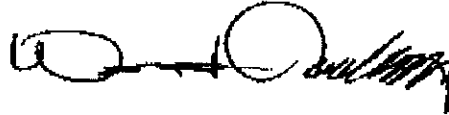


Petitioner's Right To Know Law request for access to public records, which was submitted on December 15, 2010, to the South Eastern Pennsylvania Transit Authority ("SEPTA"), was not attached to the Petition, pursuant to § 1303(b) Record on appeal (attached hereto).

3. Petitioner desires to correct whatever other defect(s) in the Petition that the Court determined to be non-compliant with 65 P.S. § 67.101, *et seq.*, and to re-file the Petition accordingly.

Therefore, Petitioner respectfully requests the Court clarify the particular defect(s) in the Petition, which was the reason for the Court's DISMISSAL WITHOUT PREJUDICE.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Warren Goolsby", written over a horizontal line.

Warren Goolsby
3587 Round Barn Blvd., #1.109
Santa Rosa, CA 95403
(707) 292-2261

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

WARREN GOOLSBY

Plaintiff

vs.

PA OFFICE OF OPEN RECORDS

Defendant

Term, _____

No. _____

CONTROL NO.: _____

RULE

AND NOW, this _____ day of _____ 200____, upon
consideration of the foregoing Motion/Petition _____

a RULE is hereby entered upon the Respondent to show cause why the relief requested therein should _____
not be granted.

RULE RETURNABLE on the _____ day of _____ 200____,
at _____ a.m./p.m., in Courtroom _____ City Hall, Philadelphia, PA 19107.

BY THE COURT:

J.

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

WARREN GOOLSBY)	_____ Term, _____
)	
Plaintiff/Petitioner)	
)	
vs.)	No. _____
)	
PA OFFICE OF OPEN RECORDS)	
)	
Defendant/Respondent)	

PETITION FOR REVIEW


The above-named Petitioner hereby petitions for review by this Court of the written final determination by the Pa. Office of Open Records (“OOR”), dated January 24, 2011, dismissing as untimely Petitioner’s appeal, dated January 18, 2011, from the South Eastern Pennsylvania Transit Authority’s (“SEPTA”) deemed denial of Petitioner’s Right to Know Law (“RTKL”) request for access to records. A copy of these documents is attached, along with Petitioner’s memorandum of law.

This Court has subject matter jurisdiction to decide this matter, pursuant to 65 P.S. § 67.1302(a).

OOR erred in its dismissal of Petitioner’s appeal, because OOR erred in its final determination of (i) the date of the deemed denial of the RTKL request, (ii) the date by which Petitioner’s appeal was required to be filed, and (iii) the date on which Petitioner actually filed his appeal.

Accordingly, Petitioner hereby requests this Court to reverse OOR's dismissal of
Petitioner's appeal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Warren Goolsby", written in a cursive style.

Warren Goolsby
3587 Round Barn Blvd., #1.109
Santa Rosa, CA 95403

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

WARREN GOOLSBY)	_____ Term, _____
)	
Plaintiff/Petitioner)	
)	
vs.)	No. _____
)	
PA OFFICE OF OPEN RECORDS)	
)	
Defendant/Respondent)	

MEMORANDUM OF LAW

QUESTIONS PRESENTED

1. On what day was Mr. Goolsby's Right to Know Law ("RTKL") request to SEPTA deemed denied, pursuant to the law in Pennsylvania?
2. By what date was Mr. Goolsby required to file an appeal with the Office of Open Records ("OOR"), from SEPTA's deemed denial of his RTKL request?
3. Did Mr. Goolsby file his appeal with the OOR within 15 business days of the date of the deemed denial, as required by Pennsylvania law?

SHORT ANSWERS

1. December 23, 2010, was the date of the deemed denial, which was the day following the date by which SEPTA was required to respond to Mr. Goolsby's RTKL request.

2. January 18, 2010, was the day by which Mr. Goolsby was required, by the RTKL, to file his appeal with OOR, which day was 15 business days from SEPTA's December 23, 2010, deemed denial.
3. Yes. Mr Goolsby filed his appeal with the OOR on January 18, 2010.

STATEMENT OF FACTS

Mr. Goolsby submitted his RTKL request, via email, to SEPTA on December 15, 2010. This fact was acknowledged by Audrey Buglione, OOR appeals officer, in the first sentence of her written final determination, dated January 24, 2011. A true and correct copy of such final determination is attached hereto as Exhibit #1. SEPTA was required to send its response to Mr. Goolsby's RTKL request within 5 business days from the date that SEPTA received the request, pursuant to § 901 General rule of the Pa. RTKL, which states as follows:

“If the agency fails to send the response within five business days of receipt of the written request for access, the written request for access shall be deemed denied.”

