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OFFICE OF OPEN RECORDS

COMMONWEALTH COURT OF PENNSYLVANIA  
DOCKETING STATEMENT  
NOTICE OF APPEAL

Counsel for Appellant(s) must complete this form and file it with the Prothonotary of the Commonwealth Court within 10 days of the date of the Notice of Docketing.

Failure to timely file a docketing statement, with required attachments and proof of service, may result in dismissal of the appeal.

Attach additional sheets if needed.

Case Caption: SEPTA v Steinheiser

Commonwealth Court Docket No.: 1255 CD 2022

**Required Attachments:**

(1) Attach a copy of all previous opinions, if any, and all pertinent orders in this case (including, for example, the order and adjudication of the Zoning Hearing Board, or similar decision).

(2) Attach a **Statement of Issues** of no more than *two pages* in length, containing a summary sufficient to explain the case (*see* Order of September 15, 1999, 29 Pa. Bull. 5064, 210 Pa. Code §69.501), and indicating the relief requested. **NOTE: Information in the Statement of Issues is used to screen cases for the Court's Mediation Program and does not bind appellant. Any issue omitted will not constitute a waiver of the issue on appeal.**

(3) Attach a **proof of service** indicating service of the docketing statement, statement of issues, and all attachments on all other parties.

**A. Timeliness of Appeal**

(1) Date of judgment, order, or decree appealed: October 13, 2022

(2) Date notice of appeal filed: November 10, 2022

**B. Appealability of Order**

(1) Is the order appealed a final order? X Yes        No

(2) Is this matter disposed of as to all parties in the trial court? X Yes        No

If no, what is the status of this case as to the remaining parties?

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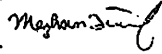
(3) If the order is not a final order, pursuant to what Rule of Appellate Procedure is this order appealed, e.g., Pa.R.A.P. 311, 313, 341(c)? \_\_\_\_\_

Please explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- C. Are there any related cases, including cross-appeals, pending in this Court or any other federal or state court? \_\_\_\_ Yes ☒ No  
If yes, please list the court, caption and docket number(s): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- D. Was there a trial or hearing before the trial court? \_\_\_\_ Yes ☒ No  
If yes, have you made arrangements to have the testimony transcribed? \_\_\_\_ Yes \_\_\_\_ No
- E. Have you paid the required deposit for the transcript? \_\_\_\_ Yes ☒ No  
If no, why not? \_\_\_\_\_
- F. Are there any real parties in interest not appearing in the trial court caption? \_\_\_\_ Yes ☒ No  
If yes, please list their names, and the names and addresses of their counsel, if any:  
\_\_\_\_\_  
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\_\_\_\_\_
- G. Have there been any previous efforts to settle this matter? \_\_\_\_ Yes ☒ No  
If yes, please explain: \_\_\_\_\_  
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- H. Are you aware of any conflict of interest that may exist with respect to any party, lawyer, or issue in this case that may suggest the need for recusal by any judge of this court?  
\_\_\_\_ Yes ☒ No  
If yes, please explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**CERTIFICATE OF COMPLIANCE**

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

Submitted by: Meghan K. Finnerty, Esq.  
Signature:   
Attorney No.: 202950 Date: 12 15 22  
Telephone No.: 484-531-1711 Fax No.: 484-531-1735  
Counsel for (Name of Party): SEPTA

**COMMONWEALTH COURT OF PENNSYLVANIA**

SOUTHEAST PENNSYLVANIA  
TRANSPORTATION AUTHORITY,

Petitioner,

v.

ERIK STEINHEISER,

Respondent

No. 1255 C.D. 2022

**STATEMENT OF ISSUES**

This matter is an appeal from an Office of Open Records Determination issued on October 13, 2022. On July 10, 2022, Mr. Steinheiser requested, via e-mail,

*video surveillance of all cameras on the West Trenton Line R3 for the 12:31 train scheduled to depart from Langhorne Station on Friday, July 8<sup>th</sup> 2022. This would be train number 6321 from the schedule. I am requesting all footage on all cameras on the train from Langhorne Station up to the end of the route. There was a police action incident at Somerton Station on this train that I also want full and complete footage included in this request.*

On August 17, 2022, Southeastern Pennsylvania Transportation Authority (“SEPTA”) denied Mr. Steinheiser’s requested it in its entirety based on 65 P.S. § 67.708(b)(1)(ii). In its denial, SEPTA indicated that release of the video requested was reasonably likely to result in a risk of physical harm to SEPTA police officers and SEPTA train engineers and conductors.

