

District Attorney

FRANCIS T. CHARDO
District Attorney

101 Market Street
Harrisburg, Pennsylvania 17101-2028
Telephone: (717) 780-6767
Fax: (717) 255-1396



Dauphin County

October 7, 2020

Charles Rees Brown, Esq.
Chief Counsel
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101

RECEIVED
OCT 15 2020
OFFICE OF OPEN RECORDS

In re: Right to Know Appeal, RTK-2020-DA-006 (Harrisburg P.D.)

Dear Mr. Brown:

Enclosed please find a copy of the Final Determination for the above-referenced Right to Know Appeal.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael A. Sprow".

Michael A. Sprow
First Assistant District Attorney
Right to Know Appeals Officer

Enclosure

RECEIVED
OCT 15 2020
OFFICE OF OPEN RECORDS

IN RE: : RIGHT-TO-KNOW REQUEST
: DAUPHIN COUNTY, PENNSYLVANIA
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APPEAL OF RAYMOND JONES : RTK-2020-DA-006 (HARRISBURG P.D.)

FINAL DETERMINATION

After review of the decision of the Open Records Officer for the City of Harrisburg, the appeal is denied. The requester, Mr. Raymond Jones, filed a request seeking a copy of "Harrisburg Police Department, May 21, 2010 at 8pm, Computer Aided Dispatch Record (CAD Report/ Metro Report) for Dispatch Incident No. 20100510212HBG . . . TAJ1 UCFPDCI6; Call Type: Traffic Stop Self Initiated." On July 13, 2020, the City of Harrisburg denied the request for the report. Although the requester erroneously filed his appeal initially with the Office of Open Records (OOR), that Office appropriately referred this appeal to the Dauphin County District Attorney's Office after allowing the parties to supplement the record. The Final Determination of the OOR provided helpful background information and is incorporated herein by reference, as well as attached collectively with the requester's initial request and letter of appeal as Appendix "A."

In addition to reviewing the above-referenced materials, I conducted an *in camera* review of the unredacted Harrisburg Bureau of Police report for which the

request was denied (case number 2010-05-10212). It is noteworthy that portions of this report were indeed turned over to the requester. Therefore, it is only the redacted portions that form the basis of this review.

A record in the possession of a local agency shall be presumed to be a public record. 65 P.S. §67.305(a). However, the presumption shall not apply if the record is exempt from disclosure under section 708 of the Right to Know Law. 65 P.S. §67.305(a)(1). The burden of proving that a record of a local agency is exempt from public access is on the local agency receiving the request by a preponderance of the evidence. 65 P.S. §67.708(a)(1). The duty of this Appeals Officer is solely to determine whether the receiver of the request was obligated by law to disclose the requested item(s). Whether to disclose one or more items outside the boundaries of the Right to Know Law is within the discretion of the agency possessing the requested item(s).

The City of Harrisburg's denial was based on Section 67.708(b)(16) of the Right-to-Know Law.

Except as provided in subsections (c) and (d), the following are exempt from access by a requester under this act:

* * *

- (16) A record of an agency relating to or resulting in a criminal investigation, including:
 - (i) Complaints of potential criminal conduct other than a private criminal complaint.
 - (ii) Investigative materials, notes, correspondence, videos and reports.

- (iii) A record that includes the identity of a confidential source or the identity of a suspect who has not been charged with an offense to whom confidentiality has been promised.
- (iv) A record that includes information made confidential by law or court order.
- (v) Victim information, including any information that would jeopardize the safety of the victim.
- (vi) A record that, if disclosed would do any of the following:
 - (A) Reveal the institution, progress or result of a criminal investigation, except the filing of criminal charges.
 - (B) Deprive a person of the right to a fair trial or an impartial adjudication.
 - (C) Impair the ability to locate a defendant or codefendant.
 - (D) Hinder an agency's ability to secure an arrest, prosecution or conviction.
 - (E) Endanger the life or physical safety of an individual.

This paragraph shall not apply to information contained in a police blotter as defined in 18 Pa. C.S. §9102 (relating to definitions) and utilized or maintained by the Pennsylvania State Police, local, campus, transit or port authority police department or other law enforcement agency or in a traffic report except as provided under 75 Pa. C.S. §3754(b) (relating to accident prevention investigations).

65 P.S. §67.708(b)(16).

The entirety of the redacted portions of the report I reviewed *in camera* consists of materials related to a criminal investigation that are excluded from the applicability of the Right-To-Know Law. 65 P.S. §67.780(b)(16). The report includes investigation of potential criminal activity which is plainly within the exception.

Investigative reports and witness statements taken by law enforcement personnel during a criminal investigation are not subject to disclosure under the Right-To-Know Law. ***Pennsylvania State Police v. Office of Open Records***, 5 A.3d 473 (Pa. Cmwlth. 2010). The contents of the police report fall within the exception contained at 65 P.S. §67.780(b)(16) and fall outside the definition of police blotter information.