SEPTA's response was, thus, required to be sent to Mr. Goolsby by December 22, 2010, which was acknowledged by Ms. Buglione in the second sentence of her written final determination, dated January 24, 2011, *supra*. SEPTA failed to send its response by December 22, 2010. It sent the response on December 23, 2010. A true and correct copy of the SEPTA response is attached hereto as Exhibit #2.

Mr. Goolsby filed his appeal with the OOR at 1:56 p.m. PST and 4:56 p.m., EST, on January 18, 2011, via email, as demonstrated by the date/time stamp on the email. A true and correct copy of such email is attached hereto as Exhibit #3. On January 24, 2011, Ms. Buglione mailed her written final determination to Mr. Goolsby and SEPTA, dismissing Mr. Goolsby's appeal as untimely. In the penultimate sentence of the first paragraph of her final determination, Ms. Buglione alleged that Mr. Goolsby's appeal was required to be filed with the OOR by no later than January 14, 2011. Ms. Buglione provided no explanation as to how she concluded the January 14, 2011, date. In the last sentence of the first paragraph of her final determination, Ms. Buglione also alleged that Mr. Goolsby filed his appeal on January 19, 2011, and was therefore allegedly untimely.

On February 4, 2011, Mr. Goolsby filed a petition for reconsideration with the OOR, explaining why his appeal was timely and requested OOR to grant the petition and reverse Ms. Buglione's dismissal. A true and correct copy of Mr. Goolsby petition for reconsideration is attached hereto as Exhibit #4. On February 8, 2011, Dena Lefkowitz, OOR Chief Counsel, summarily denied Mr. Goolsby's petition for reconsideration. A true and correct copy of Ms. Lefkowitz's denial is attached hereto as Exhibit #5.

As required by § 1302(a) of the Pa. RTKL, Mr. Goolsby filed the instant petition for review on February 22, 2011, which is within 30 days from January 24, 2011, the day that Ms. Buglione mailed the final determination dismissing Mr. Goolsby's appeal.

DISCUSSION

The issues for which this petition seeks review are three: (i) identification of the lawful date on which SEPTA's deemed denial of Mr. Goolsby's RTKL request occurred,

(ii) the lawful day and time at which Mr. Goolsby's appeal period expired, and (iii) the verified day and time that Mr. Goolsby actually filed his appeal. These events must be, necessarily, identified chronologically, ie: arranged in the order that they occurred.

Date of Deemed Denial

SEPTA was allowed 5 business days within which to send its response to the RTKL request, pursuant to § 901 General rule of the RTKL. December 22, 2010, was the 5th business day, counting forward from SEPTA's December 15, 2010, receipt of Mr. Goolsby's RTKL request. More particularly, SEPTA's response would have been timely if it had been sent by no later than 11:59:59 p.m., EST, December 22, 2010. Thus, at 12:00:00 a.m., EST, on December 23, 2010, SEPTA's allowed response time expired.

The lawful date on which the deemed denial occurred was dependent on the prior expiration of the allowed time for response, for the deemed denial was a successor event, which sequentially must follow after the expired response time. Therefore, since SEPTA's response time expired at 12:00 a.m., EST, on December 23, 2010, the deemed denial date was, unequivocally, December 23, 2010, and not before. It would be implausible and illogical to conclude that such deemed denial could occur within the same time period and prior to the expiration of the time allowed for such response.

The deemed denial date is likewise defined by § 902(b)(3) of the RTKL, as follows:

“If the requester agrees to the extension, the request shall be deemed denied on the day following the date specified in the notice if the agency has not provided a response by that date.” (Emphasis added)

Accordingly, since SEPTA failed to send its response to Mr. Goolsby's RTKL request within 5 business days, in conformance with § 901 of the RTKL, ie: by December 22, 2010, the request must be deemed denied on the day following, which was December 23, 2010.

The deemed denial date of December 23, 2010, is also consistent with the instructions to the public, on the OOR website, regarding filing of appeals. A true and correct copy of that portion of the OOR website is attached hereto as Exhibit #6, which states as follows:

“The Office shall be open from 8:30 a.m. to 5:00 p.m. each weekday, except Saturdays, Sundays and legal holidays. Appeals received after 5:00 p.m. will be stamped or deemed as received on the following business day.” (Emphasis added)

Based upon all of the above law and facts, SEPTA's deemed denial cannot have occurred prior to December 23, 2010, and, therefore, lawfully occurred on . December 23, 2010.