On August 17, 2022, Mr. Steinheiser filed an appeal with the Office of Open Records. The Office of Open Records issued a Final Determination granting in part and denying in part Mr. Steinheiser’s appeal on October 13, 2022. A copy of the Final Determination is attached hereto as Exhibit “A”. In its Final Determination, the Office of Open Records recognized the threat to the safety and security of SEPTA employees if the requested video was released, but nevertheless ordered that SEPTA produce the video at issue, with redactions to the faces and identifying

information of all SEPTA personnel depicted therein. *See* Exhibit A. Notably, neither Mr. Steinheiser nor SEPTA advocated in their respective position statements to the Office of Open Records that SEPTA should or even could be able to produce the requested video in a redacted form. Rather, the Final Determination was the first time that such a notion was raised.

The video sought by Mr. Steinheiser is approximately two (2) hours in length across approximately fifty-six (56) different cameras – for a total of 112 video hours requiring review and redaction. SEPTA does not have the capability or software to redact the footage on its own. As a result, SEPTA sought a cost estimate from an unaffiliated third party to perform the redactions. The third party opined it would take 120 total editing hours to edit the extensive video footage with an estimated cost of \$22,200.00 and completion time of approximately four weeks.

On November 10, 2022, SEPTA timely filed its instant appeal. Via its appeal, SEPTA respectfully requests that this Honorable Court reverse the Order below requiring SEPTA to produce a redacted form of the video given that it is not feasible or reasonable to disclose any portion of the video without resulting in a substantial and demonstrable risk of physical harm to or the personal security of an individual. In the alternative, SEPTA respectfully requests that this Honorable Court delay disclosure of the redacted video until such time that Mr. Steinheiser issues full and complete payment in the amount of the cost estimate for the actual cost SEPTA would incur in having the redactions performed.

Respectfully submitted,

Dated: December 16, 2022

/s/ Meghan Finnerty  
Meghan K. Finnerty (202950)  
Mark E. Gottlieb (26595)  
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## **CERTIFICATE OF SERVICE**

I, Meghan Finnerty, do hereby certify that on this 16th day of December 2022, I have served the foregoing Statement of Issues of Southeastern Pennsylvania Transportation Authority by filing the petition electronically through the Court's PACFILE and upon the following as follows in satisfaction of Pa.R.A.P. 121:

**Via e-mail and U.S. Mail**

Erik Steinheiser  
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Penndel, PA 19047-7008  
[esteinheiser@hotmail.com](mailto:esteinheiser@hotmail.com)

**Via e-mail and U.S. Mail**

Kyle Applegate, Esq.  
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Pennsylvania Office of Open Records  
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/s/ Meghan Finnerty

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# **EXHIBIT “A”**



# pennsylvania

OFFICE OF OPEN RECORDS

## FINAL DETERMINATION

IN THE MATTER OF

ERIK STEINHEISER,  
Requester

v.

SOUTHEASTERN PENNSYLVANIA  
TRANSPORTATION AUTHORITY,  
Respondent

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**Docket No: AP 2022-1908**

## INTRODUCTION

Erik Steinheiser (“Requester”) submitted a request (“Request”) to the Southeastern Pennsylvania Transportation Authority (“SEPTA”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking train surveillance video. SEPTA denied the Request, arguing that releasing the video would pose a risk of physical harm of an individual. 65 P.S. § 67.708(b)(1)(ii). The Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **granted in part** and **denied in part**, and SEPTA is required to take additional action as directed.

## FACTUAL BACKGROUND

On July 10, 2022, the Request was filed, seeking:

[V]ideo surveillance of all cameras on the West Trenton Line R3 for the 12:31 train scheduled to depart from Langhorne Station on Friday, July 8th, 2022. This would be train number 6321 from the schedule. I am requesting all footage on all cameras on the train from Langhorne Station up to the end of the route. There was a police



action incident at Somerton Station on this train that I also want full and complete footage included in this request.

On July 11, 2022, SEPTA invoked a thirty-day extension during which to respond. 65 P.S. § 67.902(b). On August 17, 2022, SEPTA denied the Request, arguing that releasing the video would pose a risk of physical harm to an individual. 65 P.S. § 67.708(b)(1)(ii).

On August 17, 2022, the Requester appealed to the OOR, challenging the denial and stating grounds for disclosure. The OOR invited both parties to supplement the record and directed SEPTA to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On August 26, 2022, the Requester granted an extension for the OOR to issue the final determination. *See* 65 P.S. § 67.1101(b)(1) (“Unless the requester agrees otherwise, the appeals officer shall make a final determination which shall be mailed to the requester and the agency within 30 days of receipt of the appeal filed under subsection (a).”).

