

WPS COPY

PHILADELPHIA COURT OF COMMON PLEAS PETITION/MOTION COVER SHEET

CONTROL NUMBER: 055144
(RESPONDING PARTIES MUST INCLUDE THIS NUMBER ON ALL FILINGS)

FOR COURT USE ONLY	
ASSIGNED TO JUDGE:	ANSWER/RESPONSE DATE: 6/2/11
Do not send Judge courtesy copy of Petition/Motion/Answer/Response. Status may be obtained online at http://courts.phila.gov	

May _____ Term, 2011
 No. **001539** Year

David Crockett

 vs.
 Southeastern Pennsylvania Transportation Authority

Name of Filing Party:
 David Crockett
 (Check one) Plaintiff Defendant
 (Check one) Movant Respondent

INDICATE NATURE OF DOCUMENT FILED:

Petition (Attach Rule to Show Cause) Motion
 Answer to Petition Response to Motion

Has another petition/motion been decided in this case? Yes No
 Is another petition/motion pending? Yes No
 If the answer to either question is yes, you must identify the judge(s):

TYPE OF PETITION/MOTION (see list on reverse side) Leave of the court to amend original petition	PETITION/MOTION CODE (see list on reverse side) MTAMD
--	---

ANSWER/RESPONSE FILED TO (Please insert the title of the corresponding petition/motion to which you are responding):

I. CASE PROGRAM
 Is this case in the (answer all questions):

A. COMMERCE PROGRAM
 Name of Judicial Team Leader: _____
 Applicable Petition/Motion Deadline: _____
 Has deadline been previously extended by the Court?
 Yes No

B. DAY FORWARD/MAJOR JURY PROGRAM — Year _____
 Name of Judicial Team Leader: _____
 Applicable Petition/Motion Deadline: _____
 Has deadline been previously extended by the Court?
 Yes No

C. NON JURY PROGRAM
 Date Listed: _____

D. ARBITRATION PROGRAM
 Arbitration Date: _____

E. ARBITRATION APPEAL PROGRAM
 Date Listed: _____

F. OTHER PROGRAM: **Crockett Vs Septa-MTAMD**
 Date Listed: _____

II. PARTIES (required for proof of service)
 (Name, address and **telephone number** of all counsel of record and unrepresented parties. Attach a stamped addressed envelope for each attorney of record and unrepresented party.)


C. Neil Petersen, Deputy Counsel (215) 580-7324
 SEPTA Open Records Officer
 1234 Market Street,
 Philadelphia, Pa. 19107-3780

Nicholas J. Staffieri (215) 580-7993
 SEPTA - General Counsel
 1234 Market Street
 Philadelphia, Pa 19107-3780

SEPTA - Legal Department
 1234 Market Street - 5th floor
 Philadelphia Pa 19107-3780

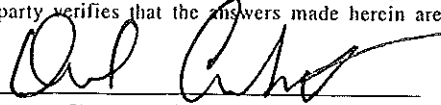
FILED
 2011 MAY 13 AM 11:21

III. OTHER



11050153900006

By filing this document and signing below, the moving party certifies that this motion, petition, answer or response along with all documents filed, will be served upon all counsel and unrepresented parties as required by rules of Court (see PA. R.C.P. 206.6, Note to 208.2(a), and 440). Furthermore, moving party verifies that the answers made herein are true and correct and understands that sanctions may be imposed for inaccurate or incomplete answers.

 _____ **5/12/11** _____ **David Crockett**
 (Attorney Signature/Unrepresented Party) (Date) (Print Name) (Attorney I.D. No.)

The Petition, Motion and Answer or Response, if any, will be forwarded to the Court after the Answer/Response Date. No extension of the Answer/Response Date will be granted even if the parties so stipulate.

