



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

R. SETH WILLIAMS
District Attorney

June 27, 2016

By post (Mr. Means/Williams) & electronic mail (Mr. Cohen)

Sean Randall Means
a/k/a Daren Williams
Inmate GN-8287
SCI-Huntingdon
1100 Pike Street
Huntingdon, Pennsylvania 16654

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

Re: Appeal from City's Denial of Request from Sean Randall Means a/k/a Daren Williams

Dear Mr. Means/Williams and Mr. Cohen:

This letter constitutes the final determination of the Appeals Officer for the Philadelphia District Attorney's Office concerning Sean Means/Daren Williams's appeal of the 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.¹

BACKGROUND

On or about March 28, 2016, Sean Means a/k/a Daren Williams (the Requestor) submitted a request to the City of Philadelphia Police Department (the PPD) under the Right-to-Know Law (the RTKL), 65 P.S. §§ 67.101 *et seq.* Among the records he sought were "Redacted Computer Assisted Dispatch [(CAD)] Reports and 9-1-1 [call] transcripts with respect to District Control No. 04-02-84093 on date 12/1/2004 2nd Police District between the hours of 4:00 a.m. and 4:30 a.m. around the 6000 block of Castor Avenue in Northeast Philadelphia, Pennsylvania 19149[.]" On April 13, 2016, the PPD sent its response denying the request.

On April 27, 2016, the Appeals Officer for the Philadelphia District Attorney's Office received a submission from the Requestor in which he appealed the PPD's denial. On May 11, 2016, the City provided its appellate position statement on behalf of the PPD, which included an

¹ Due to problems with receipt of the original version of this final determination (issued on May 27, 2016), the Appeals Officer is reissuing the final determination.

affidavit from the Open Records Officer for the PPD. The City asserted the criminal investigative records exemption found in Section 708(b)(16) of the RTKL, and also represented that it did not possess records responsive to the request at issue and that, in any event, the retention schedule for the requested records had long passed.

LEGAL ANALYSIS

The RTKL grants the Appeals Officer of the Office of the District Attorney for Philadelphia (the Appeals Officer) 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.²

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 City asserts that the request at issue facially concerns exempt criminal investigative records. 65 P.S. § 708(b)(16) (precluding from disclosure agency records “relating to or resulting in a criminal investigation”). The request seeks “Redacted Computer Assisted Dispatch [(CAD)] Reports and 9-1-1 [call] transcripts with respect to District Control No. 04-02-84093 on date 12/1/2004 2nd Police District between the hours of 4:00 a.m. and 4:30 a.m. around the 6000 block of Castor Avenue in Northeast Philadelphia, Pennsylvania 19149[.]” According to the affidavit of the PPD’s Open Records Officer, the District Control Number the Requestor references corresponds to a criminal case in which the Requestor was found guilty of first-degree murder and other crimes. As such, the plain language of the request establishes that it concerns criminal investigatory records, and, thus, the requested records fall squarely within the Section 708(b)(16) exemption. *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); *Coley v. Philadelphia Dist. Attorney's Office*, 77 A.3d 694, 697 (Pa. Commw. 2013); *Mitchell v. Office of Open Records*, 997 A.2d 1262, 1264 (Pa. Commw. 2010).

² The Appeals Officer lacks jurisdiction to review the City’s denial of a request on any ground other than the criminal investigative records exception. 65 P.S. §§ 503(d)(2), 1101(a)(1).

Accordingly, the City's assertion of the RTKL's criminal investigatory exemption was proper, and this appeal is denied.^{3, 4} *See, e.g., Hunsicker v. Pa. State Police*, 93 A.3d 911 (Pa. Commw. 2014) (affirming denial of request for criminal investigative materials concerning state trooper's involvement in death of requestor's brother); *Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. 2011) (an attestation made under the penalty of perjury may serve as sufficient evidentiary support).

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

³ The City also has asserted that the PPD has no responsive records in its possession and that, in any event, the requested records would not have been retained given the operative retention schedule for the records. The Open Records Officer's affidavit supports these assertions. For this separate and independent reason, the City's denial was proper. *See, e.g., Sherry*, 20 A.3d at 520-21.

⁴ Because the City's invocation of the criminal investigatory records exemption has been deemed proper and its denial of the instant request upheld, it is not necessary to reach the question of whether the request is an improper attempt to circumvent the PCRA discovery process, as the City asserts.