



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
AMANDA ST. HILAIRE AND ABC27	:	
NEWS,	:	
Requester	:	
	:	
v.	:	Docket No: AP 2016-1520
	:	
WEST SHORE REGIONAL POLICE	:	
DEPARTMENT,	:	
Respondent	:	

INTRODUCTION

Amanda St. Hilaire (“Requester”), a reporter with *ABC27 News*, submitted a request (“Request”) to the West Shore Regional Police Department (“Department”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking motor vehicle crash reports. The Department denied the Request, claiming that the crash reports are confidential under state law. 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 Department is not required to take any further action.

FACTUAL BACKGROUND

On August 22, 2016, the Request was filed, seeking “[a]ll crash reports showing vehicle towing information from 2009 through present.” On August 26, 2016, the Department denied the Request, asserting that the requested records are confidential under Section 3751(b) of the

Vehicle Code, 75 Pa.C.S. § 3751(b). The Department also claimed that the requested records contain personal identification information, 65 P.S. § 67.708(b)(6), and information identifying minors, 65 P.S. § 67.708(b)(30).

On September 7, 2016, the Requester appealed to the OOR, challenging the denial and stating grounds for disclosure. The OOR invited both parties to supplement the record and directed the Department to notify any third parties of their ability to participate in this appeal. *See* 65 P.S. § 67.1101(c).

On September 16, 2016, the Department submitted a position statement reiterating its grounds for denial. In support of its position, the Department submitted the sworn affidavit of Chief of Police Michael Hope, who attests to the factual statements in the Department's submission.

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 LLC 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. *See* 65 P.S. § 67.503(a). An appeals officer is required “to review all information filed relating to the request” and may consider testimony, evidence and documents that are reasonably probative and relevant to the matter at issue. 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a

hearing to resolve an appeal. 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.* The decision to hold a hearing is discretionary and non-appealable. *Id.*; *Giurintano v. Pa. Dep't of Gen. Servs.*, 20 A.3d 613, 617 (Pa. Commw. Ct. 2011). Here, neither party requested a hearing; however, the OOR has the requisite information and evidence before it to properly adjudicate the matter.

The Department is a local agency subject to the RTKL and is required to disclose public records. 65 P.S. § 67.302. Records in possession of a local 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)(1). 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 Request seeks “all crash reports showing vehicle towing information” which the Department argues are confidential under the Vehicle Code, 75 Pa.C.S. § 3751. Further, the Department enters the information online and immediately submits it to the Pennsylvania Department of Transportation (“PennDOT”). Section 3751 of the Vehicle Code requires that all written accident reports be forwarded to PennDOT and designates the circumstances and the individuals to whom a record may be released. 75 Pa.C.S. § 3751. PennDOT’s regulations expressly limit the release of police accident reports and information to identified entities or individuals as follows:

(3) Police reports filed under 75 Pa.C.S. § 3751 (relating to reports by police) will be:

(i) Available only to:

(A) Federal government, including branches of the military service, Commonwealth agencies and officials of political subdivisions and agencies of other States and nations and their political subdivisions.

(B) Persons who are determined by the Department to be involved in accident prevention or highway safety research programs.

(C) Persons involved in the accident, their attorney, or insurer if they can furnish proof that the accident report is missing or lost and, therefore, unavailable from the reporting police department.

(D) Persons authorized by court order.

67 Pa. Code § 95.2(e)(3). This regulation expressly limits the persons to whom agencies are authorized to release the records and serving as a “regulatory exemption protecting” accident reports held by PennDOT and local agencies. *See, e.g., Tennis Towing v. State College Police Dep’t*, OOR Dkt. AP 2016-0835, 2016 PA O.O.R.D. LEXIS 849; *Jamison v. Norristown Borough Police Dep’t*, OOR Dkt. AP 2011-1233, 2011 PA O.O.R.D. LEXIS 927; *Pohlman v.*

Pa. Dep't of Trans., OOR Dkt. AP 2010-0500, 2010 PA O.O.R.D. LEXIS 453; *Bieber v. Pa. Dep't of Trans.*, OOR Dkt. AP 2009-0825, 2009 PA O.O.R.D. LEXIS 391. Therefore, the requested crash reports are not publically available through a RTKL request.

CONCLUSION

For the foregoing reasons, the Requester's appeal is **denied**, and the Department 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 Cumberland County Court of Common Pleas. 65 P.S. § 67.1302(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond 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.¹ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: October 3, 2016

/s/ Jill S. Wolfe

Jill S. Wolfe, Esq.
Appeals Officer

Sent to: Amanda St. Hilaire (via e-mail only);
Anna Marie Sosson, Esq. (via e-mail only);
Chief Michael Hope (via e-mail only)

¹ See *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).