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

<p>DAVID CROCKETT 1525 Townsend Avenue Apt 2A Bronx, NY 10452</p> <p style="text-align: right;">Petitioner,</p>	<p style="text-align: center;"><u>CIVIL ACTION NO.</u></p> <p style="text-align: center;">001539</p> <p style="text-align: center;">MAY 2011</p>
<p>SOUTHEASTERN PENNSYLVANIA TRASPORTATION AUTHORITY aka SEPTA 1234 Market St, Philadelphia Pa, 19107-3780</p> <p style="text-align: center;">Respondents.</p>	

ORDER

AND NOW, this _____ day of _____, 2011 the motion for leave of the court to
 "Amend Original Petition for Writ in Mandamus" is hereby:

GRANTED IN FULL IN PART

DENIED IN FULL IN PART

 JUDGE

055144

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

<p>DAVID CROCKETT 1525 Townsend Avenue Apt 2A Bronx, NY 10452</p> <p>Petitioner,</p>	<p><u>MANDAMUS ACTION NO.</u></p> <p>MAY 2011</p> <p>001539</p>
<p>SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY aka SEPTA 1234 Market St, Philadelphia Pa, 19107-3780</p> <p>Respondents.</p>	

MOTION FOR LEAVE OF THE COURT
TO AMEND ORIGINAL PETITION FOR
WRIT IN MANDAMUS

The "Petitioner" herewith seeks "Leave of the Court" to amend original Petition for "Writ in Mandamus" Court of Common Pleas Docket # (_____)

DAVID CROCKETT v. SOUTHEASTERN PENNSYLVANIA

TRANSPORTATION AUTHORITY aka **SEPTA**. Permission to amend the original petition is sought so as to join similar actions which originate out of the same nucleus of facts thereby not wasting court resources as listed below:

- (1) Name the proper "Respondents" in this action per Pennsylvania State Law.
- (2) Judicial Review of Final Determination by the Office of Open Records (hereinafter "OOR") Docket #AP 2011-0378 which originates out of the same nucleus of facts.
- (3) Additional "Mandamus Actions" as detailed below in paragraphs four, five and six which originate out of the same nucleus of facts.
- (4) "Injunction" upon the "Respondents" as detailed in paragraph seven which originates out of the same nucleus of facts
- (5) Claim all damages allowed under Pennsylvania State Law for "Respondents" willful and wonton failure to provide open records originating out of the same nucleus of facts.

PROPOSED AMENDMENTS

1. Amendment to the original Petition to include adding C. Neil Petersen Esq., Deputy Counsel, Open Records Officer individually and in his official capacity and Nicholas J. Staffieri Esq., General Counsel, SEPTA in his individual and his official capacity as "Respondents" citing Title 231 Subchapter F; Action in Mandamus - Rule 1094a; Parties Defendant which states; "When an action is commenced to compel performance of a public act or duty by a political

subdivision of the Commonwealth, it shall be sufficient to name as defendants such officers in their official capacities as are concerned in the act or duty”.

2. Amendment to the original Petition to include setting forth “THE PARTIES” which properly names and describes the parties.
3. Amendment to the original Petition to include a Judicial Review of “OOR” Final Determination Docket # AP 2011-0378 (Exhibit #1) as Petitioner believes the “OOR” Appeals Officer erred in its ruling under the “RTKL” as the “Respondent” requested “the actual written SEPTA incident reports...” as reported by the witness to the incident” (Exhibit #2) and “Respondent” provided an injury/illness summary (Exhibit #3) derived from the “actual written incident report”. “OOR” Appeals Officer contends that “Petitioners” request for “written reports” and not “handwritten reports” (Exhibit #1– page – last paragraph) was reason to deny “Petitioners” appeal. “Petitioner disagrees as he believes that there is no defined difference between “written” and “handwritten” reports “as reported by the witness to the incident” in the possession of “Respondent” and “Respondent” was aware of the records being sought as evidenced by:
 - a. The examples (exhibit #2) of earlier request for written accident/incident reports that were provided by “Respondent”.
 - b. By “Respondents” own admission in his response to “Petitioners” appeal to said denial under “OOR” Docket number AP2011-0378, dated 4/11/2011 (Exhibit #4 – page 2- paragraph 2) where “Respondent” states that they “created and provided their own railroad injury/illness summary”, (Exhibit #3) which is not the record “Petitioner” requested.

