

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

DEREE NORMAN,
Petitioner,

No. _____ CD 2022

v.

**Petition for Review of the Final
Determination of the Office of Open
Records at Docket No.: AP 2022-1629**

CITY OF PHILADELPHIA,
Respondent.

PETITION FOR REVIEW
IN THE NATURE OF AN APPEAL FROM THE OFFICE OF OPEN RECORDS

Pursuant to Pa. 65 P.S. § 67.1302(a), Pro Se Petitioner Deree J. Norman ("Petitioner") does hereby bring this petition for review in the nature of an appeal from the Office of Open Records against The City of Philadelphia ("Respondent") to retrieve the 911 tape and or transcript relating to the subject event depicted below, and in support thereof, aver as follows:

I. STATEMENT OF JURISDICTION

1. This is an appeal from Office of Open Records ("OOR") Docket No. AP 2020-2750 as to which the Court exercises appellate jurisdiction pursuant to Section 763(a)(2) of the Judicial Code, 42 Pa. C.S. § 763(a)(2), and Section 1301(a) of the Right-to-Know Law ("RTKL"), 65 P.S. § 67.1301(a).

II. PARTY SEEKING RELIEF

2. Deree J. Norman ("Petitioner") is a private citizen and resident of Philadelphia, Pennsylvania. a "Requester" as defined in Section 102 of the RTKL, 65 P.S. § 67.102. Petitioner request that the City of Philadelphia release:
 - a. The recording of the 911 call made by Petitioner on April 8, 2022 from Petitioner's cell phone (267-304-2162);

- b. A transcript of said 911 call.
- c. The body camera footage from the University of Pennsylvania Law Enforcement Officer (Squadroni, badge No. 126)

III. GOVERNMENT UNIT WHOSE INACTION IS IN ISSUE

- 3. OOR is the government unit that made the determination for which review is sought: the City of Philadelphia is the government unit that denied Petitioner access to a specific 911 record and body camera footage.

IV. DETERMINATION SOUGHT TO BE REVIEWED

- 4. The determination for which review is sought is *Deree J. Norman v. City of Philadelphia*, OOR Docket No. AP 2022-1629, Final Determination dated August 5, 2022.

V. GENERAL STATEMENT OF OBJECTIONS TO DETERMINATION

- 5. The Appeals Officer for the OOR failed to recognize and or comprehend the existence of the provision of law that would address and refute the exemption applied to the release of a 911 recording, or a transcript of a 911 recording. (*See: 65 P.S. § 67.708(b)(18)(ii)*). She further failed to recognize that the City's misplacement of and or inability to retrieve said tape would be a failure to properly record an incident with impartiality. A dereliction of this magnitude is unequivocally critical to public interest. The mere semblance of bias and or the intentional misrepresentation of facts is prohibited by law and is a slap in the face to every legal process in this City, this Commonwealth, and this Country. Therefore, the release of the 911 recording, the transcript of said recording as well as the body camera footage of the incident, fall heavily in favor of the public's interest in the disclosure of the events in question which clearly outweigh the City's interest in the nondisclosure of the matter depicted below:

- a. *On April 8, 2022, Petitioner made a 911 call from the Mathew J. Ryan Veterinary Hospital ("Ryan Vet") located on the campus of the University of Pennsylvania located*

at 3900 Spruce Street, Philadelphia, PA 19104 to report a violation of Title 18 of the Pa Crimes Code §4906(a), §4906(b)(1)(2) and Title 49 of the Pa Code 31.21, Principle 7(a)(2) in relation to the following situation.

- b. On April 1, 2022, approximately at 10 A.M., Petitioner contacted the Ryan Vet to make an appointment with an Internal Medicine Veterinarian because his K9, was experiencing medical issues related to diabetes that had been previously diagnosed and treated at Ryan Vet for more than a year. The Vet being unavailable at the time, Petitioner was informed that someone would call back to setup an appointment.
- c. On April 1, 2022, approximately at 4 P.M. Petitioner was contacted by Michael McCullum of the Ryan Vet and informed of an available appointment on April 8, 2022, at 9:30 A.M., Petitioner accepted.
- d. On April 8, 2022, Petitioner arrived for his 9:30 appointment at approximately 9:15 only to be met by a law enforcement officer, who informed Petitioner that he had been called prior to 8 A.M. to respond to a complaint that Petitioner was trespassing. (See: 18 Pa Crimes Code §4906(a) and §4906(b)(1)(2)) Petitioner was refused service, asked to leave the facility, and told that the Ryan Vet would no longer provide service for the subject K9.
- e. After leaving the facility the law enforcement officer provided Petitioner with an incident report (See: Case No. 22-1701). In addition, Michael McCullum deviated from legal procedure and attempted to have the officer serve Petitioner with what is now known to be a discontinuation of service letter (See: 49 Pa Code 31.21 (7)(a)(2)). Petitioner did not accept the letter.
- f. Petitioner was informed by law enforcement officer that his complaint would be included in Case No. 22-1701.