On September 12, 2022, SEPTA submitted a position statement, reiterating its grounds for denial, and further arguing that the video relates to a noncriminal investigation and its disclosure would endanger the life or physical safety of an individual. 65 P.S. § 67.708(b)(17)(vi)(E). In support of its position, SEPTA submitted the affidavit of Charles Lawson, the Acting Chief of Police for SEPTA.

On September 13, 2022, the Requester submitted argument contesting the exemptions stated by SEPTA, and further arguing for release of the responsive video.

On September 15, 2022, the OOR sent email correspondence requesting further sworn submissions from SEPTA further detailing the potential risk of harm if the video was to be released.

On September 21, 2022, SEPTA explained that it did not intend to make further sworn submissions and instead supplemented the record with a SEPTA policy.

On September 22, 2022, the Requester made a submission in response, requesting that the Appeals Officer conduct an *in camera* review. On October 11, 2022, the Requester followed-up on this email. Because this Final Determination concerns the effect of the disclosure of the video, rather than the contents of the video itself, and because there is sufficient evidence before the OOR to adjudicate the matter, the request for *in camera* review is denied.

On October 11, 2022, the undersigned was reassigned the appeal.

### 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” and may consider testimony, evidence and documents that are reasonably 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 Requester sought an *in camera* review of the record but as explained above, that request is denied.

SEPTA is a Commonwealth agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.301. Records in possession of a Commonwealth 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. Upon receipt of a request, an agency is required to assess whether a record requested is within its possession, custody or control and respond within five business days. 65 P.S. § 67.901. 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)(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)).

SEPTA contends, among other grounds for denial, that granting access to the responsive video would be reasonably likely to create a substantial and demonstrable risk to a person’s security. 65 P.S. § 67.708(b)(1)(ii). To establish the applicability of this exemption, an agency must show: (1) a “reasonable likelihood” of (2) “substantial and demonstrable risk” to a person’s security. *Delaware County v. Schaefer*, 45 A.3d 1149, 1156 (Pa. Commw. Ct. 2012). The Commonwealth Court has defined substantial and demonstrable risk as “actual or real and apparent.” *Borough of Pottstown v. Suber-Aponte*, 202 A.3d 173, 180 (Pa. Commw. Ct. 2019) (emphasis in original) (quoting *Carey v. Pa. Dep’t of Corr.*, 61 A.3d 367, 373 (Pa. Commw.

Ct. 2013). Further, “[a]n agency must offer more than speculation or conjecture.” *California Borough v. Rothery*, 185 A.3d 456, 468 (Pa. Commw. Ct. 2018).

In his affidavit, Chief Lawson states:

3. On July 8, 2022, SEPTA Police responded to a call on SEPTA’s West Trenton Regional Rail Line reporting a male wearing body armor seated directly next to the train engineer's control stand.
4. SEPTA’s Railroad Supervisor also responded to the scene and spoke with train personnel. The Assistant Conductor stated that he observed a vest under the male passenger’s shirt and observed the passenger behaving abnormally. Due to recent mass shooting events and out of an abundance of caution, the Assistant Conductor notified the engineer to call for police assistance.
5. Upon arriving on scene, Police identified the male passenger wearing the body armor as Erik Steinheiser.
6. Police were also able to ascertain that Mr. Steinheiser was lawfully in possession of and traveling on SEPTA’S West Trenton Regional Rail Line with a loaded firearm.
7. When SEPTA Police arrived on scene, all other passengers but Mr. Steinheiser were moved to the back of the train, then removed and placed on another train.
8. SEPTA Police offered to drive Mr. Steinheiser to his intended destination, SEPTA’s Headquarters, via squad car. Mr. Steinheiser, however, refused to tender his weapon while riding in the squad car. The SEPTA Police Officer who was to drive Mr. Steinheiser did not feel safe allowing a passenger in the back of a police car with a loaded weapon. Instead, Mr. Steinheiser was seated on the next Regional Rail train in a car with a police escort.
9. It is believed that the individual making the subject Right to Know Law request is the same individual who Police identified as Erik Steinheiser on July 8, 2022.
10. The train video depicts the train engineer and conductors who refused to transport a passenger with a loaded firearm. Based on my training and experience in law enforcement there is a risk to the safety of the SEPTA personnel who responded to this incident if the video footage of the incident is provided to Mr. Steinheiser. The risk is that Mr. Steinheiser will be able to identify and find those SEPTA personnel. Mr. Steinheiser could then potentially use his firearm against them and/or harass them via other means.
11. The train video depicts the train engineer and conductors who refused to transport a passenger with a loaded firearm. Based on my training and experience in law enforcement, there is a risk to the safety of the SEPTA personnel who responded to this incident if the video footage of the incident is provided to members of the public. The risk is that members of the public will be able to identify and find those SEPTA personnel, and harass them.