Furthermore, a record is not considered a public record under Section 102 of the RTKL if it is "exempt under any other State or Federal Law," including the Criminal History Record Information Act (CHRIA). ***Coley v. Philadelphia District Attorney's Office***, 77 A.3d 694, 697 (Pa. Cmwlth. 2013). Section 9106(c)(4) of CHRIA provides that "[i]nvestigative and treatment information shall not be disseminated to any department, agency or individual unless the department, agency or individual requesting the information is a criminal justice agency." 18 Pa.C.S. §9106(c)(4). CHRIA defines "investigative information" as "[i]nformation assembled as a result of the performance of any inquiry, formal or informal, into a criminal incident or an allegation of criminal wrongdoing and may include modus operandi information." 18 Pa.C.S. §9102. The redacted portions of the requested report are also exempt under the RTKL because they contain information that is protected from release under CHRIA. ***Bams v. Martin***, 92 A.3d 1243, 1250 (Pa. Cmwlth. 2010).

For the above reasons, the denial of the request for the disclosure of the police report is affirmed.

The parties are hereby notified of their right to appeal this decision to the Dauphin County Court of Common Pleas within thirty days.


MICHAEL A. SPROW
APPEALS OFFICER

DATED: 10/7/20

DISTRIBUTION:

Raymond Jones, #11681-067, FCI-Schuylkill, P.O. Box 670, Minersville, PA 17954
Roxanne Lehman, RTK Officer, City Government Center, 10 North 2nd Street, Suite 402,
Harrisburg, PA 17101
Kelly Callihan, Esq., Open Records Officer, Dauphin County District Attorney's Office
Charles Rees Brown, Esq., Chief Counsel, OOR, 333 Market St., 16th Floor, Harrisburg,
PA 17101

APPENDIX "A"



pennsylvania
OFFICE OF OPEN RECORDS

RECEIVED

SEP 21 2020

**DISTRICT ATTORNEY'S
OFFICE
DAUPHIN COUNTY**

September 18, 2020

Sent Via First Class Mail

The Honorable Francis T. Chardo
Dauphin County Courthouse - 2nd Floor
101 Market Street
Harrisburg, PA 17101

Dear Attorney Chardo:

Pursuant to 65 P.S. §§ 67.503(b)-(d), the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101-.3104, requires that you have an Appeals Officer designated for hearing appeals involving the RTKL. An Appeals Officer of the Office of Open Records ("OOR") has issued a final order transferring a RTKL appeal to your jurisdiction.

The OOR's final order and a record of the appeal proceedings before the OOR are included with this correspondence.

Please contact me with any questions.

Charles Rees Brown
Chief Counsel

Kusery-Grant, Michele

From: Wolfe, Jill
Sent: Friday, September 18, 2020 8:27 AM
To: Gaylord, Isaac S.; Lehman, Roxanne R.
Subject: Jones v. Harrisburg, OOR Dkt. AP 2020-1190
Attachments: 2020-1190_Jones_Harrisburg_FD.pdf

Dear parties:

Attached is the OOR's Final Determination.

Sincerely,

Jill Wolfe



Jill S. Wolfe | Attorney
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
Phone: 717.346.9903
<https://openrecords.pa.gov> | @OpenRecordsPA



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

**RAYMOND JONES,
Requester**

v.

**CITY OF HARRISBURG,
Respondent**

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Docket No.: AP 2020-1190

On July 6, 2020, Raymond Jones (“Requester”), an inmate at the FCI-Schuylkill, submitted a request (“Request”) to the City of Harrisburg (“City”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking a CAD Report for a specific incident number. On July 13, 2020, the City denied the Request, stating that the report is related to a criminal investigation. *See* 65 P.S. § 67.708(b)(16).

On July 21, 2020, the Requester appealed to the OOR, stating that the Request was deemed denied.¹ The OOR invited both parties to supplement the record. On August 13, 2020, the City submitted an affidavit, made under the penalty of perjury, from Roxanne Lehman, the City’s Open Records Officer, attesting that she conducted a thorough examination of documents in the possession, custody and control of the City and that she provided the responsive record to the Requester.

¹ The City timely responded on July 13, 2020 and the Requester sent his appeal on July 14, 2020.

A review of the responsive record indicates that portions have been redacted. On August 17, 2020, the OOR sent an email to the City allowing additional time to support the redactions in the responsive record. On August 18, 2020, the City submitted a supplemental affidavit, made under the penalty of perjury, from Lieutenant Todd Abromitis of the Harrisburg City Police. He attests that the record responsive to the Request contains information that pertains to Harrisburg City Police investigations, including investigative material assembled as part of an inquiry into a criminal incident of criminal wrongdoing. Accordingly, the City asserts that the redacted information is exempt under Section 708(b)(16).

The OOR lacks jurisdiction over a local agency's records of a criminal investigation. *See* 65 P.S. § 67.708(b)(16); 65 P.S. § 67.503(d)(2). However, a local agency claiming that records are exempt under Section 708(b)(16) does not automatically divest the OOR of jurisdiction over an appeal. Section 503(d) creates a two-step analysis for determining when cases should be heard by the OOR and when they should be heard by the appeals officer appointed by a District Attorney. *See* 65 P.S. § 67.503(d)(2). First, jurisdiction is properly transferred from the OOR to the District Attorney's Office when an appeal on its face involves records that relate to a criminal investigation (e.g., search warrants, witness statements, etc.). *See Porter v. Allegheny County Sheriff's Office*, OOR Dkt. AP 2014-1910, 2014 PA O.O.R.D. LEXIS 1444 (appeal transferred to a district attorney where the request for a search warrant was, on its face, related to a criminal investigation).