- c. "Respondent" did not raise the question of failing to understand "Petitioners" request for records but instead stated that the documents "Petitioner" requested are precluded by the "Exceptions" of the "RTKL" and as such "Respondent" provided the "Injury Illness Summary Report" (Exhibit #3) in lieu of the actual type of record requested by Petitioner (Exhibit #2). Note from (Exhibit #2) which is the actual type of record requested, no personal information appears contrary to "Respondents" claims (Exhibit #4).
4. Amendment to the original Petition to include an additional Mandamus Action to compel the "Respondents" to provide "Petitioner" with open records requested via the "RTKL" request dated (04/10/11) seeking to inspect 156 individual litigation/claim files or the "SEPTA" legal departments written authorization to discard same as this request was deemed denied on 4/18/11 under the "RTKL" by "Respondents" failure to reply within five (5) days and as appealed under the "RTKL" (Exhibit #5). This "Mandamus Action" is sought under this petition as the records requested do not fall under the "Exceptions" of the "RTKL" and this court holds Final Jurisdiction over any Final Determinations issued by the "OOR".
5. Amendment to the original Petition to include additional "Mandamus Action" to compel the "Respondents" to provide "Petitioner" with open records requested via the "RTKL" request dated (04/10/11) seeking to inspect all of the maintenance records of "SEPTA" rolling stock rail cars as deemed denied on 4/18/11 under the "RTKL" by Respondents failure to reply within five (5) days and as appealed under the "RTKL" (Exhibit #6). This action is sought under this

petition as "OOR" held a prior ruling under Docket #AP 2011-0093 (Exhibit #8 – page 7 – last paragraph) that maintenance records are open records subject to the "RTKL" and as the records do not fall under the "Exceptions" of the "RTKL" and as this court holds Final Jurisdiction over any Final Determinations issued by the "OOR".

6. Amendment to the original Petition to include additional "Mandamus Action" to compel the "Respondents" to provide "Petitioner" with open records per the "RTKL" request dated (05/01/11) seeking a copy of 156 individual actual "handwritten" accident/incident as "handwritten" by the person who witnessed the accident/incident (exhibit #7 – original agency request and supporting data) which includes a list of each accident/incident report sought detailing the date, time, location and referenced incident/accident number associated with each record and an example of the type of accident/incident report sought. This record request was denied by SEPTA for the third time now citing inter alia "Consequently, any underlying reports generated would necessarily include the injured party's medical status and/or related information that would disclose individual identifiable personal health information". Noting that the record type I seek contains no personal information whatsoever as exemplified (exhibit #2). This action is sought under this petition as the records do not fall under the "Exceptions" of the "RTKL" and an appeal has been filed (exhibit #9 – page 3) and this court holds Final Jurisdiction over any Final Determinations issued by the "OOR".
7. Amendment to the original Petition to include an "Injunction" upon the "Respondents" and Nicholas J. Staffieri Esquire, General Counsel, SEPTA in

particular that will order “Respondents” to cease and desist the removal, deletion, disposal or discarding of the following records in possession of “SEPTA” and within the control of “Respondent” Nicholas J. Staffieri Esquire, General Counsel, SEPTA for a specific duration allowing “Petitioner” ample time to view the below open records which includes:

