



FINAL DETERMINATION

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|---------------------|---|--------------------------|
| IN THE MATTER OF | : | |
| | : | |
| EDWIN SMITH, | : | |
| Requester | : | |
| | : | |
| v. | : | Docket No.: AP 2021-2009 |
| | : | (Consolidated) |
| PHILADELPHIA POLICE | : | |
| DEPARTMENT, | : | |
| Respondent | : | |

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.* For the following reasons, the appeal is dismissed.

On August 24, 2021, Edwin Smith (“Requester”), an inmate at SCI-Mahanoy, submitted two requests (“Requests”) to the Philadelphia Police Department (“Department”) pursuant to the RTKL, seeking:

1. The existence of any complaints, civilian complaints, reports, IAB investigations, recommended sanctions by IAB, PBI Investigations, disciplinary action by PBI, written criticism, and/or criminal investigations against Detective John McDermott Badge No. 9005—in relation to any allegations of improper conduct during interviews and interrogations from his appointment to present.
2. The existence of any complaints, civilian complaints, reports, IAB investigations, recommended sanctions by IAB, PBI Investigations, disciplinary action by PBI, written criticism, and/or criminal investigations against Detective John McDermott Badge No. 9005—in relation to any allegations of misstatements, misrepresentations, misleading, false and/or inaccurate statements from his appointment to present.

On September 14, 2021, the Requester appealed to the OOR, arguing the Requests were received by the Department on August 20, 2021 and, on August 27, 2021, were deemed denied.¹ 65 P.S. § 67.901. 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.² 65 P.S. § 67.1101(c).

On October 5, 2021,³ the Department submitted a position statement arguing that it received the Requests on August 24, 2021 and, on August 30, 2021, the Department invoked thirty-day extensions during which to respond. 65 P.S. § 67.902(b). On that same day, the Requester submitted a position statement arguing that he did not receive the Department's extension notices.

Section 901 of the RTKL states "[t]he time for response shall not exceed five business days from the date the written request is received by the open-records officer for an agency." 65 P.S. § 67.901; *see also Commonwealth v. Donahue*, 98 A.3d 1223 (Pa. 2014). In support of its assertion that the Requests were received on August 24, 2021 and that timely extensions were invoked, the Department submits the attestation, made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities, of its Assistant Open Records Officer, Officer Deborah Carrero. Officer Carrero attests that she "received the [R]equests...on [August 24,] 2021" and, she "sent out initial response letters...asserting the [Department's] right to an additional 30 days to respond...on [August 30,] 2021." The Department also provided copies of the extension letters.

¹ The appeals were received by the OOR on September 22, 2021; however, the appeals were postmarked September 14, 2021. Therefore, pursuant to the "prisoner mailbox rule," the appeals are considered filed as of September 14, 2021. *See Commonwealth v. Jones*, 700 A.2d 423, 426 (Pa. 1997).

² The Requester filed two appeals arising from the Requests, docketed at OOR Dkts. AP 2021-2009 and 2021-2010. Because the appeal docketed at OOR Dkt. AP 2021-2010 also involves the same agency, requester, and similar requests, the OOR is hereby consolidating that appeal into OOR Dkt. AP 2021-2009. *See* 65 P.S. §67.1102(b)(3) (stating that "the appeals officer shall rule on procedural matters on the basis of justice, fairness and the expeditious resolution of the dispute").

³ On September 30, 2021, the Department requested an extension of the October 1, 2021 submission deadline until October 8, 2021. The OOR denied the request. However, in order to fully develop the record, the OOR afforded an extension of the submission deadline until October 5, 2021.

Under the RTKL, an 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). Based on the evidence provided, the Department proved that it received the Requests on August 24, 2021 and invoked timely extensions to respond to the Requests. The RTKL does not require that a requester receive an extension notice within five business days, only that the agency send the extension notice during that time period. *See Cap v. City of Allentown*, No. 2011-C-3533, slip op. at 4 (Lehigh Com. Pl. Jan. 20, 2012). Because the appeal was received prior to the expiration of the Department's response period, the appeal is **dismissed as premature**.⁴

The file is now closed and no further action will be taken. This Final Determination is binding on the parties. Within thirty days of the mailing date of this Final Determination, either party may appeal to the Philadelphia County Court of Common Pleas. *See* 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. 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.⁵ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: October 14, 2021

/s/ Erika Similo

APPEALS OFFICER
ERIKA SIMILO, ESQ.

⁴ Upon receipt of a final response from the Department or the Requests being deemed denied, the Requester may file a new appeal with the OOR pursuant to the requirements of 65 P.S. § 67.1101(a).

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

Sent to: Edwin Smith, HN-6352 (via regular mail);
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