



Philadelphia District Attorney's Office
Three South Penn Square
Philadelphia, Pennsylvania 19107-3499
215-686-8000

October 19, 2022

Re: Right to Know Law Appeal by Nathanael Woodard

Final Determination

Nathanael Woodard appeals the city of Philadelphia's denial of his record request. I hold that although the city disclosed one document with redactions, the city is required to disclose that document without certain redactions. The city has otherwise met its disclosure obligations.

Procedural History

Woodard filed a record request under the Right to Know Law on July 18, 2022. He sought police reports under district control numbers 22-01-007846 and 22-01-007846#2 and internal affairs incident 21-0227.

The city of Philadelphia denied the request on July 19. The city alleged that it did not have to provide Woodard the requested records because the records were relevant to a criminal investigation. The city also noted that the records could be sought through a process provided by the city outside of the Right to Know Law.

Woodard appealed to the Pennsylvania Office of Open Records on July 25. On appeal, the city repeated its arguments that it did not have to provide the requested records because they were relevant to a criminal investigation, and again noted an alternative process, outside of the Right to Know Law,

by which Woodard could request copies of the requested records. The city also provided an affidavit by the Philadelphia Police Department's Open Records Officer.

On August 23, the Pennsylvania Office of Open Records transferred the appeal to me because the city relied on the criminal investigation exception to the Right to Know Law. I received the transfer on September 19.

I issued a briefing schedule on September 20, and asked for copies of the requested documents to perform an *in camera* review to determine whether the documents in fact were relevant to a criminal investigation.

Woodard provided a statement describing the underlying facts of the police reports he sought. Woodard's description countered the city's allegation that the police reports were relevant to a criminal incident.

The city in its response disclosed the police report under district control number 22-01-007846, though the city noted that it did not waive its position that it is not required to provide the report. The city stated that there was no police report under 22-01-007846#2. The city stated that it was not required to provide the internal affairs report under 21-0227. The city finally provided another affidavit by the Philadelphia Police Department's Open Records Officer.

Standard of Review

Records in the possession of a local agency are presumed to be a public record that the agency shall provide access to unless an exception applies. 65 P.S. 67.302(a), 67.305(a). The local agency bears the burden of proving by a preponderance of the evidence that a record is exempt from public access. 65 P.S. § 67.708(a)(1). Exceptions to disclosure of public records must be narrowly construed. *Pennsylvania State Police v. Grove*, 161 A.3d 877, 892 (Pa. 2017).

The role of an appeals officer for the district attorney of a county is to determine on appeal whether a requested record is a criminal investigative record. 65 P.S. § 67.503(d)(2). The two main sources for this exemption are 65 P.S. § 67.708(b)(16) and 18 Pa.C.S. § 9106(c)(4).

Analysis

Woodard requested three documents. The city provided a redacted version of the first document, stated that the second document—as searched for under district control number 22-01-007846#2—does not exist, and stated that the city need not provide the third document.

The city provided the first document, redacting out the location of the occurrence; the complainant's name, age, race, sex, phone number, and address; and the offender's name. Woodard contests the redaction of the location of the occurrence, the complainant information, and the offender information.

The city relies in part on 65 P.S. § 67.708(b)(6)(i) for its redactions, but that section only authorizes the redaction of the complainant's phone number here. And although the city states that home addresses may be redacted under that section, the statute specifically only allows for the redaction of the home address of a law enforcement officer or judge. 65 P.S. § 67.708(b)(6)(i)(C); *See also Delaware County v. Schaefer ex rel. Philadelphia Inquirer*, 45 A.3d 1149, 1152–54 (Pa. Cmwlth. 2012).

The city relies on 65 P.S. § 67.708(b)(1)(ii) for its redactions of a date of birth. However, the redacted information seems to be an age and not a date of birth.

The city's only other reliance is 65 P.S. § 67.708(b)(1)(ii) that disclosure of the home addresses would be reasonably likely to result in a substantial and demonstrable risk of physical harm. The city gives no explanation, however, of how disclosure of a home address here would create such a harm.

Disclosure of a home address does not *per se* create such a harm and the city must offer some explanation. *Schaefer*, 45 A.3d at 1158.

Disclosure of home addresses does, however, require balancing the privacy interests at play and the public's interest in the disclosure. *Pennsylvania State Education Association v. Commonwealth Department of Community and Economic Development*, 148 A.3d 142, 157 (Pa. 2016). Based on the nature of this dispute, I will not find that disclosure of home addresses is required, but that—at the least—the names of the complainant and offender must be disclosed.