- a. All Accident Investigative Reports - 1001 & 1002
- b. All Claim Files - 1008 & 1009
- c. All Claim Invoice Request Records - 1011
- d. All Communication Record Logs – 4001, 4002 & 4003
- e. All Corporate Management and Organization Records - 6001, 6002, 6005, 6009, 6010 & 6011
- f. All CCT - Service Operations Records - 8402, 8406 & 8407
- g. All Employee Hiring, Training and Employment Records - 9000
- h. All Engineering and Construction Project Records - 11002
- i. All Financial Reports and Analysis Records - 13105 & 13112
- j. All Grant Management Records - 14001 & 14005
- k. All Inventory Records - 16001
- l. All Maintenance Records - 18008, 18009, 18011 & 18015
- m. All System Safety Records - 22302, 22311
- n. All Transportation Scheduling and Service Records - 24002, 24005, 24015, 24017

8. The above “Injunction” is sought as “Petitioner” has reason to believe that the “Respondents” will otherwise remove, delete, dispose or discard the above mentioned open public records under the pretext that the requirement for their

retention has expired before "Petitioner" has had the opportunity to review these records and as the "Respondent" has a history, beyond the above allegations, of a less-than-candid policy for allowing access to records noting that this agency has previously been held in contempt in the Court of Common Pleas by the Hon Fredericka A. Massiah-Jackson. (Exhibit #10) for this same alleged behavior.

9. Amendment to the original petition includes setting forth "THE FACTS" which properly details the facts upon which "Petitioner" relies upon the relief sought, the acts or duty the "Respondents" are required to perform, their refusal to perform it and the interest of the "Petitioner" in the result.
10. Amendment to the original petition includes setting forth "DAMAGES" which properly sets forth all damages and adequate remedies allowed under the "RTKL" and 42 Pa. Cons. Stat. § 8303, "Action for performance of a duty required by law".
11. WHEREFORE, "Petitioner" seeks Leave of the Court to amend original "Writ in Mandamus", Court of Common Pleas Docket # (001539)
DAVID CROCKETT v. SOUTHEASTERN PENNSYLVANIA TRANSPORTATION
AUTHORITY aka SEPTA. "Petitioner" has provided exhibits in support of this motion and an "Order" for this court to execute (Exhibit #11).

Signature:



Date: May 12, 2011

Printed Name: David Crockett

Email: david@davidcrockettdevelopment.com

Telephone: (718) 541-5653

Cc:

C. Neil Petersen, Esq.,
Deputy Counsel,
Open Records Officer SEPTA
Southeastern Pennsylvania Transportation Authority
1234 Market Street
Philadelphia, Pa 19107-3780

Nicholas J. Staffieri Esquire,
General Counsel, SEPTA
Southeastern Pennsylvania Transportation Authority
1234 Market Street
Philadelphia, Pa 19107-3780

Terry Mutchler
Executive Director
Pennsylvania Office of Open Records
Commonwealth Keystone building
400 North Street
4th floor
Harrisburg, Pennsylvania 17120-0225

DAVID CROCKETT

Plaintiff(s)

vs.

SEPTA ET AL

Defendant(s)

Term, 20

No.

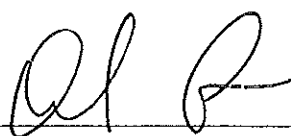
MEMORANDUM OF LAW

- 1- MOTION IS SOUGHT TO JOIN SIMILAR ACTIONS WHICH ORIGINATE OUT OF THE SAME NUCLEUS OF FACTS THEREBY NOT WASTING COURT RESOURCES WITH REPETATIVE ACTIONS.
- 2- TITLE 231 SUBCHAPTER F- ACTION IN MANDAMUS RULE 1094a: PARTIES DEFENDANT - ACTION AGAINST A COMMONWEALTH POLITICAL SUBDIVISION TO COMPEL PERFORMANCE OF A DUTY IT IS SUFFICIENT TO NAME SUCH OFFICERS IN THEIR OFFICIAL CAPACITIES.
- 3- RTKL OPS P.S. § 101 SECTION 1302 - JUDICIAL REVIEW UPON FINAL DETERMINATIONS BY OOR
- 4- SECTION 8303 OF TITLE 42 - DAMAGES IN MANDAMUS ACTIONS
- 5- TITLE 231 RULE 1095 - FORM OF THE COMPLAINT

VERIFICATION

The undersigned verifies that the statements contained in the foregoing "Motion for Leave of the Court to Amend Original Petition for Writ in Mandamus" are true and correct to the best of his knowledge, information and belief. The undersigned understands that false statements herein are made subject to the penalties of 18 Pa. C.S. section 4904, relating to unsworn falsification to authorities.

