IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION - CIVIL

CITY OF PHILADELPHIA POLICE DE	OCTOBER TERM 1921
VS MELAMED, SAMANTHA	No. 02394

CASE MANAGEMENT ORDER
AGENCY APPEAL

1. Service: You must serve a copy of your appeal papers and a copy of this Order to each of the following by certified mail, return receipt requested. That copy must arrive within **ten (10) days** of the date of this Order.

If you are appealing an order of a state agency, you must serve a copy of your appeal papers upon:

1. The agency that issued the order.
2. Any party who participated in the proceedings before that agency.

If you are appealing an order of a local Philadelphia agency, you must serve a copy of your appeal papers upon:

1. The agency that issued the order;
2. Any party who participated in the proceedings before that agency
3. City of Philadelphia Law Department

Appeals Unit
Attn: Agency Appeals Administrator
1515 Arch Street, 17th Floor
Philadelphia, PA 19102

Note: Failure to give a copy of your appeal papers to any of the above offices may result in the dismissal of your appeal. Keep your return receipts. The post office will be able to issue a form, allowing you to verify receipt of mailings. You are not required to file an affidavit of service, but may need your receipts as proof of service.

2. Procedure: All motions and petitions and any responses thereto shall be filed in the Motions section of the Electronic Filing System for the Trial Division - Civil available online at: http://courts.phila.gov. This appeal has been brought, and will be handled, under the guidelines set forth in Phila. Civ. R. 320 available online at: http://courts.phila.gov/regs/rule320.htm.

3. Scheduling: If this appeal is not disposed of within sixty (60) days of the date on this order, the court will enter a scheduling order that sets a date for the appeal or events leading to its completion.

4. Notes of Testimony: ***You are required to obtain a copy of the hearing transcript or certified record if applicable from the agency once a scheduling order is issued. Appellant must order a transcript of the proceedings by serving the stenographer with a copy of the Notice of Appeal and paying the stenographer for the cost of producing the notes.*** The stenographer must then transcribe the notes of testimony, file the original notes with the appropriate agency and deliver a copy of the notes to appellant within thirty (30) days. Failure to order the transcript will result in the dismissal of the appeal absent good cause shown.
Note: The appellant shall incur any cost associated with obtaining hearing transcripts.

BY THE COURT:
Daniel J. Anders
Supervising Judge, Trial Division - Civil

Dated: 10/29/2021

Court of Common Pleas of Philadelphia County
Trial Division

Civil Cover Sheet

For Prothonotary Use Only (Docket Number)
OCTOBER 2021 002394
E-Filing Number: 2110058366

PLAINTIFF'S NAME	DEFENDANT'S NAME
CITY OF PHILADELPHIA POLICE DEPARTMENT	SAMANTHA MELAMED
PLAINTIFF'S ADDRESS 1515 ARCH STREET, 17TH FLOOR PHILADELPHIA PA 19102	DEFENDANT'S ADDRESS 801 MARKET STREET SUITE 300 PHILADELPHIA PA 19107
PLAINTIFF'S NAME	DEFENDANT'S NAME
PLAINTIFF'S ADDRESS	DEFENDANT'S ADDRESS
PLAINTIFF'S NAME	DEFENDANT'S NAME
PLAINTIFF'S ADDRESS	DEFENDANT'S ADDRESS

RECEIVED
JAN 18 2022
OFFICE OF OPEN RECORDS

TOTAL NUMBER OF PLAINTIFFS	TOTAL NUMBER OF DEFENDANTS	COMMENCEMENT OF ACTION
1	1	☐ Complaint ☐ Petition Action ☒ Notice of Appeal ☐ Writ of Summons ☐ Transfer From Other Jurisdictions

AMOUNT IN CONTROVERSY
☐ $50,000.00 or less
☐ More than $50,000.00

COURT PROGRAMS

☐ Arbitration	☐ Mass Tort	☐ Commerce	☐ Settlement
☐ Jury	☐ Savings Action	☐ Minor Court Appeal	☐ Minors
☐ Non-Jury	☐ Petition	☐ Statutory Appeals	☐ W/D/Survival
☒ Other: AGENCY APPEAL			

CASE TYPE AND CODE
51 - MISC ADMINISTRATIVE AGENCY

STATUTORY BASIS FOR CAUSE OF ACTION

RELATED PENDING CASES (LIST BY CASE CAPTION AND DOCKET NUMBER)

FILED
PRO PROTHY
OCT 29 2021
S. RICE

IS CASE SUBJECT TO COORDINATION ORDER?
YES NO

TO THE PROTHONOTARY:

Kindly enter my appearance on behalf of Plaintiff/Petitioner/Appellant: CITY OF PHILADELPHIA POLICE DEPARTMENT

Papers may be served at the address set forth below.