Second, when it is unclear whether the requested records relate to a criminal investigation, the local agency must provide some evidence showing how the records relate to a specific criminal investigation. While a low threshold for transferring a case is needed, an agency must provide more than a conclusory affidavit that merely repeats the language of Sections 503(d) and 708(b)(16). *See Bush v. Westtown-East Goshen Police Dep't*, OOR Dkt. AP 2016-1869, 2016 PA

O.O.R.D. LEXIS 1708 (Agency submitted affidavit demonstrating how the requested records related to a specific criminal investigation); *Burgess v. Willistown Twp. Police Dep't*, OOR Dkt. AP 2013-1511, 2013 PA O.O.R.D. LEXIS 868 (holding that where a local agency made a preliminary showing that records relate to a criminal investigation, the OOR lacked jurisdiction to consider the merits of the appeal).

Here, the City provides evidence that the redacted information could relate to criminal investigations. Accordingly, this appeal is hereby transferred to the Appeals Officer for the Dauphin County District Attorney's Office to determine whether the requested record is a criminal investigative record. *See Pennsylvanians for Union Reform v. Centre Cnty. Dist. Attorney's Office*, 139 A.3d 354 (Pa. Commw. Ct. 2016) (citing 42 Pa.C.S. § 5103(a) (relating to the process for handling improperly filed appeals)). A copy of this final order and the appeal filed by the Requester will be sent to the Appeals Officer for the Dauphin County District Attorney's Office.

For the foregoing reasons, Requester's appeal is transferred to the Appeals Officer for the Dauphin County District Attorney's Office. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, either party may appeal to the Dauphin 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. 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.² This Final Determination shall be placed on the OOR website at: <https://openrecords.pa.gov>.

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

FINAL DETERMINATION ISSUED AND MAILED: September 18, 2020

/s/ Jill S. Wolfe

**APPEALS OFFICER
JILL S. WOLFE, ESQ.**

**Sent to: Raymond Jones, 11681-067;
Isaac Gaylord, Esq. (via email only);
Roxanne Lehman (via email only);
Dauphin County District Attorney**

NOTICE RELATED TO THE CORONAVIRUS (COVID-19) EMERGENCY

Pennsylvania is currently under a declared state of emergency related to the coronavirus (COVID-19). Some agencies and requesters may face challenges in regard to their ability to meaningfully participate in Right-to-Know Law (RTKL) appeals. Accordingly, and to ensure due process, the Office of Open Records (OOR) is taking the following temporary steps.

The timeline for this RTKL appeal has been extended by the OOR for 30 calendar days. This extension will allow the OOR the flexibility it requires to protect due process and to ensure that the agency and requester, along with any third parties, have a full and fair opportunity to meaningfully participate in the appeal. If necessary, the OOR may further extend the deadline of this appeal.

The appeal has been docketed by the OOR and it has been assigned to an Appeals Officer. The docket number and the Appeals Officer's contact information are included in the attachments you received along with this notice.

The Final Determination is currently due on **September 21, 2020**.

Evidence, legal argument and general information to support your position must be submitted within fifteen (15) business days from the date of this letter, unless the Appeals Officer informs you otherwise. *Note: If the proceedings have been stayed for the parties to submit a completed mediation agreement, the record will remain open for fifteen (15) business days beyond the mediation agreement submission deadline.*

Submissions in this case are currently due on **August 13, 2020**.

If you are unable to meaningfully participate in this appeal under the above deadlines, please notify the Appeals Officer as soon as possible.

Every staff member of the OOR is working remotely, and we are only able to receive postal mail on a limited basis at this time. Accordingly, we urge agencies and requesters to use email for all communication with the OOR at this time.

If you have any questions about this notice or the underlying appeal, please contact the Appeals Officer. The OOR is committed to working with agencies and requesters during this time to ensure that the RTKL appeal process proceeds as fairly and as smoothly as possible.



pennsylvania
OFFICE OF OPEN RECORDS

July 23, 2020

Via First Class Mail Only:

Mr. Raymond Jones, 11681-067
FCI-Schuylkill
PO Box 670
Minersville, PA 17954

Via Email Only:

Roxanne R. Lehman
Agency Open Records Officer
Harrisburg City
MLK City Government Center
10 North Second Street, Suite 402
Harrisburg, PA 17101
rrlehman@harrisburgpa.gov

RE: OFFICIAL NOTICE OF APPEAL - DOCKET #AP 2020-1190

Dear Parties:

Review this information and all enclosures carefully as they affect your legal rights.

The Office of Open Records ("OOR") received this appeal under the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101, et seq. on July 21, 2020. A binding Final Determination ("FD") will be issued pursuant to the timeline required by the RTKL, **subject to the enclosed information regarding the coronavirus (COVID-19).**

Notes for both parties (more information in the enclosed documents):

- The docket number above must be included on all submissions related to this appeal.
- Any information provided to the OOR must be provided to all parties involved in this appeal. Information that is not shared with all parties will not be considered.
- All submissions to the OOR, other than *in camera* records, will be public records. Do not include any sensitive information- such as Social Security numbers.