Date: May 12, 2011



David Crockett – Petitioner

1525 Townsend Avenue – 2A

Bronx, NY 10452

(718) 541 5653

CERTIFICATE OF SERVICE

I, DAVID CROCKETT, 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 5/13/2011 (date).

Name: C. NEIL PETERSEN
Address: SEPTA - 5TH FLR
Address: 1234 MARICET ST
City, State, zip: PHILA PA 19107-3780

Name: NICHOLAS J. STAFFIERI
Address: SEPTA - 5TH FLR
Address: 1234 MARICET ST
City, State, zip: PHILA PA 19107-3780

SEPTA - LEGAL DEPT
1234 MARICET ST
PHILA PA 19107-3780

Dated: 5/13/2011

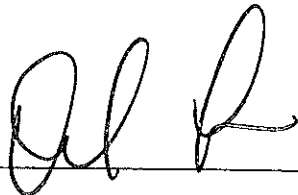
By: 

Exhibit #1



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
DAVID CROCKETT,	:	
Complainant	:	
	:	Docket No.: AP 2011-0378
v.	:	
	:	
SOUTHEASTERN PENNSYLVANIA	:	
TRANSPORTATION AUTHORITY,	:	
Respondent	:	

INTRODUCTION

David Crockett (the "Requester") submitted a request (the "Request") to the Southeastern Pennsylvania Transportation Authority ("SEPTA") seeking written incident reports pursuant to the Right-to-Know Law, 65 P.S. §§ 67.101 *et seq.*, ("RTKL"). SEPTA granted access to records that the Requester alleges are nonresponsive. The Requester appealed to the Office of Open Records ("OOR"). For the reasons set forth in this Final Determination, the appeal is **granted in part, denied in part and dismissed as moot in part** and SEPTA is required to take further action as directed.

FACTUAL BACKGROUND

On March 7, 2011, the Request was filed, seeking

[A] copy of each of the 127 actual written SEPTA incident reports as detailed on the attached list which states the date, time and location of each of the incidents as well as the incident number. Note again I am

seeking the actual written reports on file with SEPTA as reported by the witness to the incident. See attached list of the individual reports (a total of 127) that I am requesting.

On March 11, 2011, SEPTA invoked a thirty-day extension to respond pursuant to 65 P.S. § 67.902(b). On March 24, 2011, SEPTA provided a portion of records, stating that the Federal Railroad Administration only requires it to maintain such records for seven years. SEPTA provided 80 pages of records.

On March 31, 2011, the Requester appealed to the OOR, alleging that the records provided are not responsive to the Request and requesting a refund. The OOR invited both parties to supplement the record. On April 11, 2011, SEPTA provided a position statement, along with various attachments. Both parties submitted additional materials after the record closed. As these materials were received after the record closed, they were not considered.

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. Ct. 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 necessary, requisite information and evidence before it to properly adjudicate the matter.

For purposes of the RTKL, SEPTA is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.302; *see SEPTA v. City of Philadelphia*, No. 2445 C.D. 2009, 2011 Pa. Commw. LEXIS 169 at *8 n.6 (Pa. Commw. Ct. April 13, 2011) (noting that SEPTA is not a Commonwealth agency “in every conceivable circumstance”). Records in possession 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).

Section 708 of the RTKL clearly 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 or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence.” 65 P.S. § 67.708(a). Preponderance of the evidence has been defined as “evidence which as a whole shows that the fact sought to be proved is more probable than not.” BLACK’S LAW DICTIONARY 1064 (8th ed.); *see also Commonwealth v. Williams*, 567 Pa. 272, 786 A.2d 961 (2001).