- g. *As per the instructions from the law enforcement office, Petitioner subsequently contacted UP at the number provided by the law enforcement office for a copy of the police report and body camera footage.*
- h. *U, of Police refused to provide Petitioner with a copy of the report as well as a copy of the body camera footage.*

VI. RELIEF SOUGHT

WHEREFORE, for the reasons set forth above, Petitioner respectfully request an Order of the Court for (1) revision of the OOR's August 5, 2022 Final Determination, (2) release of the recording of the 911 call made by Petitioner on April 8, 2022 from Petitioner's cell phone (267-304-2162), within fourteen (14) days of the Court's Order, (3) release of a written transcript of the subject 911 call within fourteen (14) days of the Court's Order, and (4) release of the body camera footage from the University of Pennsylvania Law Enforcement Officer (Squadroni, badge No. 126) (Case No. 22-01701) relating to the incident which prompted the subject 911 call within fourteen (14) days of the Court's Order.

Respectfully submitted,

/s/ Deree J. Norman
Deree J. Norman

5367 Thomas Ave
Philadelphia, Pa 19143
(267) 304-2162
dereenorman@yahoo.com

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

DEREE NORMAN,
Petitioner,

No. _____ CD 2022

v.

**Petition for Review of the Final
Determination of the Office of Open
Records at Docket No.: AP 2022-1629**

CITY OF PHILADELPHIA,
Respondent.

NOTICE TO PARTICIPATE PURSUANT TO Pa. R.A.P. 1513(d)

If you intend to participate in this proceeding in the Commonwealth Court of Pennsylvania, you must serve and file a Notice of Intervention under Rule 1531 of the Pennsylvania Rules of Appellate Procedure within thirty days.

CERTIFICATE OF COMPLIANCE WITH PUBLIC ACCESS POLICY

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

Respectfully submitted,

/s/ Deree J. Norman
Deree J. Norman

5367 Thomas Ave
Philadelphia, Pa 19143
(267) 304-2162
dereenorman@yahoo.com

Exhibit A



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

DEREE NORMAN,
Requester

v.

CITY OF PHILADELPHIA,
Respondent

:
:
:
:
:
:
:
:
:
:

Docket No.: AP 2022-1629

INTRODUCTION

Deree Norman ("Requester") submitted a request ("Request") to the City of Philadelphia ("City") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq*, seeking a copy of specific 911 calls. The City denied the Request, indicating it does not possess responsive records and 911 records are exempt under the RTKL regardless of the Requester's identity. The Requester filed an appeal with the Office of Open Records ("OOR"). Upon review of the file, the appeal is **denied**, and the City is not required to take any further action.

FACTUAL BACKGROUND

The Request was filed on July 1, 2022, stating:

[o]n April 8, 2022 I arrived at the Ryan Vet Hospital for a scheduled appointment. I was immediately approached by a Univ of Penn law enforcement officer, in respon[s]e to a complaint of trespassing. I subsequently called 911 from my cell phone to report the violation of Title 18 of the Pennsylvania Crimes code [p]ursuant to § 4906(a) and § 4906(b)(1)(2). I am requesting a copy (recording) of the 911 call I made and the call made by the Ryan Hospital relating to Univ of Penn Div of Public Safety case no. 22-1701".

See Request. On July 6, 2022, the City denied the Request, stating that records pertaining to 911 recordings are expressly exempt under the RTKL, 65 P.S. § 67.708(b)(18), and the City cannot consider the Requester's identity in responding to the Request. *See Response.*

On July 11, 2022, the Requester filed an appeal with the OOR, challenging the denial and stating grounds for disclosure. The OOR notified the Requester the appeal was insufficient because it did not include a copy of the City's Response. The Requester provided a copy of the Response, and the OOR invited both parties to supplement the record and directed the City to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On August 3, 2022, the City submitted a position statement, arguing the records in question cannot be released pursuant to 65 P.S. § 67.708(b)(18)(i), and the City conducted a search and determined there are no responsive records in the City's possession, custody, or control. On August 3, 2022, the Requester filed a submission challenging the City's search, response, and 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 L.L.C. v. Wintermantel*, 45.A.3d 1029, 1041 (Pa. 2012). 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 reasonable 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 decision to hold a hearing is discretionary and non-appealable. *Id.* Here, neither party requested a hearing.