If you have questions about this appeal, please contact the assigned Appeals Officer (contact information enclosed), providing a copy of any correspondence to all parties involved in this appeal.

Sincerely,

Erik Arneson
Executive Director

Enc.: Description of RTKL appeal process
Assigned Appeals Officer contact information
Entire appeal as filed with OOR

The Right-to-Know Law Appeal Process

Please review this information carefully as it affects your legal rights.

The Office of Open Records (“OOR”) has received the enclosed appeal, which was filed under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101, et seq. A binding Final Determination will be issued by the OOR pursuant to the statutory timeline, subject to the enclosed information regarding the coronavirus (COVID-19). If you have any questions, please contact the Appeals Officer assigned to this case. Contact information is included on the enclosed documents.

Submissions to the OOR

Both parties may submit evidence, legal argument, and general information to support their positions to the assigned Appeals Officer. Please contact the Appeals Officer as soon as possible.

Any information provided to the OOR must be provided to all parties involved in this appeal. Information submitted to the OOR will not be considered unless it is also shared with all parties.

Include the docket number on all submissions.

The agency may assert exemptions on appeal even if it did not assert them when the request was denied (*Levy v. Senate of Pa.*, 65 A.3d 361 (Pa. 2013)).

Generally, submissions to the OOR – other than *in camera* records – will be public records. Do not include sensitive or personal information, such as Social Security numbers, on any submissions.

Agency Must Notify Third Parties

If records affect a legal or security interest of a third party; contain confidential, proprietary or trademarked records; or are held by a contractor or vendor, the agency **must notify such parties of this appeal immediately** and provide proof of that notice by the record closing date set forth above.

Such notice must be made by: (1) Providing a copy of all documents included with this letter; **and** (2) Advising relevant third parties that interested persons may request to participate in this appeal by contacting the Appeals Officer assigned to this case (see 65 P.S. § 67.1101(c)).

The Commonwealth Court has held that “the burden [is] on third-party contractors... to prove by a preponderance of the evidence that the [requested] records are exempt.” (*Allegheny County Dep’t of Admin. Servs. v. A Second Chance, Inc.*, 13 A.3d 1025, 1042 (Pa. Commw. Ct. 2011)).

A third party’s failure to participate in a RTKL appeal before the OOR may be construed as a waiver of objections regarding release of requested records.

NOTE TO AGENCIES: If you have questions about this requirement, please contact the Appeals Officer immediately.

Statements of Fact & Burden of Proof

Statements of fact **must** be supported by an affidavit or attestation made under penalty of perjury by a person with actual knowledge. Statements of fact or allegations submitted without an affidavit may not be considered.

Under the RTKL, the agency has the burden of proving that records are exempt from public access (see 65 P.S. § 67.708(a)(1)). To meet this burden, the agency **must** provide evidence to the OOR.

The law requires the agency position to be supported by sufficient facts and citation to all relevant sections of the RTKL, case law, and OOR Final Determinations.

An affidavit or attestation is required to prove that records do not exist.

Sample affidavits are on the OOR website, openrecords.pa.gov.

Any evidence or legal arguments not submitted or made to the OOR may be waived.

Preserving Responsive Records

The agency **must** preserve all potentially responsive records during the RTKL appeal process, including all proceedings before the OOR and any subsequent appeals to court.

Failure to properly preserve records may result in the agency being sanctioned by a court for acting in bad faith.

See *Lockwood v. City of Scranton*, 2019-CV-3668 (Lackawanna County Court of Common Pleas), holding that an agency had “a mandatory duty” to preserve records after receiving a RTKL request. Also see generally *Uniontown Newspapers, Inc. v. Pa. Dep’t of Corr.*, 185 A.3d 1161 (Pa. Commw. Ct. 2018), holding that “a fee award holds an agency accountable for its conduct during the RTKL process...”

Mediation

The OOR offers a mediation program as an alternative to the standard appeal process. To participate in the mediation program, both parties must agree in writing.

The agency must preserve all potentially responsive records during the RTKL appeal process. Mediation is a voluntary, informal process to help parties reach a mutually agreeable settlement. The OOR has had great success in mediating RTKL cases.

If mediation is successful, the requester will withdraw the appeal. This ensures that the case will not proceed to court – saving both sides time and money.

Either party can end mediation at any time.

If mediation is unsuccessful, both parties will be able to make submissions to the OOR as outlined on this document, and the OOR will have no less than 30 calendar days from the conclusion of the mediation process to issue a Final Determination.

Parties are encouraged to consider the OOR's mediation program as an alternative way to resolve disputes under the RTKL.



pennsylvania
OFFICE OF OPEN RECORDS

APPEALS OFFICER:

Jill Wolfe, Esq.