In the present case, the Requester alleges that the Request sought handwritten incident reports. While the Request seeks “actual written reports,” nowhere in the Request is there any indication that the Request was actually seeking handwritten incident reports. Because the Request does not facially seek handwritten reports, SEPTA properly provided responsive written reports to the Requester.

The Requester provided a copy of the responsive records provided by SEPTA. SEPTA, on appeal, attached a copy of 23 incident reports that were allegedly not provided, along with an affidavit from its Safety Statistics and Reports Administrator indicating that it previously provided these reports to the Requester. Based on the information submitted, the appeal is moot as to the records already provided.

In both its initial response and its supplement to the record, SEPTA indicates it limited its search to only records within the last seven years because the Federal Railroad Administration allegedly does not require agencies to maintain such records beyond seven years. SEPTA, however, provided no evidentiary support that it does not actually maintain such records and suggests that it did not conduct a search for responsive records created prior to 2004 as required by 65 P.S. § 67.901. Although an agency may not be required to maintain records for a longer period of time than required, an agency may still possess such records and, if so, must provide such records, as long as they exist, upon request. As a result, the OOR finds that SEPTA is required to provide all responsive records prior to 2004, if they exist.

CONCLUSION

For the foregoing reasons, Requester's appeal is **granted in part, denied in part and dismissed as moot in part** and SEPTA is required to provide the Requester with all responsive records prior to 2004 within thirty (30) days. 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. This Final Determination shall be placed on the OOR website
at: <http://openrecords.state.pa.us>.

FINAL DETERMINATION ISSUED AND MAILED: April 28, 2011



APPEALS OFFICER
J. CHADWICK SCHNEE, ESQ.

Sent to: David Crockett; C. Neil Petersen, Esq.

- (1) The names of all SEPTA personnel operating this specific train at the time of the accident along with identification/badge numbers;
- (2) Copy of the SEPTA report for this specific accident/incident filed by the SEPTA personnel operating the train at the time of the accident;
- (3) Identification number of the coach/car involved in the accident;
- (4) Any and all maintenance records for the specific coach/car prior to and after this incident/accident;
- (5) The make/model/manufacture and date of service for the coach/car listed above;
- (6) Any and all accident/incident reports associated with the SEPTA personnel operating the train as listed above; these reports requested are for the history of their employment with SEPTA not just this specific train, shift or tour;
- (7) The training and work history of all SEPTA personnel who operated the train above;
- (8) Any and all accident/incident reports associated with STEPWELLS and STEPWELL COVERS or TRAP DOORS over STEPWELLS for all SEPTA trains within the entire SEPTA system

(the "Request").

SEPTA, which received the Request in January, timely responded by providing a copy of the employee accident/incident report but withholding maintenance and personnel records based upon Sections 708(b)(6)(i)(A), (b)(7) and (b)(17) for noncriminal investigative records. SEPTA also denied parts of the Request, arguing it posed a series of questions and sought explanations entailing compilation of a record or research. The Requester timely appealed, arguing that badge numbers are not exempt as personal; work history/training are not exempt as personnel records; and, the investigative exception does not protect maintenance records or other accident reports involving similar situations ("Appeal").

After providing evidence showing the timeliness of the Appeal, SEPTA supplemented the record. SEPTA contends that it is a Commonwealth agency and not a local agency under the RTKL pursuant to its enabling statute, 74 Pa. C.S. §1711, and notes that it has been deemed an

“arm of the Commonwealth” in *Goldman v. SEPTA*, 980 A.2d 709 (Pa. Commw. 2009). SEPTA notes that the Request consisted in part of questions for information regarding the train car involved and information about personnel operating the train, including their badge numbers.