The City is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.302. Records in the possession of a local agency are presumed to be 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 exemption(s). *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.” 65 P.S. § 67.708(a); *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)). Likewise, “[t]he burden of proving a record does not exist ... is placed on the agency responding to the right-to-know request.” *Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

The City argues it conducted a good faith search and determined no responsive records exist in this case.¹ In response to a request for records, “an agency shall make a good faith effort to determine if ... the agency has possession, custody or control of the record[.]” 65 P.S. § 67.901.

¹ The requested records, even if they did exist, could not be released under the RTKL pursuant to 65 P.S. § 67.708(b)(18) that specifically exempts “[r]ecords ... by emergency dispatch personnel, including 911 recordings.”

While the RTKL does not define the term “good faith effort,” in *Uniontown Newspapers, Inc. v.*

Pa. Dep’t of Corr., the Commonwealth Court concluded that:

As part of a good faith search, the open records officer has a duty to advise all custodians of potentially responsive records about the request, and to obtain all potentially responsive records from those in possession.... When records are not in an agency’s physical possession, an open records officer has a duty to contact agents within its control, including third-party contractors.... After obtaining potentially responsive records, an agency has the duty to review the record and assess their public nature under...the RTKL.

185 A.3d 1161, 1171-72 (Pa. Commw. Ct. 2013) (internal citations omitted), *aff’d* 243 A.3d 19 (2020); *see also* *Rowles v. Rice Twp.*, OOR Dkt. AP 2014-0729, 2014 PA O.O.R.D. LEXIS 602 (citing *Judicial Watch, Inc. v. United States Dep’t of Homeland Sec.*, 857 F.Supp.2d 129, 138-39 (D.D.C. 2012)). Additionally, the Commonwealth Court has held that an open records officer’s inquiry of agency members may constitute a “good faith effort” to locate records, stating that open records officers have

a duty to inquire of [agency personnel] as to whether he or she was in the possession, custody or control of any of the ... requested emails that could be deemed public and, if so, whether the emails were, in fact, public and subject to disclosure or exemption from access by [r]equest[e]r.

Mollick v. Twp. Of Worcester, 32 A.3d 859, 875 (Pa. Commw. Ct. 2011); *see also In re Silberstein*, 11 A.3d 629, 634 (Pa. Commw. Ct. 2011) (holding that it is “the open-records officer’s duty and responsibility” to both send an inquiry to agency personnel concerning a request and to determine whether to deny access.

In support of the City’s argument that it conducted a good faith search and no responsive records exist, the City provided the affidavit of Lieutenant Barry Jacobs (“Lt. Jacobs”), the Open Records Officer for the Philadelphia Police Department (“PPD”). Under penalty of perjury, Lt. Jacobs affirms as follows:

1. I am familiar with the [R]equest underlying the above-captioned appeal, which was received on July 1, 2022 and addressed to the Department of Records....
2. 911 call records, to the extent that they exist, are generally under the custody and control of the PPD, not the Department of Records to which this [R]equest was addressed.
3. As the [R]equester was informed in the ... [R]esponse, 911 audio call recordings are not public records under the RTKL, regardless of a [R]equester's relationship to those records.
4. Nevertheless, I searched (or caused to be searched) PPD records for audio recordings responsive to this [R]equest using the identifying information provided in the [R]equest regarding location, date, and name underlying the 911 calls. This search was conducted in files where such records are routinely kept.
5. To the best of my knowledge, information, and belief, PPD does not possess any responsive records for this [R]equest.

Under the RTKL, a sworn affidavit is generally competent evidence to sustain an agency's burden of proof. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). In the absence of any competent evidence that the City acted in bad faith, "the averments in [the affidavit] should be accepted as true." *McGowan v. Pa. Dep't of Env'tl. Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014) (citing *Office of the Governor v. Scolforo*, 65 A. 3d 1095, 1103 (Pa. Commw. Ct. 2013)).