NAME OF PLAINTIFF'S/PETITIONER'S/APPELLANT'S ATTORNEY	ADDRESS
RUSSELL CROTTS	1515 ARCH STREET PHILADELPHIA PA 19102
PHONE NUMBER: (215) 683-5403 / FAX NUMBER: none entered	
SUPREME COURT IDENTIFICATION NO.: 319971	E-MAIL ADDRESS: russell.crotts@phila.gov
SIGNATURE OF FILING ATTORNEY OR PARTY: *RUSSELL CROTTS*	DATE SUBMITTED: Friday, October 29, 2021, 08:56 am

FINAL COPY (Approved by the Prothonotary Clerk)

CITY OF PHILADELPHIA LAW DEPARTMENT
DIANA P. CORTES, CITY SOLICITOR
By: Russell T. Crotts, Deputy City Solicitor
Attorney I.D. No. 319971
1515 Arch Street, 17th Floor
Philadelphia, PA 19102-1595
PHONE: (215) 683-5403
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CITY OF PHILADELPHIA POLICE DEPARTMENT	:	
Appellant	:	**COURT OF COMMON PLEAS PHILADELPHIA COURT TRIAL DIVISION**
v.	:	
SAMANTHA MELAMED	:	**No.**
Appellee	:	

NOTICE OF APPEAL

Appellant City of Philadelphia Police Department hereby appeals from the decision of the Office of Open Records made on October 1, 2021, and indexed as O.O.R. Dkt. AP 2021-1426. A copy of the decision is attached as "Exhibit A."

/s/Russell T. Crotts
Russell T. Crotts
Deputy City Solicitor

Date: October 29, 2021

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
SPECIAL DOCKET PROGAM

Appeal of the City of Philadelphia
from a Decision of the Office of Open Records

NOTICE OF APPEAL

The City of Philadelphia hereby appeals from a decision of the Office of Open Records, dated October 1, 2021 and indexed as O.O.R. Dkt. AP 2021-1426, a copy of which is attached hereto. The following persons entered an appearance in the proceedings below:

Dated: October 29, 2021

Russell T. Crotts, Esq.
Deputy City Solicitor
City of Philadelphia Law Department
1515 Arch Street, 17th Floor
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(215) 683-5403 (phone)

Samantha Melamed
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Jordan Davis, Esq.
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Office of Open Records
333 Market Street, 16th Floor
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CITY OF PHILADELPHIA LAW DEPARTMENT
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CITY OF PHILADELPHIA POLICE DEPARTMENT	:	
Appellant	:	**COURT OF COMMON PLEAS PHILADELPHIA COURT TRIAL DIVISION**
v.	:	
SAMANTHA MELAMED	:	**No.**
Appellee	:	

CERTIFICATE OF SERVICE

I, Russell T. Crotts, Esq. hereby certify that a true and correct copy of the foregoing Notice of Appeal was served upon the parties below by Certified Mail (Return Receipt Requested):

Samantha Melamed
Philadelphia Inquirer
801 Market St.
Suite 300
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smelamed@inquirer.com

Jordan Davis, Esq.
Appeals Officer
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
jorddavis@pa.gov

/s/Russell T. Crotts
Russell T. Crotts
Deputy City Solicitor

Date: October 29, 2021

Exhibit A

pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
SAMANTHA MELAMED and	:	
THE PHILADELPHIA INQUIRER,	:	
Requester	:	
	:	
v.	:	
	:	**Docket No: AP 2021-1426**
CITY OF PHILADELPHIA	:	
POLICE DEPARTMENT,	:	
Respondent	:	

INTRODUCTION

Samantha Melamed and The Philadelphia Inquirer (collectively, "Requester") submitted a request ("Request") to the City of Philadelphia Police Department ("Department") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq.*, seeking response records connected with an identified 911 call. The Department denied the Request in part, arguing that the responsive records relate to criminal and noncriminal investigations or constitute exempt emergency records, and 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 the Department is required to take further action as directed.