SEPTA argues that seeking information on the car involved and the personnel qualifies as seeking answers to questions which are open-ended and would require compilation and research. SEPTA represents that it has been operating Silverliner cars for decades and they have been used since 1963 such that the number of accidents involving the rail fleet is enormous and they are not organized by type of accident, *i.e.*, “step accidents,” or by personnel involved. SEPTA argues the Requester filed a claim against SEPTA and is seeking to obtain through the RTKL information that it should obtain through the discovery process.

SEPTA argues that the records sought in Parts 6 and 7 are exempt as personnel records under Section 708(b)(7) and that the remaining records, including maintenance records, are exempt as noncriminal investigative records under (b)(17) because they are part of its investigation of the accident. SEPTA notes that “for those requests that are either overly broad, lacking in specificity or simply because no mechanism exists to identify same, it should be found that no public records can be located.” SEPTA Deputy Counsel, C. Neil Petersen, Esquire, made a verification pursuant to 18 Pa. C.S. §4904 as to the accuracy of the submissions.

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 adjudicate the matter.

SEPTA is a local agency subject to the RTKL and required to disclose public records. *See* 65 P.S. §67.302. Although SEPTA challenges its designation as a “local agency,” Commonwealth Court precedent holds that SEPTA is a “local agency” for jurisdictional purposes. *See Quinn v. SEPTA*, 659 A.2d 613, 615 (Pa. Commw. 1995) (“This Court has repeatedly held that for the purposes of determining jurisdiction, SEPTA is a local agency and not an agency of the Commonwealth.”); *Krenzel v. SEPTA*, 840 A.2d 450 (Pa. Commw. 2003); *Cunningham v. SEPTA*, 914 A.2d 966 (Pa. Commw. 2007). The fact that SEPTA enjoys sovereign immunity and is treated as an arm of the Commonwealth in the context of immunity from suit in tort as in the cases cited by SEPTA does not convert its status from a local agency to a Commonwealth agency for purposes of determining whether proper jurisdiction lies in the Commonwealth Court.

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). SEPTA asserts the requested records relating to personnel are protected by Sections 708(b)(6) and (b)(7), and the remaining proper requests are exempt under (b)(17).

Before assessing the asserted exceptions, the OOR evaluates SEPTA's response to each of the eight (8) parts of the Request. SEPTA provided the record in Part 2 and withheld the remainder.

Section 708 of the RTKL clearly places the burden of proof on the public body to demonstrate that a record is exempt. In pertinent part, Section 708(a) states: "(1) [t]he burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence." 65 P.S. §67.708(a). Preponderance of the evidence has been defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." BLACK'S LAW DICTIONARY 1064 (8th ed.); *see also Commonwealth v. Williams*, 567 Pa. 272, 786 A.2d 961 (2001).

1. Request requires research and compilation

As an initial matter, the OOR notes that the status of the Requester as a claimant in a potential litigation with SEPTA does not preclude his access to records under the RTKL. *See Brennan v. Allentown*, OOR Dkt. AP 2011-1168, 2011 PA O.O.R.D. LEXIS 9. The Request seeks information relating to a specific train accident in which the Requester was involved, and for which he has filed suit. With regard to Part 1, SEPTA did not provide the names of all personnel or badge numbers. SEPTA identified the number of the car involved in the accident on the accident report for Part 3 but withheld the maintenance records (Part 4); the coach/car information (Part 5); the accident reports of personnel as part of their employment (Part 6); training and work history of SEPTA personnel who operated the train (Part 7); and any and all accident/incident reports associated with certain equipment or coach/car parts (Part 8).

The RTKL provides that a request must "identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested." *See* 65 P.S. § 67.703. As noted by the OOR, the determination as to whether a request has been

described as sufficiently specific must be made on a case-by-case basis and “[i]f the OOR can determine what the Requester sought, it will find the request to be sufficiently specific.” *See Lauff v. Fort Cherry School District*, OOR Dkt. AP 2010-0128, 2010 PA O.O.R.D. LEXIS 180; *Mollick v. Methacton School District*, OOR Dkt. AP 2009-0180, 2009 PA O.O.R.D. LEXIS 287; *see, e.g., Shaw v. South Eastern School District*, OOR Dkt. AP 2010-0720, 2010 PA O.O.R.D. LEXIS 718.

