



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

:

**PECO ENERGY,
Requester**

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:

:

v.

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Docket No.: AP 2016-1176

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**PHILADELPHIA PARKING AUTHORITY,
Respondent**

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INTRODUCTION

William Marron, on behalf of PECO Energy (collectively, “Requester”), submitted a request (“Request”) to the Philadelphia Parking Authority (“Authority”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking data captured by a specific traffic camera. The Authority denied the Request, asserting that the footage is confidential under the Vehicle Code. The Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **denied**, and the Authority is not required to take any further action.

FACTUAL BACKGROUND

On June 22, 2016, the Request was filed, seeking “[t]raffic camera data for south bound Knights Rd at Woodhaven Rd Phila. specifically for a red Altima with Pa. tags EVX 7660 for 6/16/16 at 11:10 AM[.]” On June 24, 2016, the Authority denied the Request, asserting the records are confidential under Section 3116(e)(3) of the Vehicle Code, 75 Pa.C.S. § 3116(e)(3).

On July 11, 2016, the Requester appealed to the OOR, challenging the denial and stating grounds for disclosure.¹ The OOR invited both parties to supplement the record and directed the Authority to notify any third parties of their ability to participate in the appeal. *See* 65 P.S. § 67.1101(c). No supplemental submissions were made.

LEGAL ANALYSIS

“The objective of the Right to Know Law ... is to empower citizens by affording them access to information concerning the activities of their government.” *SWB Yankees L.L.C. v. Wintermantel*, 45 A.3d 1029, 1041 (Pa. 2012). Further, this important open-government law is “designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials and make public officials accountable for their actions.” *Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), *aff’d* 75 A.3d 453 (Pa. 2013).

The OOR is authorized to hear appeals for all Commonwealth and local agencies. 65 P.S. § 67.503(a). An appeals officer is required “to review all information filed relating to the request.” 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. The decision to hold a hearing is discretionary and non-appealable. *Id.* The law also states that an appeals officer may admit into evidence testimony, evidence and documents that the appeals officer believes to be reasonably probative and relevant to an issue in dispute. *Id.* Here, neither party requested a hearing; however, the OOR has the necessary, requisite information and evidence before it to properly adjudicate the matter.

The Authority is a Commonwealth agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.301; 53 Pa.C.S. § 5508.3(a)(2). Records in possession of a

¹ On that day, the OOR ordered the Requester to provide a copy of the Request, and, on July 19, 2016, the Requester complied.

Commonwealth agency are presumed public unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. 65 P.S. § 67.305. Upon receipt of a request, an agency is required to assess whether a record requested is within its possession, custody or control and respond within five business days. 65 P.S. § 67.901. An agency bears the burden of proving the applicability of any cited exemptions. 65 P.S. § 67.708(b).

Section 708 of the RTKL clearly places the burden of proof on the public body to demonstrate that a record is exempt. In pertinent part, Section 708(a) states: “(1) The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence.” 65 P.S. § 67.708(a). Preponderance of the evidence has been defined as “such proof as leads the fact-finder ... to find that the existence of a contested fact is more probable than its nonexistence.” *Pa. State Troopers Ass’n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Pa. Dep’t of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

The Authority asserts that the requested traffic camera data are confidential under the Vehicle Code. Specifically, Section 3116, which addresses automated red light enforcement systems in cities of the first class reads, in pertinent part:

[I]nformation prepared under this section and information relating to violations under this section which is kept by the city of the first class ... including recorded images ... shall be for the exclusive use of the city, its authorized agents, its employees and law enforcement officials for the purpose of discharging their duties under this section and under any ordinances and resolutions of the city. The information shall not be deemed a public record under the act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.

75 Pa.C.S. § 3116(e)(3). Section 306 of the RTKL provides that “[n]othing in [the RTKL] shall supersede or modify the public or nonpublic nature of a record or document established in ... State law....” 65 P.S. § 67.306.

Here, by its own terms, the Request seeks records that are expressly exempted from public disclosure under the Vehicle Code. Accordingly, the requested records are not subject to public access.

CONCLUSION

For the foregoing reasons, Requester’s appeal is **denied**, and the Authority is not required to take any further action. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to the Commonwealth Court. 65 P.S. § 67.1301(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond as per Section 1303 of the RTKL. However, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.² This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: August 5, 2016

/s/ Blake Eilers
Blake Eilers, Esq.
APPEALS OFFICER

Sent to: William Marron (via e-mail only);
Richard Dickson, Jr. (via e-mail only);
Thomas Hinchey, Esq. (via e-mail only)

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