



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
ERIK STEINHEISER,	:	
Requester	:	
	:	
v.	:	Docket No: AP 2019-1877
	:	
SOUTHEASTERN PENNSYLVANIA	:	
TRANSIT AUTHORITY,	:	
Respondent	:	

INTRODUCTION

Erik Steinheiser (“Requester”) submitted a request (“Request”) to the Southeastern Pennsylvania Transit Authority (“SEPTA”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking on-board bus surveillance video footage and the business card of SEPTA’s Open Records Officer. SEPTA partially denied the Request, arguing that the video does not exist and providing a copy of a letter providing a scanned copy of the business card. The Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **denied**, and SEPTA is not required to take additional action.

FACTUAL BACKGROUND

On September 25, 2019, the Request was filed, stating in relevant part,

I need to resubmit a request I submitted on June 4th 2019 since it was [adjudicated] with further [clarification]. I am requesting a copy of the ORIGINAL [business] card for the Open Records Officer for SEPTA. When I filed this request on this date you declined this request saying it is not a record of SEPTA and when it was

overturned by the OOR it was only emailed. Therefore since I am requesting [clarification] on this request I am requesting a[n] original official [business] card for the Open Records Officer for SEPTA now that it has been determined that it is a[n] official record of SEPTA...

On September 27, 2019, SEPTA responded, in pertinent part, by noting that a copy of the original business card had been sent following a prior appeal (*see Steinheiser v. SEPTA*, OOR Dkt. AP 2019-0961, 2019 PA O.O.R.D. LEXIS 709) and including a copy of that letter.

On October 11, 2019, the Requester appealed to the OOR, explaining that he was only appealing as it relates to the format in which the business card was provided. He further noted that he would submit additional explanation once the appeal was docketed and assigned to an appeal officer. 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 October 14, 2019, the Requester filed the additional explanation for his appeal and included a copy of the OOR's prior Final Determination, as well as a copy of the letter he received via email providing him with the copy of the business card. On October 24, 2019, SEPTA submitted a position statement reiterating its grounds for denial. SEPTA claims that the appeal is legally insufficient, the Request is disruptive, and SEPTA is under no obligation to provide original records.

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 law also states that an appeals officer may admit into evidence testimony, evidence and documents that the appeals officer believes to be reasonably probative and relevant to an issue in dispute. *Id.* The decision to hold a hearing is discretionary and non-appealable. *Id.*; *Giurintano v. Pa. Dep’t of Gen. Servs.*, 20 A.3d 613, 617 (Pa. Commw. Ct. 2011). Here, the parties did not request a hearing; however, the OOR has the necessary information and evidence before it to properly adjudicate the matter.

SEPTA is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.302. Records in 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)).

1. The Request is not disruptive

SEPTA argues that the Request is disruptive because the Requester received a copy of the record on July 31, 2019 in response to an OOR Final Determination. SEPTA then provided a copy of the card again in response to this Request. SEPTA argues this makes the Request disruptive and burdensome because the Requester has received the card twice but still appealed.

Section 506(a) of the RTKL states that “[a]n agency may deny a requester access to a record if the requester has made repeated requests for that same record and the repeated requests have placed an unreasonable burden on the agency.” 65 P.S. § 67.506(a)(1). “Under this section ... an agency must demonstrate that (1) ‘the requester has made repeated requests for th[e] same record[s]’ and (2) ‘the repeated requests have placed an unreasonable burden on the agency.’” *Office of the Governor v. Bari*, 20 A.3d 634, 645 (Pa. Commw. Ct. 2011); *see Slate v. Pa. Dep’t of Env’tl. Prot.*, OOR Dkt. AP 2009-1143, 2010 PA O.O.R.D. LEXIS 97 (“A repeated request alone is not enough to satisfy § 506(a)(1)”). In *Mezzacappa v. West Easton Borough*, the OOR held that a request must be repeated more than once to constitute a “repeated request” for purposes of 65 P.S. § 67.506(a). OOR Dkt. AP 2012-0992, 2012 PA O.O.R.D. LEXIS 967 (“Because the Borough has only established that the Requester has made one repeated request, rather than multiple ‘repeated requests,’ the OOR finds that the Request was not disruptive”). The OOR’s decision in *Mezzacappa* was subsequently upheld by the Northampton County Court of Common

Pleas and the Commonwealth Court. *Borough of West Easton v. Mezzacappa*, No. C-48-CV-2012-7973 (North. Com. P1. Jan. 9, 2013) (“[A] request is not disruptive when a requester [seeks] the same records only twice”), *aff’d* 74 A.3d 417 (Pa. Commw. Ct. 2013).