The OOR does not find that the Request consists of a series of questions. With regard to Parts 1 and 3, the OOR can discern that records are sought and these parts are not seeking an “explanation” as SEPTA contends. However, it is unclear which records are sought or whether responsive records exist containing the information sought in Parts 1 and 3 without requiring compilation from other records. With regard to Parts 6 and 8, SEPTA confirmed that the accident records are not segregated by type of accident or other information that would permit these reports to be provided without research or special compilation. Accordingly, the OOR finds that SEPTA may withhold records requiring creation or compilation from accident reports in accordance with Section 705. To the extent they exist and are not exempt, SEPTA must disclose records responsive to Parts 1 and 3 of the Request.

2. Employee/personnel records

The Requester seeks identification/badge numbers of employees and accident reports, work history and training records of personnel who operated the train involved in the accident. Section 708(b)(6)(i)(A) expressly permits an agency to redact “employee numbers or other confidential personal identification numbers.” Therefore, these identification numbers are properly withheld.

Section 708(b)(7) specifically exempts certain records relating to an agency employee. Work history records, training records and accident/incident reports are not listed among the records properly exempt under this exception. SEPTA did not establish that the training or work histories or accident reports are information regarding discipline, demotion or discharge. SEPTA asserts that "prior accident history," which are part of the performance and safety records, and are subject to discipline under their collective bargaining agreements are exempt. Counsel's verification that the "prior accident history" and records relating to culpability for any accident are performance and discipline-related establishes that these records are exempt. Therefore, SEPTA may withhold records involving training and work history that are part of a performance review and/or discipline, including any prior accident history records, from disclosure under Section 708(b)(7).

3. Records for the coach/car

SEPTA claims the remaining records are all being consulted in its noncriminal investigation of the accident, and are thus exempt under Section 708(b)(17) as "related to a noncriminal investigation." The OOR disagrees. In order for this exemption to apply, an agency must demonstrate that "a systematic or searching inquiry, a detailed examination, or an official probe" was conducted regarding a noncriminal matter. *See Department of Health v. OOR*, 4 A.3d 803, 810-11 (Pa. Commw. 2010). Based on the underlying purpose of the RTKL, however, "exemptions from disclosure must be narrowly construed." *See Bowling, supra* at 824.


The make/model/manufacture of the coach/car involved in the accident and the maintenance records for the coach/car at issue are not records that reveal anything about a noncriminal investigation being conducted by SEPTA. Similarly, maintenance records are not created or maintained as a part of investigating the accident at issue; review of certain records as

part of an investigation does not confer "investigative" status upon them. *See, e.g., Sasso v. City of Phila.*, OOR Dkt. AP 2009-0014, 2009 PA O.O.R.D. LEXIS 257 (elevator maintenance records are not protected); *Prine v. PSP*, OOR Dkt. AP 2010-0550, 2010 PA O.O.R.D. LEXIS 473. SEPTA did not substantiate how the maintenance records or model information related to the coach/car are "investigative" and thus did not meet its burden pursuant to Section 708(a)(1) to exempt records responsive to Parts 4 and 5 above.

CONCLUSION

For the foregoing reasons, the appeal is **granted in part** and **denied in part** and SEPTA is required to disclose existing responsive records to Parts 1, 3, 4, 5 and training histories and non-accident history work histories for Part 7, to the Requester within thirty (30) days; the remaining records in Parts 6, 7 and 8 and the identification numbers of employees in Part 1 are exempt or requiring compilation. 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. This Final Determination shall be placed on the OOR website at: <http://openrecords.state.pa.us>.

FINAL DETERMINATION ISSUED AND MAILED: February 24, 2011


LUCINDA GLINN, ESQ.
APPEALS OFFICER

Sent to: David Crockett; C. Neil Peterson, Esq.