



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

**VANCE STRADER,
Requester**

v.

**CITY OF PITTSBURGH,
Respondent**

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Docket No.: AP 2022-2457

FACTUAL BACKGROUND

On August 31, 2022, Vance Strader (“Requester”) submitted a request (“Request”) to the City of Pittsburgh (“City”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

1. [A]ll information pertaining to the violent and vicious murder of my son Shayne Strader caught on cameras throughout the north side and in front of the Martin Luther King School and the Pittsburgh Aviary on Arch Street.

2. [I]nformation such as the incident number and the police report, and redact any sensitive information [...]

3. [A]ll information as to Who owns the Allegheny Commons and if any of these suspects have a rental lease at the Allegheny Commons and[/]or at any other public housing that they reside at or where they sell their narcotics publicly.

4. The business address at Avis Rent A Car. [...]

[...]¹

9. I want all the information about Avis Rent A Car who is the manager and why it’s being said that they are not cooperating. I require the same information about

¹ Several numbered paragraphs of the Request do not seek information of any kind and have been omitted.

the Allegheny Commons[,] so I can bring my wrongful death suit against Avis rent-a-cars and the Allegheny Commons to publicly bankrupt them.

On October 7, 2022, following a thirty-day extension, 65 P.S. § 67.902(b), the City provided the Requester with a single-page Police Offense/Incident Report noting the date and time of the homicide and identifying the reporting officer. The City otherwise denied the Request, arguing that any additional police records relate to a criminal investigation and are otherwise exempt under the Criminal History Record Information Act. 65 P.S. § 67.708(b)(16); 18 PA C.S. §9101 *et seq.* The City additionally argued that, with the exception of those exempt investigative records, no other responsive records exist.

On October 24, 2022, the Requester appealed to the Office of Open Records (“OOR”), challenging the City’s denial, arguing chiefly that the City should not have permitted the Agency Open Records Officer (“AORO”) to respond in place of an elected official and that the records sought would not jeopardize the City’s investigation. 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 November 2, 2022, the City submitted a position statement, arguing that the appeal is insufficient under Section 1101(a) of the RTKL and that the matter should be dismissed on that basis. 65 P.S. § 67.1101(a). In the alternative, the City argued that the Request impermissibly seeks to require the City to answer questions rather than provide documents, facially seeks records related to a criminal homicide investigation, and seeks police camera footage outside of the OOR’s jurisdiction. In support of these arguments, the City submitted the verification of Lieutenant Julie Stoops, who attests that she examined the criminal investigation file and identified a variety of responsive records, most of which related to a criminal investigation.

The Requester did not participate on appeal.

LEGAL ANALYSIS

The City is local agency subject to the RTKL. 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. As an agency subject to the RTKL, the City is required to demonstrate, “by a preponderance of the evidence,” that records are exempt from public access. 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)).

1. The appeal is sufficient under Section 1101(a) of the RTKL

The City argues that the appeal is deficient pursuant to Section 1101(a) of the RTKL, which requires appeals to “state the grounds upon which the requester asserts that the record is a public record ... and ... address any grounds stated by the agency for delaying or denying the request.” 65 P.S. § 67.1101(a)(1); *see also Pa. Dep’t of Corr. v. Office of Open Records*, 18 A.3d 429, 434 (Pa. Commw. Ct. 2011) (“[I]t is appropriate and, indeed, statutorily required that a requester specify in its appeal to Open Records the particular defects in an agency’s stated reasons for denying a RTKL request”). Pursuant to this section, the Commonwealth Court has held that a requester must “state why the records [do] not fall under the asserted exemptions and, thus, [are] public records subject to access.” *Saunders v. Pa. Dep’t of Corr.*, 48 A.3d 540, 543 (Pa. Commw. Ct. 2012); *see also ACLU of Pa. v. City of Pittsburgh*, 116 A.3d 1189 (Pa. Commw. Ct. 2015) (holding that an appeal did not sufficiently address an agency’s grounds by “simply argu[ing] that

the RTKL places the burden of proof upon the [agency] and that the [agency] has provided no ... information in support of its assertion that” the records were exempt).