Expiration of the Time for Appeal

The time period within which Mr. Goolsby was required to file his appeal with the OOR is defined at § 1101(a)(1) of the RTKL, stating as follows:

“If a written request for access to a record is denied or deemed denied, the requester may file an appeal with the Office of Open Records or judicial, legislative or other appeals officer designated under section 503(d) within 15 business days of the mailing date of the agency's

response or within 15 business days of a deemed denial. The appeal shall 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.” (Emphasis added)

Considering that SEPTA’s response was deemed denied on December 23, 2010, the 15th business day, counting forward there from, was January 18, 2011. Such 15 business days are compiled as follows:

Friday	24DEC10	Legal holiday non-business day
Saturday	25DEC10	Weekend non-business day
Sunday	26DEC10	Weekend non-business day
Monday	27DEC10	Day 1
Tuesday	28DEC10	Day 2
Wednesday	29DEC10	Day 3
Thursday	30DEC10	Day 4
Friday	31DEC10	Legal holiday non-business day
Saturday	01JAN11	Weekend non-business day
Sunday	02JAN11	Weekend non-business day
Monday	03JAN11	Day 5
Tuesday	04JAN11	Day 6
Wednesday	05JAN11	Day 7
Thursday	06JAN11	Day 8
Friday	07JAN11	Day 9
Saturday	08JAN11	Weekend non-business day
Sunday	09JAN11	Weekend non-business day
Monday	10JAN11	Day 10
Tuesday	11JAN11	Day 11
Wednesday	12JAN11	Day 12
Thursday	13JAN11	Day 13
Friday	14JAN11	Day 14
Saturday	15JAN11	Weekend non-business day
Sunday	16JAN11	Weekend non-business day
Monday	17JAN11	Legal holiday non-business day
Tuesday	18JAN11	Day 15

The legal holidays noted above, which may not be counted as business days, are verified in the published list of Pa. legal holidays for the years 2010 and 2011. A true and correct copy of the published lists is attached hereto as Exhibit #7. Thus, Mr. Goolsby was entitled to file his appeal with the OOR by not later than 5:00 p.m. EST, on January 18, 2011.

Date Appeal Filed

In point of fact, Mr. Goolsby filed his appeal with OOR at 1:56 p.m. PST and 4:56 p.m. EST, on January 18, 2011, as demonstrated by the email's time stamp, Exhibit #3, *supra*. OOR represented on its website that appeals must be filed by not later than 5:00 p.m. on a regular OOR business day, failing which such appeal will be stamped or deemed received on the following business day, Exhibit #6, *supra*. When an email is sent, it simultaneously arrives at the destination computer server. The time at which OOR received Mr. Goolsby's email-filed appeal was, in fact, 1:56 p.m. PST and 4:56 p.m. EST, as reported in the properties of such email file, Exhibit #3, *supra*. Thus, Mr. Goolsby's appeal was received by OOR before 5:00 p.m. EST, on January 18, 2011, and was therefore timely filed, contrary to Ms. Buglione's final determination, whereby she alleged that such appeal was received on January 19, 2011. Accordingly, Mr. Goolsby was entitled to have his appeal decided, in accordance with § 1101 and § 1102, et seq., instead of being dismissed as untimely by Ms. Buglione.

CONCLUSION

The date that SEPTA's response was deemed denied, based upon the facts and the law, must be established as December 23, 2010. Mr. Goolsby was therefore lawfully entitled to file his appeal by not later than 5:00 p.m. EST, on January 18, 2011, and he timely filed his appeal prior to 5:00 p.m. EST on that day. Mr. Goolsby is entitled to have his appeal decided pursuant to the Pa. RTKL, and requests this Court to reverse Ms. Buglione's dismissal of the appeal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Warren Goolsby", written over a horizontal line.

Warren Goolsby
3587 Round Barn Blvd., #1.109
Santa Rosa, CA 95403



Warren Goolsby
 3587 Round Barn Boulevard, #1.109
 Santa Rosa, CA 95403

C. Neil Petersen
 Open Records Officer
 SEPTA
 Legal Division, 5th Floor
 1234 Market Street
 Philadelphia, PA 19107-3780

**Re: Goolsby v. SEPTA, OOR Dkt. AP 2011-0044
 DISMISSED AS UNTIMELY**

Dear Parties:

On December 15, 2010 Mr. Goolsby submitted a request for records to SEPTA via email. The agency was required to respond no later than December 22, 2010. It responded on December 23, 2010 extending the deadline to provide a final response for up to thirty days. However, this extension was not permissible as the appeal was already deemed denied and the fifteen (15) business day appeals period began on December 23, 2010. An appeal must have been filed by January 14, 2011. The appeal was filed on January 19, 2011 and is therefore untimely.