CONTACT INFORMATION:

**Commonwealth of Pennsylvania
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234**

FACSIMILE:

(717) 425-5343

EMAIL:

jiwolfe@pa.gov

**Preferred method of contact and
submission of information:**

EMAIL

**Please direct submissions and correspondence related to this appeal to the above Appeals Officer.
Please include the case name and docket number on all submissions.**

**You must copy the other party on everything you submit to the OOR. The Appeals Officer cannot
speak to parties individually without the participation of the other party.**

**The OOR website, <https://openrecords.pa.gov>, is searchable and both parties are encouraged to review
prior final determinations involving similar records and fees that may impact this appeal.**

**The OOR website also provides sample forms that may be helpful during the appeals process. OOR staff
are also available to provide general information about the appeals process by calling (717) 346-9903.**

REQUEST TO PARTICIPATE BEFORE THE OOR

Please accept this as a Request to Participate in a currently pending appeal before the Office of Open Records. The statements made herein and in any attachments are true and correct to the best of my knowledge, information and belief. I understand this statement is made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities.

NOTE: The requester filing the appeal with the OOR is a named party in the proceeding and is NOT required to complete this form.

OOB Docket No: _____

Today's date: _____

Name: _____

PUBLIC RECORD NOTICE: ALL FILINGS WITH THE OOR WILL BE PUBLIC RECORDS AND SUBJECT TO PUBLIC ACCESS WITH LIMITED EXCEPTION. IF YOU DO NOT WANT TO INCLUDE PERSONAL CONTACT INFORMATION IN A PUBLICLY ACCESSIBLE RECORD, PLEASE PROVIDE ALTERNATE CONTACT INFORMATION IN ORDER TO RECEIVE FUTURE CORRESPONDENCE RELATED TO THIS APPEAL.

Address/City/State/Zip _____

E-mail _____

Fax Number: _____

Name of Requester: _____

Address/City/State/Zip _____

Telephone/Fax Number: _____ / _____

E-mail _____

Name of Agency: _____

Address/City/State/Zip _____

Telephone/Fax Number: _____ / _____

E-mail _____

Record at issue: _____

I have a direct interest in the record(s) at issue as (check all that apply):

- An employee of the agency
- The owner of a record containing confidential or proprietary information or trademarked records
- A contractor or vendor
- Other: (attach additional pages if necessary) _____

I have attached a copy of all evidence and arguments I wish to submit in support of my position.

Respectfully submitted, _____ (must be signed)

Please submit this form to the Appeals Officer assigned to the appeal. Remember to copy all parties on this correspondence. The Office of Open Records will not consider direct interest filings submitted after a Final Determination has been issued in the appeal.

Raymond Jones
Reg No. 11681-067
P.O. Box 670
Minersville, Pa 17954

July 13, 2020

Office of Open Records
333 Market St.
Harrisburg, Pa 17101

Re: Right-to-Know Law 65 P.S. §§ 67,1101
67,1301.

RECEIVED

JUL 21 2020

OFFICE OF OPEN RECORDS

Dear OOR,

I have sent the Office of the City Solicitor several several request pursuant to (RTKL) please see attached letters requesting: Harrisburg Police Department, May 21, 2010 at 8pm, Computer Aided Dispatch Record (CAD Report/ Metro Report) for Dispatch Incident No. 20100510212HBG...TAJ1 UCFPDC16; Call Type: Traffic Stop Self Initiated.

However, the City Solicitor's office has failed to respond to any of my request in violation to of RTKL 65 P.S. § 67.301(a); 65 P.S. § 67.302(a) that "prohibits a Commonwealth or local agency from denying a requester access to public record".

Therefore, I am requesting administrative enforcement pursuant to RTKL 65 P.S. §§ 67.1101; 67,1301 and that I be provided a copy of the forementioned report or a response in order to exerise my right to appeal.

Thank you in advance for your assistance and immediate response to this matter.

Respectfully,



Raymond Jones
'11681-067
P.O. Box 670
Minersville, Pa 17954

May 20, 2020

Office of the City Solicitor
10 North Second St.
Harrisburg Pa 17101

Re: Right-to Know Request

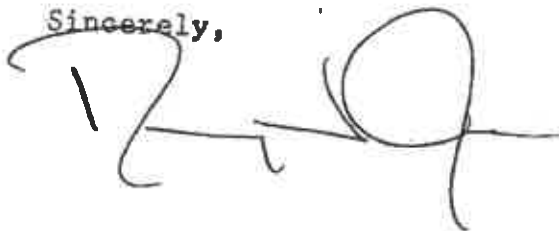
Dear Designee,

This letter is a follow up to my original letter dated April 27, 2020, regarding: "Public Record Review/Duplication Request" for Harrisburg Police Department's (HBGPD) May 24, 2010 at 8pm, Computer Aided Dispatch Record (CAD Report) For Incident No. 20100510212HBG, ...TAJ1 UCFPDCI6; in reference to HBGPD self initiated traffic stop of a 2020 Toyota Camry Pa Registration DWT-0895.

By not replying to my request you are in violation of Pennsylvania Right-to-Know Law 65 P.S. §§ 67.301(a); 67.302(a) that "prohibits a Commonwealth or local agency from denying a requester access to public record". Please be advised, your wilful non-compliance will result in administrative enforcement per RTKL 65 P.S. §§ 67,1101; 67,1301.

