



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

**SOLENA LAIGLE for AMERICAN CIVIL
LIBERTIES UNION, Complainant**

v.

**CITY OF PITTSBURGH,
Respondent**

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Docket No. AP 2010-0955

INTRODUCTION

Solena Laigle, on behalf of the American Civil Liberties Union of Pennsylvania, (the “Requester”) submitted a request to the City of Pittsburgh (the “City”) pursuant to the Right-to-Know Law, 65 P.S. §§67.101 *et seq.*, (“RTKL”), seeking policies and training materials for use of force. The City denied access under the disruptive requester provision. The Requester timely appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **granted**, and the City is required to take further action as directed.

FACTUAL BACKGROUND

On September 10, 2010, the Requester submitted a right-to-know request seeking:

- (1) all policies, directives or guidelines, however titled, regarding the use of force by police. This includes all documents relating to: (a) the general Use of Lethal/Deadly Force; (b) the general Use of Non-Lethal/Deadly Force; and (c) the use of all of the following by the police department: Tasers, Batons, Firearms, Chemical Agents, Canines, Knives, Kinetic Energy Impact Projectiles, and any other device or weapon employed by the Department;
- (2) All training materials relating to the use of force by police. This includes any handouts, presentation materials, or other documents used in the training of officers, regarding all of the above stated categories.

(the “Request”).

Jason Zollett, Open Records Officer (ORO), timely denied the Request under Section 506(a) as duplicative of the Requester's request of February 19, 2010 ("Denial"). The February 19th request sought "all policies, directives or guidelines, however titled, and all training materials relating to the use of force by police..." The City advised that the February 19th request was addressed such that the duplicative request places an undue burden upon the City.

The Requester timely appealed arguing that the City had acknowledged the existence of a Taser Policy and Use of Force Policy, but withheld the Taser Policy under Sections 708(b)(1)(ii) and (b)(2), withheld training materials under (b)(11), and attached the Use of Force Policy; the Requester argues that additional use of force policies exist and have not been addressed (the "Appeal"). The Requester responded to the City's Denial advising that policies and training materials related to other specific uses of force are responsive and have not been granted, such that the Request is not disruptive.

The City supplemented the record with a letter from its ORO explaining that the City previously responded to an almost identical request, seeking identical records and granted it in part. The Requester did not timely appeal the partial denial, and, the City argues, cannot now re-request the same records and appeal now. The City, citing *Cohen v. Dept. of L&I*, OR Dkt. AP 2009-0296 and *Dougher v. Scranton*, OOR Dkt. AP 2009-0798, argues the request qualifies as "repeated" despite being phrased differently. The City contends the fact that the Request is repeated is sufficient to show that it is unreasonable citing *Dreyer v. DEP*, OOR Dkt. AP 2009-0453. The City also cites *Cohen v. Dept. of L&I*, OOR Dkt. AP 2009-0333, in which the OOR held that once an agency meets its burden of proof, it is not required to relitigate the issue, as the Requester can always appeal. The City argues the fact the Request is repeated makes it disruptive. The City did not submit any substantiation for the facts submitted. No other material was timely submitted.

LEGAL ANALYSIS

The RTKL 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. OOR*, 990 A.2d 813, 824 (Pa. Commw. 2010). 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.” 65 P.S. §67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal.

The decision to hold a hearing or not hold a hearing is discretionary and non-appealable. *Id.* 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.* Here, neither party requested a hearing and the OOR has the requisite and necessary information before it to properly adjudicate the matter.

The City is a local agency required to disclose public records. *See* 65 P.S. §67.302. Records in possession, custody or control 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. An agency bears the burden of proving the applicability of any cited exemptions, *See* 65 P.S. §67.708(b). The City asserts the Requester is disruptive as per Section 506(a).

Under Section 506(a), an agency can establish that a requester is disruptive by demonstrating repeated requests for the same records and that the “repeated requests” have placed an “unreasonable burden on the agency.” *Bari v. Office of the Governor*, OOR Dkt. AP 2010-0733. Thus, two elements are required, (1) the Requests must be repeated, and (2) must place an unreasonable burden on the agency.

From review of the Request as compared with the February 19th request, the records sought are identical, using virtually identical language. Both requests seek “all policies, directives or guidelines, however titled and all training materials regarding the use of force by police,” the only difference between them being the additional detail in the “including” clause. The records sought are identical and additional examples of uses of force do not alter that fact, despite additional phrasing. *See, e.g., Cohen v. Dept. L&I*, OOR Dkt. AP 2009-0333.

However, the OOR finds that the City did not establish that the Request placed an unreasonable burden on the City. The fact it is repetitive does not suffice alone to make the Request “disruptive” as set forth in the RTKL. Further, unlike the *Cohen* cases cited there has been only one prior request for the same information; unlike *Dreyer*, the City did not establish that it had granted or responded substantively to the entirety of the February 19th request. The City identified and substantively responded to the request for the Taser Policy and training materials, albeit by denying access to them under cited exceptions. The City did not clarify in this Appeal that all other responsive “use of force” policies, like the Taser Policy, had been addressed in the prior response as would be required for *Dreyer* to apply here.

The City is not required to replicate its response to the Taser Policy and training materials as the Requester had its opportunity to appeal that decision and failed to do so; that re-request is disruptive as per *Dreyer v. DEP, supra* as there is no dispute it has been substantively addressed. But since the City did not substantiate that it provided all responsive records in response to the February 19th request, additional records related to the “use of force by police” may exist that remain unidentified and unaddressed by the City. Accordingly, the OOR finds, that to the extent the prior request remains unaddressed, the Request is not disruptive, and, having failed to raise other exemptions, the City has an obligation to provide any remaining responsive records.

CONCLUSION

For the foregoing reasons, the appeal is **granted**, and the City is required to disclose to the Requester any and all responsive records, aside from the Use of Force policy provided, and the Taser Policy and training materials, which it substantively addressed, within thirty (30) days.

This Final Determination is binding on the parties. Within thirty (30) days of the mailing date of this Final Determination, either party may appeal to the Allegheny 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 according to court rules as per Section 1303. This Final Determination shall be posted at: <http://openrecords.state.pa.us>.

FINAL DETERMINATION ISSUED AND MAILED: November 5, 2010



LUCINDA GLINN, ESQ.
APPEALS OFFICER

Sent to: Solena Laigle for ACLU; Jason Zollett for City