FACTUAL BACKGROUND

On July 14, 2021, the Request was filed, seeking:

> [T]he time response log, computer-aided dispatch report, and any other documents generated in connection with any 911 call on June 7 at or around 6:58 p.m. requesting assistance at 523 Burnham Rd., Philadelphia PA 19119.

On July 22, 2021, the Department provided time response log information, but denied the remainder of the Request as seeking records related to criminal investigations, 65 P.S. § 67.708(b)(16), noncriminal investigations, 65 P.S. § 67.708(b)(17), seeking records of emergency response services, 65 P.S. § 67.708(b)(18), and seeking records that are confidential under the Criminal History Record Information Act ("CHRIA"). 18 Pa.C.S. §§ 9101 *et al.*

On July 23, 2021, the Requester appealed to the OOR, arguing that the incident in question was not related to criminal activity and that the Department should provide an unredacted response sheet.[1,2] 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 September 9, 2021, the Department submitted a position statement, reiterating its argument that the responsive emergency response records are exempt under Section 708(b)(18) of the RTKL and arguing that the responsive records contain personal medical information. 65 P.S. § 67.708(b)(5). The Department also argued that the records relate to a criminal investigation and that the OOR lacks jurisdiction to adjudicate that claim. In support of these arguments, the Department submitted the verification of Lt. Barry Jacobs, the Department's Open Records Officer, who attests that the responsive records contain personal medical information and consist of criminal investigative material.

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[1] The Requester granted the OOR a 30-day extension to issue a 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).").

[2] The Requester submitted an appeal narrative focused on the redactions to the CAD Report, explaining why each exemption does not apply to the report. Because both parties have indicated that the log redactions are the subject of this appeal, the OOR's review on appeal is constrained to the CAD Report.

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 Department is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.302. Records in the possession of a local 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)). Likewise, "[t]he burden of proving a record does not exist ... is placed on the agency responding to the right-to-know request." *Hodges v. Pa. Dep't of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

The Department provided a copy of a Computer-aided Dispatch ("CAD") report but redacted all of the information except for the time dispatched, the arrival time, and the location of the call. Section 708(b)(18)(i) of the RTKL exempts from public disclosure "[r]ecords or parts of records, except time response logs, pertaining to audio recordings, telephone or radio transmissions received by emergency dispatch personnel, including 911 recordings." 65 P.S. § 67.708(b)(18)(i). However, Section 708(b)(18)(ii) of the RTKL permits disclosure of a 911 recording or transcript of a 911 recording "if the agency or a court determines that the public interest in disclosure outweighs the interest in nondisclosure." 65 P.S. § 67.708(b)(18)(ii).

In support of this argument, the Department submitted the verification of Lt. Jacobs, who attests that:

> 2. [The Department] created a CAD Report responsive to [the Request].
>
> a. The responsive CAD Report is a computer-generated report[] that document[s] PPD's responses to a potential criminal event as well as a medical event.

b. The responsive CAD Report contains detailed medical information related to an individual patient, including but not limited to injury information, mechanism of injury information, background medical information, and mental health information.

c. The responsive CAD Report contains identifying age and sex demographic information.

d. The responsive CAD Report contains explicit location information, including address and zip code.

3. The CAD Report responsive to Appellant's Request was created by using a computerized system that allows each telecommunicator who is talking on the telephone with an emergency caller, or talking on the radio system with a PPD officer, to type in small central concepts related to the response that the emergency telecommunicator received from the telephone call, or through talking on the radio with emergency responders.

4. The notes in CAD Report are typed-in so as to allow the emergency telecommunicator to maintain a shorthand synopsis of the information that he or she received, and related actions he or she has taken.

5. CAD Report responsive to Appellant's Request contains comments typed into the computerized system by the emergency telecommunicator as part of the 9-1-1 Center receipt of the telephone calls for that emergency, and radio communications made with emergency responders.