Thank you in advance for your assistance in this matter. I look forward to your immediate response.

Sincerely,



Raymond Jones
#11681-067
PO Box 670
Minersville, Pa 17954

June 29, 2020

Attn: Roxanne Lehman, Right To Know Officer
Office of the City Solicitor
City of Harrisburg
10 North Second Street, Suite 402
Harrisburg, PA 17101

RE: Right To Know Request

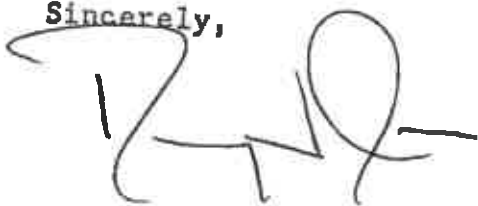
Dear Ms. Lehman,

I am currently requesting Harrisburg Police Dept:
May 21, 2010 at 8pm Computer Aided Dispatch Record (CAD Report)
for Dispatch Incident No. 20100510212HBG...TAJ1 UCFPDC16: Call
Type: Traffic Stop Self Initiated.

The requested CAD Report is in reference to the
the stop of my vehicle on the above date and time. This request
is made pursuant to Pennsylvania Right-to Know Law (65 P.S. § 67.101
et seq.)("RTKL").

Thank you in advance for your assistance, I look
forward to your immediate response to this request.

Sincerely,



Raymond Jones

Federal Prison Camp Schuylkill

P.O. Box 670

Minersville, PA 17954

Mailed from

Federal Prison Camp

Schuylkill, PA



HARRISBURG PA 171

14 JUL 2020 PM 4 1

TO *Office of Open Records*

333 Market St

Harrisburg, Pa 17101

17101-221099



Neil A. Grover
City Solicitor
Email: ngrover@harrisburgpa.gov

Tiffany E. Baldock
Sr. Deputy City Solicitor
Email: tebaldock@harrisburgpa.gov

Isaac S. Gaylord
Deputy City Solicitor
Email: isgaylord@harrisburgpa.gov



MLK, Jr. City Government Center
10 North Second Street, Suite 402
Harrisburg, PA 17101
LAWBureau@harrisburgpa.gov
Ph: (717) 255-3065/Fax (717) 255-3056

Emily A. Farren
Assistant City Solicitor/Collections
Email: efarren@harrisburgpa.gov

Roxanne R. Lehman
Legal Assistant/Right To Know Officer
Email: rlehman@harrisburgpa.gov

City of Harrisburg Office of the City Solicitor

Via email to jiwolfe@pa.gov

August 13, 2020

Jill Wolfe, Esquire
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
jiwolfe@pa.gov

Re: OOR Dkt. # AP 2020-1190

Dear Appeals Officer Wolfe:

On behalf of the City of Harrisburg, please consider this letter and the accompanying documents to serve as my Entry of Appearance and a submission in response to the OFFICIAL NOTICE OF APPEAL – DOCKET #AP 2020-1190 dated July 23, 2020.

Requester, Raymond Jones, submitted a Right to Know Request, dated June 29, 2020, to the City of Harrisburg seeking records related to a traffic stop. The City of Harrisburg Right to Know Officer received Mr. Jones' request on July 6, 2020, as attested to by City of Harrisburg Right to Know Officer Roxanne Lehman, which is attached hereto as Exhibit A. Ms. Lehman further attests that she mailed responsive records to Mr. Jones on July 13, 2020. (Exhibit A). A copy of the records mailed to Mr. Jones as well as the response letter, explaining the partial redactions, are attached hereto as Exhibit B.

The City respectfully requests that the appeal be dismissed as moot for two reasons. First, the appeal was filed prematurely. As attested to by the City's Right to Know Officer, Ms. Lehman, a response was mailed to Mr. Jones on July 13th, which is the fifth business day following receipt of the request on July 6th. Accordingly, the City properly responded in accordance with the time line mandated by 65 P.S. 67.901 and the appeal, also filed on July 13th, was filed on the fifth business day following receipt of the request and is premature.

Second, the City respectfully requests that the appeal be dismissed as moot as the City did provide responsive records, as attested to by the City's Right to Know Officer, on July 13, 2020.

For the foregoing reasons the City respectfully requests that the appeal be dismissed as moot.

Respectfully,

CITY OF HARRISBURG LAW BUREAU

By: s/Isaac S. Gaylord

Isaac S. Gaylord

Deputy City Solicitor

PA 323722

10 North Second Street, Suite 402

Harrisburg, PA 17101

Phone: (717) 255-3065

Facsimile: (717) 255-3056

cc: R. Jones (w. encl. via First Class Mail)

EXHIBIT A

Neil A. Grover
City Solicitor
Email: ngrover@harrisburgpa.gov

Tiffany E. Baldock
Sr. Deputy City Solicitor
Email: tebaldock@harrisburgpa.gov

Isaac S. Gaylord
Deputy City Solicitor
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Emily A. Farren
Assistant City Solicitor/Collections
Email: efarren@harrisburgpa.gov

Roxanne R. Lehman
Legal Assistant/Right To Know Officer
Email: rlehman@harrisburgpa.gov

