



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

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**SUSAN LLOYD,
Requester**

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V.

: Docket No: AP 2022-2577

**PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION,
Respondent**

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FACTUAL BACKGROUND

On November 8, 2022, Susan Lloyd (“Requester”) submitted a request (“Request”) to the Pennsylvania Department of Transportation (“Department”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

Certified copies of all documents related to white Ford Escape Titanium Tag KK7 0859
And certified copies of all documents related to
Gray Toyota Camry JKF 1238
Owner of these vehicles are defendants in Lancaster County 22-05400.
I am Plaintiff.

On November 10, 2022, the Department denied the Request, indicating private motor vehicle information cannot be released under the RTKL because the Pennsylvania Motor Vehicle Code (“Vehicle Code”), 75 Pa. C.S. § 1955 and 67 Pa. Code § 95.2, relating to information concerning drivers and vehicles, and the Federal Driver’s Privacy Protection Act (“Act”), 18 U.S.C. §§ 2721-2725, govern the manner in which motor vehicle information can be released.

On November 10, 2022, the Requester appealed to the Office of Open Records (“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. 65 P.S. § 67.1101(c).

On November 22, 2022, the Department submitted a position statement reiterating its grounds for denial. In support of its position, the Department submitted the affidavit of Diosdado Arroyo (“Arroyo”), who serves as the Department’s Division Chief, License Control Division, Bureau of Driver Licensing, Driver and Vehicle Services. The Requester did not file a submission in this case.

LEGAL ANALYSIS

The Department is a Commonwealth agency subject to the RTKL. 65 P.S. § 67.301. Records in the possession of a Commonwealth 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 Department 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)).

The RTKL provides that any record that is “exempt from being disclosed under any Federal or State law or regulation or judicial order or decree” is not a public record under the RTKL. 65 P.S. § 67.102. Section 3101.1 of the RTKL indicates “[i]f the provisions of this act regarding access to records conflict with any other Federal or State law, the provisions of this act shall not

apply. 65 P.S. § 67.3101.1. The Act, 18 U.S.C. § 2721, makes it a criminal offense for the Department to release information contained within a motor vehicle record.

(a) In general. A State department of motor vehicles, and any officer, employee, or contractor thereof, shall not knowingly disclose or otherwise make available to any person or entity:

(1) personal information, as defined in 18 U.S.C. 2725(3), about any individual obtained by the department in connection with a motor vehicle record ...

Section 2725(3) states:

‘personal information’ means information that identifies an individual, including an individual’s photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information ...

18 U.S.C. § 2725(3).

Section 2721 provides exceptions allowing the Department to provide motor vehicle information under certain circumstances. *See* 18 U.S.C. § 2721(b). Section 6114 of the Vehicle Code provides that “[i]t is unlawful for ... any officer, employee or agent of any Commonwealth agency which makes or receives records or reports required to be filed under this title to sell, publish or disclose ... records or reports which relate to the driving record of any person.” 75 Pa. C.S. § 6114(a)(1). The Commonwealth Court has held other statutory and regulatory laws support non-disclosure of driver information under the RTKL, indicating “[t]he legislature intended to grant a broad exemption in Section 6114 of the Vehicle Code.” *Advancement Project v. Pa. Dep’t of Transp.*, 60 A.3d 891, 897 (Pa. Commw. Ct. 2013) (holding drivers licenses are a type of driving record and are exempt under § 6114(a)(1) of the Vehicle Code and the Act and, therefore, could not be released under the RTKL).

The Department argues there is a statutory process for obtaining access to motor vehicle records under 75 Pa.C.S. § 1955 and improperly releasing records covered under the Act would

expose the Department to criminal fines and penalties.¹ 18 U.S.C. § 2723; Arroyo Statement ¶ 5.

The Arroyo statement explains the Department's process for vetting motor vehicle record requests as follows:

6. The Department's process for vetting motor vehicle record requests for compliance with applicable laws, including the Vehicle Code and the [Act], is accomplished through the completion of its form DL-135 and payment of fees in accordance with 75 Pa. C.S. § 1955 and 67 Pa. Code § 95.2(c).
 7. The DL-135 gathers relevant information about the requesting party, gathers information about the intended use of the motor vehicle record being sought and requires a verification (subject to penalty to perjury) of the intended use as part of determining whether the requesting party meets an exception to the [Act], which might entitle the requesting party to [Act]-protected personal and highly personal information.
 8. Responding to a request for motor vehicle records under the RTKL where the intended use of the records is not relevant, would hinder the [Department's] ability to ensure legal compliance because the Department cannot determine the use of the record(s).
 9. The responsive records contain personal information that is not subject to disclosure pursuant to the Vehicle Code, 75 Pa. C.S. § 1955, 67 Pa. Code § 95.2(c), and the ... Act, 18 U.S.C. §§ 2721-2725..., which are sources of law I am familiar with in my current position.
 10. In my position, I am confident and can confirm that records for motor vehicle information cannot be provided under the Vehicle Code and the [Act] (and) unless and until the intended purpose and use of the record is fully disclosed and vetted under the Department's DL-135.
 11. To provide motor vehicle records in response to this [R]equest runs afoul of the policy behind the [Act], which aims to protect personal information in the possession of a state department of motor vehicles that would allow the owner of vehicles to be identified.
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¹ Under the RTKL, a sworn affidavit or statement made under the 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. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). In the absence of any contrary evidence or evidence that the Department has acted in bad faith, “the averments in the statement should be accepted as true.” *McGowan v. Pa. Dep’t of Envtl. 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)).

13. Under the process of the DL-135, [the Requester] can follow the Department's final RTKL response, pay the statutory fees and if [Requester] meets the requirements of all applicable sources of law, including the [Act], Vehicle Code, and the Department's Regulations, [the Requester] may potentially receive the responsive records.

Here, because the information sought in the Request is contained within the Department's motor vehicle records, it cannot be disclosed under the RTKL pursuant to the Vehicle Code, 75 Pa. C.S. § 1955, 67 Pa. Code § 95.2(c), and the Act. *See* 18 U.S.C. § 2721; 65 P.S. § 67.3101.1. *See Tokarcik v. Pa. Dep't of Transp.*, OOR Dkt. AP 2016-0842, 2016 PA O.O.R.D. LEXIS 833; *see also Pa. Dep't of Labor & Indus. v. Heltzel*, 90 A.3d 823, 832 (Pa. Commw. Ct. 2014) (where the RTKL and another statue conflict regarding the method of accessing records, the RTKL yields). However, the Requester is not prohibited from using the process set forth by the Department above to seek the records in question.

CONCLUSION

For the foregoing reasons, the 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 Commonwealth Court of Pennsylvania. 65 P.S. § 67.1301(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 a party.² This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

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

FINAL DETERMINATION ISSUED AND MAILED: December 7, 2022

/s/ *Lois Lara*

APPEALS OFFICER
LOIS LARA, ESQ.

Sent via portal to: Susan Lloyd
Temitope Quadri, Esq.
Adam Shanabrook, AORO