



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
JOSÉ-MANUEL NAVARRO,	:	
Requester	:	
	:	
v.	:	Docket No.: AP 2016-1697
	:	
PHILADELPHIA POLICE	:	
DEPARTMENT,	:	
Respondent	:	

INTRODUCTION

José-Manuel Navarro (“Requester”) submitted a request (“Request”) to the Philadelphia Police Department (“Department”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking a variety of records. The Department denied the Request, arguing that the Request was insufficiently specific. The Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **dismissed**, and the Department is not required to take any further action.

FACTUAL BACKGROUND

On August 9, 2016, the Request was filed, seeking:

- 1) Photographs with identifying places and dates
- 2) Videotapes and magnetic tape recordings
- 3) Reports and Field notes
- 4) Recordings of all telephone conversations

- 5) Transcriptions of all my public or private speeches
- 6) All written published and unpublished materials
- 7) All documents mentioning the Puerto Rican Socialist Party
- 8) All documents compiled by Lt. George Fencil's Squad
- 9) All documents representing, mentioning or referencing me

The Request also states that "The dates for which I seek information extend from January 1, 1964 through July 31, 2016, inclusive. Records may appear under the name listed below, or 'Jose Navarro' or Jose M. Navarro."

On September 22, 2016, after extending its time to respond by thirty days, *see* 65 P.S. § 67.902(b), the Department denied the Request, arguing that the Request was insufficiently specific. *See* 65 P.S. § 67.703.

On October 11, 2016, the Requester appealed to the OOR, challenging the denial. 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 October 26, 2016, the Department submitted a position statement reiterating its argument that the Request is insufficiently specific, along with argument that the Requester had failed to address any of the Department's reasons for denial under Section 1101 of the RTKL. *See* 65 P.S. § 67.1101(a). The Department further alleged that it had raised reasons for denial under Sections 708(b)(1), (b)(6), (b)(10), (b)(12), (b)(17), and (b)(18) of the RTKL, none of which the Requester had addressed on appeal. Finally, the Department submitted the affidavit of Lieutenant Edward Egenlauf, the Open Records Officer for the Department, who attested that, due to the limitations of the Request, he had been unable to conduct a search for the requested records.

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. *See* 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 requisite information and evidence before it to properly adjudicate the matter.

The Department is a local agency subject to the RTKL that 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. *See* 65 P.S. § 67.305. An agency bears the burden of proving the applicability of any cited exemptions. *See* 65 P.S. § 67.708(b).

Section 708 of the RTKL 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 Department argues that the appeal is deficient because the Requester failed to state the grounds upon which he asserts that the requested records are public or address the Department’s reasons for denying the Request. *See* 65 P.S. § 67.1101(a)(1). Section 1101(a)(1) of the RTKL states that an “appeal shall state the grounds upon which the requestor asserts that the record is a public record, legislative record or financial record and shall address any grounds stated by the agency for delaying or denying the request.” 65 P.S. § 67.1101(a)(1); *see also Dep’t of Corrections v. Office of Open Records*, 18 A.3d 429, 434 (Pa. Commw. Ct. 2011) (“[I]t is appropriate and, indeed, statutorily required that a requestor specify in its appeal to Open Records the particular defects in an agency’s stated reasons for denying a RTKL request”). The Commonwealth Court has held that a requestor must “state why the records [do] not fall under the asserted exemptions and, thus, [are] public records subject to access.” *Saunders v. Dep’t of Corrections*, 48 A.3d 540, 542 (Pa. Commw. Ct. 2012).

On appeal, the Department asserts that it raised two separate grounds for denial: first, that the Request was insufficiently specific under Section 703 of the RTKL; and, second, that several exemptions under Section 708 applied. The Department notes that the Requester did not appeal its response using the OOR’s standard appeal form, which allows a requester to indicate that “the

records are in the possession, custody or control of the agency and are not protected by any exemptions under Section 708 of the Right-to-Know Law, are not protected by privilege, and are not exempted under any Federal or State law or regulation.”¹ The Department further alleges that, since the Requester did not in any way address either the Department’s arguments for specificity or any of the exemptions raised, the appeal must be dismissed under Section 1101.

In his appeal, the Requester does not address any of the Department’s grounds for denial, nor does he assert that the records are public records. Instead, the Requester addressed a letter to the OOR stating: “

With this letter, I wish to appeal ... My reason for requesting the records is a purely scholarly one. I am co-authoring a book on the Puerto Rican Socialist Party in the United States and am trying to access records that the Philadelphia police may have on my activism with the Puerto Rican Socialist Party in Philadelphia.

This does not address the Department’s denial of the Request for insufficient specificity, and therefore this appeal is not sufficient. However, the Requester is not prohibited from filing a new request, and if necessary, a new appeal pursuant to the requirements of 65 P.S. § 67.1101(a)(1).

¹ This appeal form can be found at http://openrecords.pa.gov/Documents/Appeals/Appeal_Form.pdf.

CONCLUSION

For the foregoing reasons, Requester's appeal is **dismissed**, 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 Philadelphia 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.²

This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: November 10, 2016

/s/ Jordan C. Davis

APPEALS OFFICER
JORDAN DAVIS, ESQ.

Sent to: José-Manuel Navarro (via first-class mail);
Russel Crotts, Esq. (via e-mail only);
Lt. Edward Egenlauf (via e-mail only)

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