City of Harrisburg Office of the City Solicitor

ATTESTATION THAT RIGHT TO KNOW REQUEST FROM RAYMOND JONES WAS RESPONDED TO BY RIGHT TO KNOW OFFICER, ROXANNE LEHMAN

Name of Requester: Raymond Jones
#11681-067
P.O. Box 670
Minersville, PA 17954

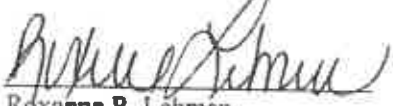
Records Requested: See Attached Copy of Request

Appeal Caption: OOR Dkt. AP 2020-1190

I, Roxanne Lehman, hereby declare, pursuant to 18 Pa.C.S. § 4904, that the following statements are true and correct based upon my personal knowledge information and belief:

1. I serve as the Open Records Officer for The City of Harrisburg ("Agency") and am responsible for responding to Right-to-Know requests filed with the Agency.
2. In my capacity as the Open Records Officer, I am familiar with the records of the Agency.
3. I received the Right-to-Know request on July 6, 2020.
4. I conducted a thorough search of the records of the City of Harrisburg in a good faith effort to locate responsive records.
5. The responsive record was mailed to the requester on July 13, 2020.

Date: August 13, 2020

Signature: 
Roxanne R. Lehman
Right to Know Officer
City of Harrisburg



City Government Center
10 North Second Street, Suite 402
Harrisburg, PA 17101
Phone: (717) 255-3065
Facsimile: (717) 255-3056

City of Harrisburg

Right-To-Know Response – GRANTED IN PART/DENIED IN PART

July 13, 2020

Via First Class Mail

Raymond Jones
#11681-067
P.O. Box 670
Minersville, PA 17954

Dear Mr. Jones:

Thank you for writing to the City of Harrisburg with your request for records pursuant to Pennsylvania's Right-To-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq.*

On July 6, 2020, you requested the CAD report for dispatch incident 20100510212 HBG.

Your request is granted in part and denied in part. A responsive record is attached. Your request is denied in part for the following reason pursuant to 708(16) of the RTKL:

Section 708(16): A record of an agency relating to or resulting in a criminal investigation, including:
(ii) Investigative materials, notes, correspondence, videos and reports.

You have a right to appeal this denial in writing to the Dauphin County District Attorney's office, 101 Market St., Harrisburg, PA 17101. If you choose to file an appeal you must do so within 15 business days of the mailing date of the agency's response. See 65 P.S. § 67.1101. Please note that a copy of your original Right-to-Know request and this denial letter must be included when filing an appeal. More information about how to file an appeal under the RTKL is available at the Office of Open Records website, <https://www.openrecords.pa.gov>.

This correspondence will serve to close this record with our office as permitted by law.

Respectfully,

Rokanne R. Lehman
RTK Officer & Legal Assistant

(DISIPINC)

TAAI UCFFHPA1

DISPATCH INCIDENT: 20100510212 RBG

PAGE: 1

CALL TYPE: TRAFFIC STOP SELF INITIATED

LOCATION	GRID	CCL	UCR	IPG	DISPO	PRI
02436 MARKET ST	0509	263	2641	Y	01	6

ALARM	CTAK	DEAT	YEH-REGISTRAT	MAKE	DATE	RCV	DISP	ARRV	CL	TOTT	REP
N	DAS1	DAS1	PA DWJ0895	TOYT	20100521	2000	2000	2000	2237	0157	

UNIT BADG OFFICER

UNIT	BADG	OFFICER	DATE	RCV	DISP	ARRV
221	502	CAPALLO SHARON	L 20100521	2000	2000	2204
W010	131	KERTSMAN YEVGENIY	20100521	2000	2000	2237
W012	167	LOVETT MICHAEL	R 20100521	2000	2000	2237
W013	163	MCCORMICK MICHAEL	E 20100521	2000	2000	2237
218	84	MCGARRITY THOMAS	P 20100521	2012	2127	2127

NAMES: BARBUSH RENTALS (O) 000 000 0000
 OWNER
 DWN0895 PA (O) 000 000 0000
 LIC PLATE
 JONES RAYMOND (O) 000 000 0000
 DOB 12-26-72
 FERRY SEAN (O) 000 000 0000
 DOB 9-3-71 SOC [REDACTED]
 UNK JOSH (O) 000 000 0000
 APO SUPERVISOR.

COMMENTS

GLD IN COLOR.

DAS1 100521 2000

BARBUSH RENTALS INC
 1885 W HARRISBURG PIKE
 MIDDLETOWN, PA. 17057
 LIC: DWT0895. EXPIRES: 02-11.
 VNA: TOYOTA VYR: 2010. VST: SDN
 VIN: 4T1BF3EK1AU031928
 TIA: 67532129.

UNIT# 201 DISPATCHED 2114, TRANSF 2116, BADG 117

LRP1 100521 2002

OLN: 23697327. VALIDATED: 2009-05-08.
 NAM: JONES, RAYMOND A EXPIRES: 2012-12-27.
 4501 SEQUOIA DR
 HARRISBURG PA. 17109
 SEN: 159545220. DOB: 1972-12-26. SEX: M.
 RESTRICTIONS: NONE
 SUSPENSION: NO

SLC1 100521 2002

FRONT SEAT PASSENGER SEAN D FERRY 159547048 9-3-71.