The city provides an affidavit that it searched for the second document under district control number 22-01-007846#2 and found that it did not exist. I find that this statement is credible and no such document exists under that district control number. Whether any additional records exist—such as additional police reports or body camera footage—relevant to the underlying police encounter that Woodard describes is not at issue in the underlying Right to Know Law records request here, and may need to be sought out from a new record request.

The city is correct, regarding the third document, that it is not required to provide an internal affairs report. *See Weaver v. Pennsylvania State Police*, 2008 WL 9398940 at *2 (Pa. Cmwlth. 2008).

I now take this opportunity to express my disapproval of the city of Philadelphia's actions in this Right to Know Law case. The city originally refused to disclose Woodard's requested documents, alleging they pertained to a criminal investigation. On appeal, the city makes no explicit argument affirming that earlier position. Indeed, review of the document that the city eventually disclosed suggests no criminal investigation relevance.

There are two consequences by the city's change of position. First, the city has now harmed its credibility in all future dealings with me. In the past, I have relied on affidavits provided by the city and the Philadelphia Police

Department that stated that requested documents were exempt from disclosure because they pertained to criminal investigations. I relied on those affidavits—provided under penalty of perjury—to reach my decisions. My ability to rely on similar affidavits in the future is now harmed. Indeed, though I have credited the city’s averment that no document exists under district control number 22-01-007846#2, I would not be without reason to discredit it now (*See City’s 10/14/2022 Response, 2*) (“Where no competent evidence has been presented to show that the Department acted in bad faith, the averments in the Department’s affidavit should be accepted as true.”).

Second, the city has frustrated the proper disposal of the claims in this Right to Know Law appeal. The city no longer relies on the criminal investigation disclosure exemption. But my role as an appeals officer for the Philadelphia District Attorney’s Office is limited to determining whether a requested record is a criminal investigative record. 65 P.S. § 67.503(d)(2). Upon determining—after the city seemingly abandoned its claim—that the requested records were not a criminal investigative record, I should have transferred this appeal to the Pennsylvania Office of Open Records to decide this appeal. But this appeal had *already* been transferred to me by that office because of the city’s original reliance on the criminal investigation disclosure exemption. Because the Right to Know Law was designed to provide for an expeditious resolution for record requests, I nevertheless chose to decide this appeal. *Bowling v. Office of Open Records*, 990 A.2d 813, 823 (Pa. Cmwlth. 2010). Any error by my actions will be moot on any appeal. *California Borough v. Rothery*, 185 A.3d 456, 463–64 (Pa. Cmwlth. 2018).

Conclusion

Woodard requested three documents. The city provided a redacted version of the first document, stated that the second document does not exist, and stated that it is not required to provide the third document. I hold that the city must disclose the first document with the location of the incident, the complainant’s name, and the offender’s name unredacted. I hold that the city need not disclose the second document because of its averment

that it does not exist. I hold that the city need not disclose the third document because it is exempt from disclosure.

If the city disagrees with this ruling, it may appeal this final determination to the Philadelphia Court of Common Pleas within 30 days of today by filing a petition for review. 65 P.S. § 67.1302(a). If Woodard disagrees with this ruling, he may appeal to that court as well. 65 P.S. § 67.1302(a). The city of Philadelphia, Woodard, and myself shall be served notice of any appeal. 65 P.S. § 67.1303(a). The record on appeal shall consist of the request, the city's response, the appeal from the city's response, and this final determination. 65 P.S. § 67.1303(b). The Court of Common Pleas will conduct a *de novo* appeal, meaning that it will be able to examine this case anew and make its own factual findings. *Bowling v. Office of Open Records*, 75 A.3d 453, 466–74 (Pa. 2013).

P. Christian Adamski

P. Christian Adamski
Appeals Officer
Philadelphia District Attorney's Office
Three South Penn Square
Philadelphia, PA 19107-3499
(215) 686-8069
paul.adamski@phila.gov

Service provided on October 19, 2022 by e-mail to:

Nathanael Woodard
Requester
2057 McClellan Street
Philadelphia, PA 19145
nathanael.woodard@comcast.net

Feige Grundman
Open Records Officer
City of Philadelphia Law Department
1515 Arch Street, 17th Floor
Philadelphia, PA 19102
feige.grundman@phila.gov
righttoknowlaw@phila.gov
police.righttoknow@phila.gov

Javier Soler
Assistant City Solicitor
City of Philadelphia Law Department
1515 Arch Street, 17th Floor
Philadelphia, PA 19102
javier.soler@phila.gov