In this instance, the City has demonstrated its Open Records Officer conducted a good faith search by searching PPD records for recordings responsive to the Request in the files where such records are routinely kept. Jacobs Affidavit ¶ 4. The City also demonstrated that the good faith search resulted in no responsive records. Jacobs Affidavit ¶ 5. *See Campbell v. Pa. Interscholastic Ath. Ass'n*, 268 A.3d 502, (Pa. Commw. Ct. 2021) (the affidavit of the association's executive director stating that after a thorough search, the association did not have possession, custody or control of certain records was sufficient); *Hays v. Pa. State Police*, OOR Dkt. AP 2015-0193, 2015

PA O.O.R.D. LEXIS 294 (finding that an agency conducted a good faith search by “contact[ing] the Bureau most likely to possess responsive records, and ... explain[ing] why that Bureau is most likely to possess those records”). Therefore, the City has met its burden of proving the requested records do not exist.

CONCLUSION

For the foregoing reasons, the appeal is **denied**, and the City 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 or petition for review to the Philadelphia 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 according to court rules as per Section 1303 of the RTKL. 65 P.S. § 67.1303. 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 website at: <https://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: August 5, 2022

/s/ Lois Lara

APPEALS OFFICER
LOIS LARA, ESQ.

Sent to: Deree Norman, (via email only)
Feige Grundman, Esq., Counsel for the City (via email only)
Lt. Barry Jacobs, AORO (via email only)

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

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

DEREE NORMAN,
Petitioner,

No. _____ CD 2022

v.

**Petition for Review of the Final
Determination of the Office of Open
Records at Docket No.: AP 2022-1629**

CITY OF PHILADELPHIA,
Respondent.

CERTIFICATE OF SERVICE

I hereby certify that I am on 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 and Pa. R.A.P. 1514(c):

VIA Electronic Mailing

Lois Lora, Esq
Counsel for OOR
lolara@pa.gov

Feige Grundman, Esq.,
Counsel for the City
feige.grundman@phila.gov

Lt. Barry Jacobs,
AORO Philadelphia Police Department
Barry.Jacobs@Phila.gov

Helen C. Logan
Sr. Administrator for Legal Services
City of Philadelphia / University of Pennsylvania
Helen.logan@ogc.upenn.edu

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Norman, Deree J, Petitioner v. City of Philadelphia : AP 2022-1629
:
:

PROOF OF SERVICE

I hereby certify that this 7th day of September, 2022, I have served the attached document(s) to the persons on the date(s) and in the manner(s) stated below, which service satisfies the requirements of Pa.R.A.P. 121:

Service

Served: Attorney General
Service Method: eService
Service Date: 9/7/2022
Address: Strawberry Square
16th Floor
Harrisburg, PA 17120
Phone: (71-7) -787-3391

Served: Civil Division - Philadelphia
Service Method: eService
Service Date: 9/7/2022
Address: Philadelphia County Court of Common Pleas
1301 Filbert Street
Philadelphia, PA 19107
Phone: 215-686-8858

Served: Feige Millie Grundman
Service Method: Email
Email: feigeg@gmail.com
Service Date: 9/6/2022
Address:
Phone: 215-683-5008
Representing: Respondent City of Philadelphia

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

/s/ Deree J Norman

(Signature of Person Serving)

Person Serving: Norman, Deree J
Attorney Registration No:
Law Firm:
Address: 5367 Thomas Ave
Philadelphia, PA 19143
Pro Se: Petitioner Norman, Deree J

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Norman, Deree J, Petitioner v. City of Philadelphia : AP 2022-1629
:
:

PROOF OF SERVICE - DRAFT

I hereby certify that this day of , , I have served the attached document(s) to the persons on the date(s) and in the manner(s) stated below, which service satisfies the requirements of Pa.R.A.P. 121:

Service

Served: Attorney General
Service Method: eService
Service Date:
Address: Strawberry Square
16th Floor
Harrisburg, PA 17120
Phone: (71-7) -787-3391

Served: Civil Division - Philadelphia
Service Method: eService
Service Date:
Address: Philadelphia County Court of Common Pleas
1301 Filbert Street
Philadelphia, PA 19107
Phone: 215-686-8858

/s/ Deree J Norman

(Signature of Person Serving)

Person Serving: Norman, Deree J
Attorney Registration No:
Law Firm:
Address: 5367 Thomas Ave
Philadelphia, PA 19143
Pro Se: Petitioner Norman, Deree J