On appeal, the City argues that the Requester “states no reason for asserting that the records sought are public records. Neither does the Appeal address the grounds the City proffered for denial of records.” Although the Requester’s rationale offered in the appeal letter is not well-organized, the appeal letter offers the following objections to the City’s denial:

First, the Requester states, “[w]ho is [the AORO] to make a determination on what I am asking for, and to say the non exceptional record will jeopardize a worthless investigation by the Pittsburgh Police Department.” This is an objection to the City’s denial of the records under Section 708(b)(16), arguing that the agency’s AORO lacks sufficient authority or expertise to make that determination.² Next, the Requester states “I didn’t ask [...] [f]or records or information of who are the suspects. I asked who owns the commons that does not jeopardize your worthless investigation. I asked if the feds are involved in this case, that does not jeopardize your worthless investigation.”³ Throughout the letter, the Requester insists that his Request does not seek information that would jeopardize a criminal investigation.

Notably, the Requester does not address the City’s denial of records that do not exist; however, the City’s denial does not clearly identify or differentiate between those Items of the Request that are being denied pursuant to Section 708(b)(16) and those that are being denied because no responsive records exist. Therefore, the appeal is sufficient to proceed to jurisdictional and merits determinations under Section 1101(a) of the RTKL.

² Notably, Section 1101(a) does not require that the identified flaw in an agency’s denial be legally sound or factually accurate. For example, the Requester inaccurately states that the City’s AORO is not a lawyer as part of his appeal.

³ The Requester’s description of the Request is not facially accurate here.

2. The appeal must be transferred in part

The Request seeks all records related to the homicide death of the Requester's son, including police records. The City provided a single page incident report, but otherwise denied access to police records of the homicide, arguing that they relate to a criminal investigation. In support of this argument, the City submitted the verification of Lieutenant Stoops, who attests that:

6. When I received the Request for this case, I examined the criminal investigation file for the homicide described in the Request and identified the following documents: PBP Investigative and Supplemental Reports; photographs and video footage, to include body worn camera footage, of the crime scene; interviews with witnesses; a Field Contact/Search and Seizure Report, an Investigative Summary, a ShopSpotter Report, JNET documents, search warrant application and copies of search warrant service.

7. For this Request, we produced the 2.0 Incident Report to the Requester, as that report does not reveal sensitive material that could put the actors in this controversy at risk, or otherwise affect the outcome of this investigation.

8. Due to amendments to the Judicial Act, camera footage is not disseminated under the RTKL.

Under the RTKL, an affidavit or statement made under penalty of perjury may serve as sufficient evidentiary support. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. Off. of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). In the absence of any evidence that the City has acted in bad faith, "the averments in the [attestation] should be accepted as true." *McGowan v. Pa. Dep't of Env't Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014) (citing *Off. of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)).

In this instance, the City has submitted evidence to establish that the responsive reports and related records may relate to a criminal investigation conducted into a homicide. The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. § 67.503(a). However, the OOR does not have jurisdiction to hear appeals related to criminal investigative

records held by local law enforcement agencies. *See* 65 P.S. 67.503(d)(2). Instead, appeals involving records alleged to be criminal investigative records held by a local law enforcement agency are to be heard by an appeals officer designated by the local district attorney. *See id.* Thus, only the Appeals Officer for the Allegheny County District Attorney’s Office (“DA’s Office”) is authorized to “determine if the record requested is a criminal investigative record” of a local agency within Allegheny County. *See* 65 P.S. § 67.503(d)(2). Therefore, the matter must be transferred to the DA’s Office to determine whether the homicide records and reports are exempt criminal investigative records. *See Pennsylvanians for Union Reform v. Centre Cnty. Dist. Attorney’s Office*, 139 A.3d 354 (Pa. Commw. Ct. 2016) (citing 42 Pa.C.S. § 5103(a) (relating to the process for handling improperly filed appeals)). A copy of this final order and the appeal filed by the Requester will be sent to the Appeals Officer for the DA’s Office.⁴

3. The Request facially seeks records that are not records of the City

On appeal, the City argues that the Request does not seek records of the City, but largely demands answers to questions or seeks records of properties and businesses that do not belong to the City. Under the RTKL, a request must seek records, rather than answers to questions. *Walker v. Pa. Ins. Dep’t*, No. 1485 C.D. 2011, 2012 Pa. Commw. Unpub. LEXIS 425 at *16 (Pa. Commw. Ct. 2012) (“The RTKL is not a forum for the public to demand answers to specifically posed questions to either a Commonwealth or local agency. In fact, there is no provision in the RTKL that requires an agency to respond to questions posed in a request”); *Gingrich v. Pa. Game Comm’n*, No. 1254 C.D. 2011, 2012 Pa. Commw. Unpub. LEXIS 38 at *14 (Pa. Commw. Ct.