Here, the Requester has sought the same record twice and this is not a disruptive request. Furthermore, SEPTA has provided no evidence whatsoever to suggest that providing a business card constitutes an unreasonable burden.

2. The appeal is sufficient; however, SEPTA has provided the responsive records in the available format

SEPTA argues that the appeal is legally insufficient because it fails to “state the grounds upon which the requester asserts that the record is a public record, legislative record or financial record and shall address any grounds stated by the agency for delaying or denying the request.” 65 P.S. § 67.1101(a)(1); *see also Pa. Dep’t of Corr. v. Office of Open Records*, 18 A.3d 429, 434 (Pa. Commw. Ct. 2011) (“[I]t is appropriate and, indeed, statutorily required that a requester specify in its appeal to Open Records the particular defects in an agency’s stated reasons for denying a RTKL request”). The Commonwealth Court has held that a requester must “state why the records [do] not fall under the asserted exemptions and, thus, [are] public records subject to access.” *Saunders v. Pa. Dep’t of Corr.*, 48 A.3d 540, 543 (Pa. Commw. Ct. 2012). A requester must state why each of the agency’s reasons denying a request is incorrect. General statements that the agency is incorrect or that a record is public under the Right-to-Know Law are insufficient to meet this requirement.

On Friday, October 11, 2019, the Requester filed his appeal by email, indicating that he is “only appealing item #2 over the format that the record was provided. I will submit additional explanation once I am assigned a docket number and a[n] appeals officer.” The OOR emailed the appeal paperwork later that same day. On Monday, October 14, 2019 the Requester filed

additional explanation. The Requester's original email clearly indicates he is appealing the format in which a record was provided. This is sufficient to meet Section 1101(a)'s requirements, as SEPTA did not deny the Request and the challenge is only as to the format of the document.

SEPTA argues that the Request was unclear because the Requester references both a copy of the original and an original. However, the Request explains that he previously received an emailed copy of the business card following the prior final determination and is seeking an original business card.

Section 701 of the RTKL provides that an agency must make public records accessible for inspection and duplication. 65 P.S. § 67.701. Here, because the Requester did not seek to inspect or duplicate the record himself, SEPTA provided a duplicate of the requested record as is required under the law.¹ Because the RTKL does not impose any obligation to provide originals of records, and because SEPTA granted access to the record via duplication, it has satisfied its obligations under the RTKL.

CONCLUSION

For the foregoing reasons, the appeal is **denied**, and SEPTA is not required to take any further action. 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 County Court of 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

¹ The OOR notes that while the RTKL provides only for duplicates of records, the case of a business card is unique in that the purpose of the record is to hand it out. Indeed, the format of a business card is such that it is a "static record that cannot be altered or modified." *Bowling v. Pa. Emgcy. Mgmt. Agency*, OOR Dkt. AP 2009-0128, 2009 PA O.O.R.D. LEXIS 607. Further, the RTKL provides that an agency may charge for postage in providing a record. There is nothing in the RTKL prohibiting SEPTA from simply mailing a business card to the Requester and seeking reimbursement for the postage. 65 P.S. § 67.1307(a).

OOR is not a proper party to any appeal and should not be named as a party.² This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: November 6, 2019

/s/ Erin Burlew

APPEALS OFFICER
ERIN BURLEW, ESQ.

Sent to: Erik Steinheiser (via email only);
Megan Shannon, Esq. (via email only);
C. Neil Petersen, Esq. AORO (via email only)

² *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).