DRIVER RAYMOND A JONES 12-26-72
23697327 OLN

LRP1 100521 2006

(DISIPINC)

TAA1 UCFFHPA1

DISPATCH INCIDENT: 20100510212 HBG

PAGE: 2

[REDACTED]

DAS1 100521 2028

[REDACTED]

(DISIPINC)

TAL UCFPHRAJ

PAGE: 3

[REDACTED]

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Roxanne R. Lehman
Legal Assistant/Right To Know Officer
Email: rrlehman@harrisburgpa.gov

City of Harrisburg Office of the City Solicitor

Via email to jtwolfe@pa.gov

August 18, 2020

Jill Wolfe, Esquire
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
jtwolfe@pa.gov

Re: OOR Dkt. # AP 2020-1190

Dear Appeals Officer Wolfe:

On behalf of the City of Harrisburg, please consider this letter and the accompanying documents to serve as a supplemental position statement in response to the OFFICIAL NOTICE OF APPEAL – DOCKET #AP 2020-1190 dated July 23, 2020 solely as it relates to the redactions of the responsive records that were provided to the requester.

As detailed in the position statement submitted to the Office of Open Records by the City of Harrisburg redacted responsive records were provided to the respondent in a timely fashion. To the extent that requester's appeal seeks to challenge these redactions¹ the City believes that the appeal should be dismissed.

The redactions to the produced records were made pursuant to Section 708(b)(16) of the Right to Know Law. In the attestation of Lieutenant Todd Abromitis, which is attached hereto as Exhibit A, he attests that the information that is redacted constitutes "material that was assembled as part of an inquiry into a criminal incident and allegation of criminal wrongdoing." Abromitis' attestation is sufficient to demonstrate that the redactions solely relate to a criminal investigation

¹ Requester's appeal is dated July 13, 2020, but postmarked July 14, 2020, and states that no response was received, which was correct as of July 13, as that was the date the City placed its response to the request in the mail. The appeal, as written, is an appeal of a deemed denial.

as in an appeal before the Office of Open Records sworn statements constitute sufficient evidence to support dismissal of an appeal. Moore v. Office of Open Records, 992 A.2d 907 (Pa. Commw. 2010). In Jaynes v. Philadelphia Police Department the Office of Open Records stated that "The OOR does not have jurisdiction to hear appeals related to criminal investigative records held by local law enforcement agencies. See 65 P.S. § 67.503(d)(2). Instead, appeals involving records alleged to be criminal investigative records held by a local law enforcement agency are to be heard by an appeals officer designated by the local district attorney." Docket No. AP 2020-0392. To the extent that this appeal is an appeal of the redactions made by the City it should be transferred to the appeals officer designated by the Dauphin County District Attorney and dismissed by the Office of Open Records. However, the Appellant in this matter has given no indication that an appeal of the redactions is being made, as the appeal was signed and dated on July 13, 2020, before the Appellant could have received the response to his request.

For the foregoing reasons, and reasons stated in its initial position statement, the City respectfully requests that the appeal be dismissed, or in the alternative, transferred to the designee of the Dauphin County District Attorney.

Respectfully,

CITY OF HARRISBURG LAW BUREAU

By: 

Isaac S. Gaylord

Deputy City Solicitor

PA 323722

10 North Second Street, Suite 402

Harrisburg, PA 17101

Phone: (717) 255-3065

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cc: R. Jones (w. encl. via First Class Mail)

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City of Harrisburg Office of the City Solicitor

ATTESTATION OF LT. TODD ABROMITIS

Name of Requester: Raymond Jones
#11681-067
P.O. Box 670
Minersville, PA 17954


Records Requested: See Attached Copy of Request

Appeal Caption: OOR Dkt. AP 2020-1190

I, Lieutenant Todd Abromitis, hereby declare, pursuant to 18 Pa.C.S. § 4904, that the following statements are true and correct based upon my personal knowledge information and belief:

1. I am the records custodian for the Harrisburg City Police.
2. In my capacity as the records custodian, I am familiar with the records of the Agency.
3. I was contacted by Roxanne Lehman to conduct a thorough examination of files in the possession, custody and control of the Agency for records responsive to the request underlying this appeal.
4. I determined that documents responsive to the request contained information that pertained to Harrisburg City Police investigations.
5. Specifically, the information that is redacted in the incident report constitutes investigative material that was assembled as part of an inquiry into a criminal incident and allegation of criminal wrongdoing.

Date:

Signature:  #605
Lt. Todd Abromitis
Harrisburg City Police
Technical Services Division

14901446000000000000

POSTNET

14901446000000000000

**DAUPHIN COUNTY
DISTRICT ATTORNEY'S OFFICE**
Dauphin County Court House
101 Market Street, Room 205
Harrisburg, PA 17101

**Charles Rees Brown, Esquire
Chief Counsel
Office of Open Records
383 Market Street, 16th Floor
Harrisburg, PA 17101**