⁴ Lt. Stoops attests that among the responsive records are video recordings. Police video and audio recordings are not available through the RTKL process and must be sought separately pursuant to the process laid out in the Judicial Code. *See* 42 Pa.C.S. §§ 67A02-67A03. More information on this process can be found on the OOR’s website, at <https://www.openrecords.pa.gov/RTKL/PoliceRecordings.cfm>. Here, the City does not establish whether all of the responsive recordings are subject to this separate access requirement. Because the DA’s Office has jurisdiction over the disposition of these records in any event, the OOR will not issue a separate determination as to dismissal under 42 Pa.C.S. § 67A02.

2012) (noting that the portion of a request “set forth as a question” did not “trigger a response”); *see also Stidmon v. Blackhawk Sch. Dist.*, No. 11605-2009 at 5 (Beav. Com. Pl. Dec. 14, 2009) (“The [RTKL] did not provide citizens the opportunity to propound interrogatories upon local agencies, rather it simply provides citizens the opportunity to propound interrogatories upon local agencies, rather it simply provides citizens access to existing public records”).

The City identifies three Items of the Request as failing to seek records; Items 3, 4, and 9.⁵

These Items of the Request read:

3. [A]ll information as to Who owns the Allegheny Commons and if any of these suspects have a rental lease at the Allegheny Commons and[/]or at any other public housing that they reside at or where they sell their narcotics publicly.

4. The business address at Avis Rent A Car. [...]

9. I want all the information about Avis Rent A Car who is the manager and why it’s being said that they are not cooperating. I require the same information about the Allegheny Commons[,] so I can bring my wrongful death suit against Avis rent-a-cars and the Allegheny Commons to publicly bankrupt them.

Item 9 of the Request is seeking the answer to a question rather than records. Moreover, it is seeking information the City has no reason to possess. Rather than identifying any responsive type of documents that might divulge such information, Item 9 of the Request is setting forth a narrative regarding a private business and asking the City to explain that business’ conduct. Therefore, Item 9 of the Request does not seek records of the City, and the City was not obligated to respond.

Items 3 and 4 of the Request do not identify specific municipal documents that might hold the information sought but are seeking information. Because the RTKL is remedial legislation, the definition of “record” must be liberally construed. *See Allegheny Cnty. Dep’t of Admin. Servs.*

⁵ As noted above, Items 5-8 of the Request neither seek records nor ask questions, but simply contain allegations regarding the City’s administration and society writ large. The OOR will not address these Items of the Request, as they are irrelevant to any appeal under the RTKL.

v. A Second Chance, Inc., 13 A.3d 1025, 1034-35 (Pa. Commw. Ct. 2011).; *Gingrich v. Pa. Game Comm'n*, No. 1254 C.D. 2011, 2012 Pa. Commw. Unpub. LEXIS 38 at *13 (Pa. Commw. Ct. Jan. 12, 2012) (“[H]ow [can] any request that seeks information ... not [be] one that seeks records[?]”). Therefore, Items 3 and 4 may be reasonably construed as seeking records that contain the identified information.

However, for a record to be a public record, it must reflect some transaction or activity of the agency. *Pa. Office of Attorney General v. Bumsted*, 134 A.3d 1204 (Pa. Commw. Ct. 2016). Avis Rent-A-Car is a private business that rents cars upon request; the Allegheny Commons is a privately-owned apartment building on East Ohio Street.⁶ As the City notes, the properties do not belong to the City, and the City states that it does not maintain records on those businesses. Therefore, Items 3 and 4 do not facially seek records of the City. *Pa. Office of Attorney General v. Bumsted*, 134 A.3d 1204 (Pa. Commw. Ct. 2016).

CONCLUSION

For the foregoing reasons, the appeal is **denied in part** and **transferred in part**, and the City is not required to take any further action at this time. 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 Allegheny 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. 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

⁶ On appeal, the City did provide the Requester with the address for the Allegheny County real estate search, at <https://www2.alleghenycounty.us/RealEstate/search.aspx>, which does show the property owner’s information when a search for properties on “E Commons” is conducted.

a party.⁷ This Final Determination shall be placed on the OOR website at:
<http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: November 23, 2022

/s/ Jordan C. Davis

SENIOR APPEALS OFFICER
JORDAN DAVIS

Sent via email to: Vance Strader (via email only);
Celia Liss, Esq. (via email only);
Appeals Officer, Allegheny County DA's Office (via email only)

⁷ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).