6. All typed comments in the CAD Reports are comprised of information received from one of the callers or emergency responders, which is directly related to the calls or radio communication.

Under the RTKL, a 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 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)).

In *County of York v. Pa. Office of Open Records*, the Commonwealth Court addressed the issue of time response logs and the information contained therein:

> The General Assembly's object in requiring access to "time response logs" was to allow the citizenry "to scrutinize the actions of public officials" by evaluating the efficiency of each county's emergency response to various 911 calls. In order to be able to conduct such an evaluation or, for that matter, emergency responders to monitor their own performance, time response logs must contain the time of the request for service, the address or cross-street information, and when the responder arrived at the scene. Without the address or cross-street information, there would be no way of knowing exactly how far the emergency responders had to travel in response to any given call and, therefore, no way of determining whether or not those response times were deficient. Necessarily then, the term "time response logs" as used in Section 708(b)(18) of the RTKL does not exempt destination addresses or cross-street information.

13 A.3d 594, 602 (Pa. Commw. Ct. 2011); *see also Pa. State Police v. Muller*, 124 A.3d 761 (Pa. Commw. Ct. 2015) (holding that the Pennsylvania State Police improperly withheld an "Incident Memo" containing time response information, including the time of the request for service, the address or cross-street information, and when/if a Trooper responded to and arrived at the scene of the incident). Therefore, the portions of the CAD Reports reflecting the time of the request for service, address or cross-street information, and when/if emergency responders responded to and arrived at the scene are subject to public access and were properly provided in response to the Request. *See Vurimindi v. Phila. Police Dep't*, OOR Dkt. AP 2017-1662, 2017 PA O.O.R.D. LEXIS 1459 (holding that the CAD Reports were exempt from production under Section 708(b)(18), except for time response information).

Furthermore, in *Carter Walker and The LPN Media Group, Inc. v. Lancaster County District Attorney's Office*, OOR Dkt. AP 2021-0448, 2021 PA O.O.R.D. LEXIS 712, the OOR reexamined its application of *County of York* to determine that Section 708(b)(18) does not exclude the disclosure of nature of the call information. Specifically, the OOR reasoned:

> In *County of York*, the Court found that the purpose for including the term, "time response logs" in Section 708(b)(18) is to provide citizens with oversight of the government's actions and enable the public to evaluate the efficiency of an entity's response time to reported emergencies. Like cross-street information, we find that "nature of the call" information is entirely relevant to the public's ability to understand an emergency responder's response time and evaluate the government's emergency response efficiency. Without knowing the "nature of a call" received by an emergency dispatcher and then responded to, the public is unable to assess whether the corresponding response times related to those calls are reasonable.

The OOR has since held that information such as odometer readings, milage information, information regarding delays encountered by the vehicle and the type of incident for which the dispatch was made must be provided. *Sapp v. Phila. Fire Dep't.*, OOR Dkt. AP 2021-1051, 2021 PA O.O.R.D. LEXIS 1678. Therefore, to the extent that the CAD Report contains that information, it must be provided.[3] The Department is required to provide any withheld time response log information, including any withheld meter information regarding the responding vehicle, the basic type of incident response which was called for by dispatch, and any travel or delay information contained within the CAD Report which would help the Requester ascertain how effectively the emergency response was conducted. However, the Department is permitted to redact information directly related to the contents and basis of the 911 call and radio conversations with emergency responders which is unrelated to time response evaluation.

CONCLUSION

For the foregoing reasons, the appeal is **granted in part** and **denied in part**, and the Department is required to provide any responsive time response log information, as directed above, 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 Philadelphia Court of

[3] The Department argues that the CAD Report relates to a criminal investigation and is exempt under Section 708(b)(16) of the RTKL, over which the OOR has no jurisdiction in this case. However, as the OOR is not directing the Department to release any investigative information, the OOR will not analyze the application of that exemption to this case.

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 a party.[4] This Final Determination shall be placed on the OOR website at: http://openrecords.pa.gov.

FINAL DETERMINATION ISSUED AND MAILED: October 1, 2021

/s/ Jordan Davis

APPEALS OFFICER
JORDAN C. DAVIS, ESQ.

Sent via email to: Samantha Melamed (via email);
Russell Crotts, Esq. (via email)

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