



**DISTRICT ATTORNEY'S OFFICE**  
THREE SOUTH PENN SQUARE  
PHILADELPHIA, PENNSYLVANIA 19107-3499  
215-686-8000

R. SETH WILLIAMS  
District Attorney

May 20, 2016

***By post (Mr. Howard) & electronic mail (Mr. Cohen)***

Dennis Howard  
Inmate HK-4825  
SCI-Benner  
301 Institution Drive  
Bellefonte, Pennsylvania 16823

Jeffrey Cohen, Esquire  
Assistant City Solicitor, Law Department  
One Parkway Building  
1515 Arch Street  
Philadelphia, Pennsylvania 19102

**Re: Appeal from City's Partial Denial of Request from Dennis Howard**

Dear Mr. Howard and Mr. Cohen:

This letter constitutes the final determination of the Appeals Officer for the Philadelphia District Attorney's Office concerning Mr. Howard's appeal of the partial denial by the City of Philadelphia of his request for public records under Pennsylvania's Right-to-Know Law. For the reasons set forth below, the appeal is denied.

**BACKGROUND**

On or about February 25, 2016, the Philadelphia Medical Examiner's Office received from Dennis Howard (the Requestor) a request under the Right-to-Know Law (the RTKL), 65 P.S. §§ 67.101 *et seq.* Specifically, he sought the "[c]ompleted autopsy report of case # 06-04833, DOD 11/7/06, bullet track, internal, external examination, video recording reduced to writing, physical pictures, body chart of victim. Trial case # CP-51-CR-0000672-2007."

On or about April 4, 2016, the Medical Examiner's Office (through the Law Department of the City of Philadelphia) sent a final response partially denying the request. Among the bases for the denial, the City asserted the criminal investigative records exemption found in Section 708(b)(16) of the RTKL.

On April 20, 2016, the Appeals Officer for the Philadelphia District Attorney's Office received a submission from the Requestor in which he appealed the Medical Examiner's Office's partial denial of his request. After the City requested and received a one-week extension of time in which to submit its response, the City provided its appellate position statement on May 16, 2016, which included an affidavit from the Open Records Officer for the Philadelphia Police Department (PPD).

## LEGAL ANALYSIS

The RTKL grants the Appeals Officer of the Philadelphia District Attorney's Office for Philadelphia jurisdiction to hear and decide this appeal. 65 P.S. §§ 503(d)(2), 1101(a)(1). Under 65 P.S. § 67.503(d)(2), the Appeals Officer is authorized to "determine if the record requested is a criminal investigative record" of a local agency in Philadelphia County.

The City is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.302. As such, records in its possession are presumed public, and thus subject to disclosure, unless exempt under the RTKL or other law or protected by a privilege, judicial order, or decree. 65 P.S. § 67.305. The City bears the burden of proving the applicability of any exemptions it claims. 65 P.S. § 67.708(a).

The Requestor, in his original request and his appellate submission, explicitly states that the requested records are autopsy records for the victim in a criminal case---a case in which he was tried for the murder of the victim. The Requestor argues that the City should produce the records because they purportedly should have been disclosed to him in discovery in the criminal proceedings and the supposed failure to disclose the records prevented him from having a fair trial.

In its appellate submission, the City expands on its original assertion of the RTKL's criminal investigative records exception and also contends that the request at issue represents an improper attempt to circumvent the post-conviction discovery process.<sup>1</sup> To support its invocation of Section 708(b)(16), the City provides an affidavit from the PPD's Open Records Officer establishing that the requested records are exempt criminal investigative records as the RTKL defines them.

By describing the requested records as autopsy records for the victim in a criminal case, the Requester himself essentially has conceded that the requested records constitute criminal investigative materials under the RTKL. Because of this concession, and for the reasons provided in the City's appellate submission, which correctly sets forth and applies the relevant law concerning the City's assertion of the criminal investigative records exception, this appeal is denied. *See Barros v. Martin*, 92 A.3d 1243, 1250 (Pa. Commw. 2014) ("Thus, if a record, on its face, relates to a criminal investigation, it is exempt under the RTKL pursuant to Section 708(b)(16)(ii); *Hunsicker v. Pa. State Police*, 93 A.3d 911 (Pa. Commw. Ct. 2014) (affirming denial of request for criminal investigative materials); *Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011) (an attestation made under the penalty of perjury may serve as sufficient evidentiary support).

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<sup>1</sup> The Appeals Officer lacks jurisdiction to review the Medical Examiner's Office's denial of the request on any ground other than the criminal investigative records exception. 65 P.S. §§ 503(d)(2), 1101(a)(1).

For the foregoing reasons, this appeal is denied. This final determination is binding on all parties. Within thirty days of the date of this letter, any party may appeal to the Philadelphia County Court of Common Pleas. 65 P.S. § 67.1302(a). All parties must be served notice of the appeal. The Appeals Officer also shall be served notice and have an opportunity to respond in accordance with applicable court rules. 65 P.S. § 67.1303.

Sincerely,  
*/s/ Priya Travassos*  
Priya Travassos  
Appeals Officer  
Office of the District Attorney of Philadelphia