what the Commissioner told the media was untrue, that Commissioner Dallara was misleading the reporters by omitting any reference to the PUC litigation, and that resultant deception constitutes clear evidence of "bad faith" as referenced in *McGown*:

a) The solar panels were delivered on site in September 2018, and groundbreaking on the project was covered with great fanfare on December 13, 2018, with the project to be completed by March 2019. That renders impossible the assertion that "the design work in 2019 took longer than anticipated".

b) The Commissioner also asserted, falsely, that "in 2019, COVID came out of nowhere and stopped everything for almost two years." Covid first appeared in the United States in February 2020, and the first Covid shutdowns manifested in early April 2020. Moreover, the subsequent Covid restrictions did not "stop everything" -- nor did they stop RER Energy from completing a 2MW solar installation in Saranac Lake, NY in February 2021 and a 4MW municipal solar array in Livingston, NY in April 2021.<sup>11</sup>

c) The *Mirror* reporter also notes: "In addition to blaming the pandemic, Dallara said that DEP permitting, supply chain issues and inflation further hampered the project's completion." There is no mention of a permit application of any sort to the DEP in the County's response.

d) The Commissioner simply failed to inform the *Mirror* reporter about the County's litigation against BREC, which by this time had been abandoned.

e) In the *Mirror* article, the Commissioner also asserts that "RER Energy assured the commissioners repeatedly that there was nothing wrong with the panels." Not only is this

---

<sup>10</sup> [https://www.bedfordgazette.com/news/solar-panel-project-at-a-standstill/article\\_5d5d7b31-a96d-555d-84be-35782d1166eb.html](https://www.bedfordgazette.com/news/solar-panel-project-at-a-standstill/article_5d5d7b31-a96d-555d-84be-35782d1166eb.html)

<sup>11</sup> <https://reenergygroup.com/ground-broken-for-solar-project-millions-projected-in-jail-cost-savings/>  
<https://reenergygroup.com/town-of-geneseo-celebrates-completion-of-community-solar-array-in-livingston-county/>

demonstrably untrue, the County response to Requester's RTK provides no documentation mentioning meetings, discussions, emails or interactions of any kind with RER Energy after 2018.

f) In the *Gazette* article, the Commissioner states that no county funds had been expended on the project. This must be untrue, as the County shepherded the project through at every stage, and then launched litigation at its expense over the project in the PUC.

***Request for proceedings and order***

22. The Requesters therefore hold the County of Bedford to be in violation of the Open Records Law, specifically §§ 701, 901, and 903. We assert that the records sought are readily accessible without undue burden or impact on the efficiency of the office, and are in no way exempt under §708 of the law.
23. We thereby request the Office of Open records to open proceedings under §1101, in which the Requesters can submit evidence and argument, upon which Requesters appeal to the Office Open Records for relief, and request a final determination and order:
  - a) Declaring the County of Bedford to be in violation of the Right-to-Know law
  - b) Directing the County of Bedford to release the requested records as defined in the Requester's request of April 5, 2022, and further specified in this filing.
  - c) To pay reasonable costs of this action pursuant to §1304 of the law.

Bryan King  
Public Affairs Officer   
Hollidaysburg Community Watchdog