Affidavit ¶¶ 3-11.<sup>1</sup>

Further, SEPTA submitted data compiled by SEPTA Police regarding arrests for aggravated assaults utilizing guns committed from 2020 to 2022 and data compiled by SEPTA Police regarding arrests for robberies utilizing guns committed from 2020 to 2022. SEPTA claims the violent crime rates show a potential threat against employees.

The reports submitted by SEPTA do not specifically denote crimes only against SEPTA employees, but against all people on SEPTA services. In its September 21, 2022 supplemental submissions, SEPTA included the policy regarding the prohibition of threatening items while traveling aboard SEPTA vehicles. In the accompanying unsworn position statement, SEPTA argues that the body armor worn by the Requester is, by its very nature, threatening to SEPTA employees. Meanwhile, in his September 13, 2022 unsworn position statement, the Requester argues:

Merely stating that releasing someone's likeness will put them in danger is insufficient to prove this burden. Additionally, SEPTA is speculating that the surveillance video "could be used to identify the train engineers and conductors on board as of that day" and has no way to prove how merely showing someone's likeness will enable identification of any form to the requestor this is also speculation. In addition to this, they allege that over a lawful activity that the requester could all of a sudden "behave in a manner that could endanger and threaten the engineer and conductor" once again this is pure speculation. How can SEPTA predict how the requester will and will not act?

Requester Position Statement ¶2. The Requester also notes that the train was open to the public at the time of the surveillance footage and that there was not an expectation of privacy at that time.

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<sup>1</sup> Under the RTKL, a sworn affidavit 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 evidence that SEPTA 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)).

The instant matter is similar to *Crocco v. Pa. Dep't of Health*, 214 A.3d 316, 324 (Pa. Commw. Ct. 2019). In *Crocco*, the Commonwealth Court upheld the redaction of names of individuals who served non-hospital abortion facilities under Section 708(b)(1)(ii). The Court acknowledged that, “[n]otwithstanding that ‘the personal security exception does not specifically provide for a blanket exception for certain classes or large groups of individuals[,] ... an agency may establish the existence of an exception covering a large group of individuals based upon evidence that establishes that the release of certain information poses a likelihood of a substantial and demonstrable risk to the personal security of that group of individuals’.” *Crocco*, 214 A.3d at 325 (citing *State Emps. ’ Ret. Sys. v. Fultz*, 107 A.3d 860, 866-67 (Pa. Commw. Ct. 2015) (deeming categorical evidence as to vulnerability of individuals over age 60 insufficient)); cf. *Lutz v. City of Phila.*, 6 A.3d 669, 676 (Pa. Commw. Ct. 2010) (rejecting personal security exception when one witness testified generally that police officers' families are frequently threatened).

We find Chief Lawson’s affidavit to be credible as to the potential for harm to SEPTA personnel due to the events captured on the video. Based upon the preponderance of the evidence standard, we find that it is more likely than not that the release of the video would likely create a very real threat of physical harm to those SEPTA personnel. However, SEPTA has not demonstrated that the video is exempt in its entirety. The evidence is silent as to any threat posed to any other member of the public that was captured on the video, and we cannot conclude that there is any expectation of privacy that those individuals may have while riding public transportation. Therefore, while the faces or any other identifying information of SEPTA personnel may be redacted from the video, the remainder of the video shall be disclosed.<sup>2</sup> 65 P.S. § 67.706. The Supreme Court has recognized that video may be redacted of non-public

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<sup>2</sup> With these redactions, it does not appear that any of the other exemptions cited by SEPTA are applicable, as SEPTA’s concerns lie with the identification of SEPTA personnel.

information under the RTKL, *Easton Area Sch. Dist. v. Miller*, 232 A.3d 716 (Pa. 2020), and SEPTA has not provided any evidence that it is not capable of such redactions.

### CONCLUSION

For the foregoing reasons, the appeal is **granted in part and denied in part**, and SEPTA is required to provide the responsive video, with redactions, within thirty days. 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. 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.<sup>3</sup> This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: October 13, 2022**

/s/ Kyle Applegate

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CHIEF COUNSEL  
KYLE APPLGATE, ESQ.

Sent to: Erik Steinheiser (via email only);  
Mark Gottlieb, Esquire (via email only);  
Justine Baakman, Esquire (via email only);  
SEPTA Open Records Officer (via email only)

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