



**FINAL DETERMINATION**

**IN THE MATTER OF**

**KEITH TOLBERT,  
Requester**

**v.**

**CITY OF PHILADELPHIA POLICE  
DEPARTMENT,  
Respondent**

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**Docket No: AP 2022-2571**

The Office of Open Records (“OOR”) received the above-captioned appeal under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.* Upon review of the file, the appeal is **dismissed** for the following reasons:

On October 25, 2022, Keith Tolbert (“Requester”), an inmate at SCI-Somerset, filed a RTKL request (“Request”) with the City of Philadelphia Police Department (“Department”), seeking an internal affairs report related to a complaint he made about two detectives and depositions related to an incident involving one of the detectives. The next day, the Department denied the Request, arguing that the records are related to both criminal and noncriminal investigations, 65 P.S. §§ 67.708(b)(16)-(17), and constitute exempt employee records, 65 P.S. §§ 67.708(b)(7)(vi) & (viii).

On November 7, 2022, the Requester mailed an appeal to the OOR, stating that the records are exculpatory and are related to his criminal case.

On November 22, 2022, the Department submitted a position statement, arguing that the OOR does not have jurisdiction over records related to a criminal investigation in the possession of a local agency, *see* 65 P.S. § 67.503(d)(2), and that the requested depositions do not exist. In support, the Department submitted a statement made under the penalty of unsworn falsification to authorities by Lt. Barry Jacobs, the Department’s Open Records Officer.

Section 1101(a)(1) of the RTKL states that an “appeal shall state the grounds upon which the requester 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). 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 Pa. Dep’t of Corr. v. Off. 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”).

In his appeal, the Requester does not address the Department’s grounds for denying the Request, nor does he explain why the records are public records. Instead, he states that he is appealing because “all parties have exculpatory testimony evidence [sic] in requested document[s] that directly pertain to my criminal case ... and upcoming PCRA evidentiary hearing....” However, a requester’s identity or motivation for making a request is not relevant to determining whether a record is accessible under the RTKL. *See Padgett v. Pa. State Police*, 73 A.3d 644, 647 (Pa. Commw. Ct. 2013). Under the RTKL, a record is either available to the public at large as a public record or it is shielded from disclosure. *See* 65 P.S. § 67.102; 65 P.S. § 67.305; *see also Cafoncelli v. Pa. State Police*, No. 1392 CD 2016, 172 A.3d 140 (Pa. Commw. Ct. 2017)

(unpublished) (citing *Hunsicker v. Pa. State Police*, 93 A.3d 911, 912 (Pa. Commw. Ct. 2014)).

Accordingly, as the appeal does not satisfy the requirements of Section 1101(a)(1) of the RTKL, it is **dismissed**. However, the Requester is not prohibited from filing a new request and appealing any denial pursuant to the requirements of 65 P.S. § 67.1101(a)(1).

For the foregoing reasons, 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.<sup>1</sup> This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: December 5, 2022**

/s/ Blake Eilers  
Blake Eilers, Esq.  
Appeals Officer

Sent to: Keith Tolbert, LZ4998 (via regular mail);  
Shea Skinner, Esq. (via email only);  
Lt. Barry Jacobs (via email only)

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