



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

:

**MARIANNA HUGHES,
Requester**

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:

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v.

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Docket No: AP 2020-1015

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**PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION,
Respondent**

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INTRODUCTION

Marianna Hughes (“Requester”) submitted a request (“Request”) to the Pennsylvania Department of Transportation (“Department”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking a vehicle accident report. The Department denied the Request, arguing, among other things, that the accident report is confidential under the Vehicle Code, 75 Pa.C.S. § 3751(b). The Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **denied**, and the Department is not required to take any further action.

FACTUAL BACKGROUND

On June 9, 2020, the Request was filed, seeking “a copy of the accident report from 5/22/20. Citation no: T88052241.” On June 16, 2020, the Department denied the Request, asserting that the requested report is confidential under the Vehicle Code, 75 Pa.C.S. § 3751(b), and its related regulations, 67 Pa. Code § 95.2(e). The Department also argues that Federal law

provides that information collected for the purposes of 23 U.S.C. § 152 (related to maintenance and engineering surveys) is protected from disclosure, 23 U.S.C. § 409, and that the report is related to a noncriminal investigation, 65 P.S. § 67.708(b)(17).

On June 19, 2020, the Requester appealed to the OOR, challenging the denial and stating grounds for disclosure. 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. *See* 65 P.S. § 67.1101(c).

On July 14, 2020, the Department submitted a position statement reiterating its grounds for denial, along with the affidavit of Robert Ranieri, the Department's Crash Information Systems and Analysis (CISA) Manager and PA Traffic Records Coordinate Committee Coordinator (PA TRCC), within the Department's Bureau of Maintenance and Operations, Highway Safety and Traffic Operations Division, who attests that the Department collects and uses accident reports to carry out its responsibility under the Vehicle Code and Federal law of maintaining a safe highway and bridge system. Mr. Ranieri further attests that only police departments are authorized to provide copies of accident reports.

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 LLC 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, neither party requested a hearing; however, the OOR has the necessary information and evidence before it to properly adjudicate the matter.

The Department is a Commonwealth agency subject to the RTKL and is required to disclose public records. 65 P.S. § 67.301. Records in the possession of a Commonwealth agency are presumed public unless exempt under the RTKL or other law or protected by a privilege, judicial order, or decree. 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. 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 is exempt from public access shall be on the Commonwealth 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)).

The Department argues that the Vehicle Code protects the requested accident report from public access. Section 3751 of the Vehicle Code designates the circumstances and the individuals to whom a record may be released. 75 Pa.C.S. § 3751. The Department's regulations expressly limit the release of police accident reports and information to identified entities or individuals as follows:

(3) Police reports filed under 75 Pa.C.S. § 3751 (relating to reports by police) will be:

(i) Available only to:

(A) Federal government, including branches of the military service, Commonwealth agencies and officials of political subdivisions and agencies of other States and nations and their political subdivisions.

(B) Persons who are determined by the Department to be involved in accident prevention or highway safety research programs.

(C) Persons involved in the accident, their attorney, or insurer if they can furnish proof that the accident report is missing or lost and, therefore, unavailable from the reporting police department.

(D) Persons authorized by court order.

67 Pa. Code § 95.2(e)(3). The OOR interprets this regulation as expressly limiting the persons to whom agencies are authorized to release the records and serving as a "regulatory exemption protecting" accident reports held by the Department and local agencies. *See, e.g., James D. Morrissey, Inc. v. Pa. Dep't of Transp.*, OOR Dkt. AP 2017-1103, 2017 PA O.O.R.D. LEXIS 988; *Krawitz v. Pa. Dep't of Transp.*, OOR Dkt. No. AP 2014-1892, 2015 PA O.O.R.D. LEXIS 111.

Regarding this case, Mr. Ranieri attests

7. ... [P]olice reports, including the police report at issue in this appeal, are the police reports referenced in 75 Pa. C.S. § 3751 and 67 Pa. Code § 95.2(e)....
8. Under Section 3751 *only* police departments are statutorily authorized to provide copies of accident reports, and then only to a defined group of parties. 75 Pa. C.S. § 3751.
9. The Department's regulations clarify and reinforce that accident reports and related records are only to be released to a defined group of parties and only under identified circumstances.
10. The limitations of 67 Pa. Code § 95.2(e) interpreted in conjunction with Section 3751 of the Vehicle Code, establish that police accident reports are not subject to disclosure under the RTKL. 65 P.S. § 67.305 (noting that regulations may exempt records from disclosure under the RTKL).
11. The police report, which is the subject of the [R]equest is utilized by the Department as a constituent part of safety studies, gathered and maintained by the Department pursuant to federal law (*See, e.g.,* 23 U.S.C. §§ 148, 152 and 402) and its Pennsylvania Vehicle Code counterpart (75 Pa. C.S. § 3754).

Under the RTKL, an affidavit or statement made under penalty of perjury may serve as sufficient evidentiary support. *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 competent evidence that the Department acted in bad faith, “the averments in [the affidavit] should be accepted as true.” *McGowan v. Pa. Dep’t of Env’tl. 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)). Therefore, the Department has met its burden of proving that the requested accident report is not publicly available under the RTKL.

The Requester argues that she has a right to know what is in her accident report. However, a requester's identity or motivation for making a request is not relevant to determining whether a record is accessible under the RTKL. *Padgett v. Pa. State Police*, 73 A.3d 644, 647 (Pa. Commw. Ct. 2013). Under the RTKL, a record is either available to the public at large as a public record or it is shielded from disclosure. *See* 65 P.S. § 67.102; 65 P.S. § 67.305; *see also Cafoncelli v. Pa.*

State Police, 2017 Pa. Commw. Unpub. LEXIS 405 (Pa. Commw. Ct. 2017) (citing *Hunsicker v. Pennsylvania State Police*, 93 A.3d 911, 912 (Pa. Commw. Ct. 2014)). However, the Requester is not prohibited from obtaining the record from the issuing police department pursuant to the Vehicle Code.

CONCLUSION

For the foregoing reasons, the Requester's appeal is **denied**, and the Department 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 Commonwealth Court. 65 P.S. § 67.1301(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. 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.¹ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: July 31, 2020

/s/ Blake Eilers
Blake Eilers, Esq.
Appeals Officer

Sent to: Marianna Hughes (via email only);
Adam Shanabrook (via email only);
Meghan McNaughton, Esq. (via email only);
Jeffrey Spotts, Esq. (via email only);
Valorie Rosi (via email only)

¹ See *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).