The OOR website contains helpful information regarding the procedure surrounding both the request and appeal process under the RTKL. The web address is:
<http://openrecords.state.pa.us>.

For the foregoing reasons, Requester's appeal is **dismissed as untimely** and the agency is not required to take any further action. This final determination is binding on all parties. Within thirty (30) 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 according to court rules as per Section 1303 of the RTKL.

Sincerely,

Audrey L. Buglione
 Appeals Officer


VERIFICATION

I, WARREN GOOLSBY, Plaintiff/Defendant, verify that the facts set forth in the foregoing are true and correct to the best of my information knowledge, and belief.

I understand that the statements contained herein are subject to the Penalties of 18 Pa. C.S.A., §4904 relating to unsworn falsification to authorities.

WARREN GOOLSBY

(Print Name)



(Signature)

Date: February 22, 2011

CERTIFICATE OF SERVICE

I, WARREN GOOLSBY, hereby certify that a true and correct copy of the foregoing motion/petition and accompanying papers, was served on the below listed addresses by first-class United States mail, postage pre-paid on February 22, 2011 (date).

Name: Audrey L. Buglione

Address: Pennsylvania Office of Open Records

Address: 400 North Street, 4th Floor

City, State, zip: Harrisburg, PA 17120-0225

Name: C. Neil Petersen

Address: South Eastern Pennsylvania Transit

Address: 1234 Market Street

City, State, zip: Philadelphia, PA 19107-3780

Dated: February 22, 2011

By: 


IN THE COURT OF COMMON PLEAS FOR PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION - CIVIL

RECEIVED
MAR 01 2011
CIVIL ADMINISTRATION

WARREN GOOLSBY :
: FEBRUARY TERM, 2011
:
:
v. :
:
PA OFFICE OF OPEN RECORDS : NO. 03214
: Control#11023095
:


ORDER

AND NOW, this 1st day of March, 2010, upon consideration of Warren Goolsby's Petition to Review, it is hereby ORDERED and DECREED that said Petition is DISMISSED WITHOUT PREJUDICE to re-file in compliance with 65 P.S. § 67.101 *et seq.*

BY THE COURT:


IDEE FOX, J.

DOCKETED
MAR - 1 2011
S. McQUEEN
CIVIL ADMINISTRATION

Goolsby Vs Pa. Office O-ORDRF

11020321400005

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

WARREN GOOLSBY

March Term, 2011

Plaintiff/Petitioner

No. 110203214

vs.

PA OFFICE OF OPEN RECORDS

CONTROL NO.: _____

Defendant/Respondent

ORDER

AND NOW, this _____ day of _____, 200____,

upon consideration of the Motion/Petition _____

_____, and any responses thereto, it is

ORDERED and DECREED that said Motion/Petition is _____.

BY THE COURT:

J.

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

WARREN GOOLSBY

Plaintiff

vs.

PA OFFICE OF OPEN RECORDS

Defendant

March Term, 2011

No. 110203214

CONTROL NO.: _____

RULE

AND NOW, this _____ day of _____, 200____, upon
consideration of the foregoing Motion/Petition _____

_____ a RULE is hereby entered upon the Respondent to show cause why the relief requested therein should _____
not be granted.

RULE RETURNABLE on the _____ day of _____, 200____,
at _____ a.m./p.m., in Courtroom _____ City Hall, Philadelphia, PA 19107.

BY THE COURT:

J.

CERTIFICATE OF SERVICE

I, WARREN GOOLSBY, hereby certify that a true and correct copy of the foregoing motion/petition and accompanying papers, was served on the below listed addresses by first-class United States mail, postage pre-paid on March 9, 2011 (date).

Name: Audrey L. Buglione
Address: Pa. Office of Open Records
Address: 400 North Street, 4th Floor
City, State, zip: Harrisburg, PA 17120-0225

Name: C. Neil Petersen
Address: South Eastern Pennsylvania Transit Authority
Address: 1234 Market Street
City, State, zip: Philadelphia, PA 19107-3780

Dated: March 9, 2011

By: 
