



CITY OF PHILADELPHIA

POLICE DEPARTMENT
HEADQUARTERS, FRANKLIN SQUARE
PHILADELPHIA, PENNSYLVANIA 19106

CHARLES H. RAMSEY
Commissioner

December 22, 2011

Ms. Amara S. Chaudhry, Esquire
Council on American-Islamic Relations
1218 Chestnut Street, Suite 510
Philadelphia, PA 19107

RE: Pennsylvania Right-To-Know Act Request

Dear Ms. Chaudhry:

Your Pennsylvania Right-To-Know Act request dated 11-14-11 was received by this office on 11-16-11 for:

- (1) Records, documents, communications, guidelines and procedures detailing the process through which the PPD decides, and/or has decided, which topics to address during trainings which the PPD has hosted, sponsored, endorsed, sanctioned or funded in whole or in part, or may do so in the future.
- (2) Records, documents, communications, guidelines and procedures detailing the process through which the PPD vets, and/or has vetted, the trainers, speakers, presenters, or organizations it contracts or has contracted to conduct trainings which the PPD has hosted, sponsored, endorsed, sanctioned or funded in whole or in part, or may do so in the future.
- (3) Records, documents, communications, guidelines and procedures detailing the process through which the PPD vets and has vetted the content of trainings suggested or conducted by a PPD employee which the PPD has hosted, sponsored, endorsed, sanctioned or funded in whole or in part, or may do so in the future.
- (4) Records, documents, and communications that include references to Islam, Islamists, terrorism, counterterrorism, extremism or extremists, homeland security, Muslims, the Muslim Brotherhood, Islamic law, Sharia, jihad, radicalization, or CAIR produced, received, or reviewed by PPD employees who were or are involved in selecting, scheduling, and organizing training events which the PPD has hosted, sponsored, endorsed, sanctioned or funded in whole or in part, or may do so in the future.

- (5) Records, documents, and communications regarding trainings which the PPD has hosted, sponsored, endorsed, sanctioned or funded in whole or in part, or may do so in the future, pertaining to Islam, Islamists, terrorism, counterterrorism, extremism, extremists, homeland security, Muslims, the Muslim Brotherhood, Islamic law, Sharia, jihad, radicalization, or CAIR.

This request includes, but is not limited to, invoices, contracts, brochures, written training materials, handouts, attendance lists, videos, books, recordings of presentations or seminars, webinars or webcast content and recordings, promotional materials, pamphlets, and feedback forms.

- (6) Records, documents, and communications regarding any materials or presentations—including the materials and presentations themselves—distributed or proposed to be distributed or presented or proposed to be presented at trainings which the PPD has hosted, sponsored, endorsed, sanctioned or funded in whole or in part, or may do so in the future, pertaining to Islam, Islamists, terrorism, counterterrorism, extremism or extremists, homeland security, Muslims, the Muslim Brotherhood, Islamic law, Sharia, jihad, or radicalization, or CAIR.
- (7) Records, documents, and communications pertaining to all solicitations and offers—including the solicitations and offers themselves—made to the PPD regarding trainings that make references in any way to Islam, Islamists, terrorism, counterterrorism, extremism or extremists, homeland security, Muslims, the Muslim Brotherhood, Islamic law, Sharia, jihad, radicalization, or CAIR. This includes all solicitations and offers regarding such trainings, irrespective of whether such training occurred.
- (8) Records, documents, and communications discussing the qualifications, credentials, affiliations, or experience of any person or company to conduct a training for which the PPD hosted, sponsored, endorsed, sanctioned or funded in whole or in part, or may do so in the future.
- (9) Records, documents, and communications that refer to, discuss or assess the PPD's or the PPD's employees' knowledge of Islam or the American Muslim community.
- (10) Records, documents, and communications that discuss or make reference to any of the following persons or entities or are correspondence between the PPD and any of the following persons or entities:

- a. Security Solutions International (551)
- b. Extreme Terrorism Consulting, LLC
- c. The Alpha Group
- d. Axiom
- e. Michael Ronczkowski
- f. Homeland Security University
- g. The Center for Counterintelligence and Security Studies (CI Center)
- h. Nobel USA
- i. Chameleon Associates
- j. Association of Threat Assessment Professionals
- k. Strategic Security Corp
- l. SIG Homeland Security, LLC
- m. Anti-Terrorism Accreditation Board
- n. S2 Strategic Intelligence
- o. Sam Caroba
- p. Walid Shoebat
- q. Nonie Darwish
- r. Pamella Geller
- s. Robert Spencer
- t. Frank Gaffney
- u. David Yerushalmi
- v. International Counter-Terrorism Officers Association (ICTOA)
- w. ACT for America
- x. MEMRI
- y. Andrew Boston
- z. Steven Emerson
- aa. Ebrahim Ashabi
- bb. Kamal Saleem
- cc. Shahram Hadian

On 11-21-11 correspondence was sent to you acknowledging receipt of your request and also stated that I was asserting the City's right to (up to) an additional 30 days to:

- a. ascertain if the requested record does exist,
- b. check legal review to determine whether the record is a record subject to access under the Act,
- c. determine if the request requires the redaction of a public record, and
- d. bona fide staffing limitations (in retrieving and reviewing the record requested).

After an extensive and careful part by part review of your Pennsylvania Right-to-Know request, the determination is as follows:

All portions of your request that seek “[r]ecords, documents and communications” on various vaguely identified subject matters are sufficiently specific such that the PPD is unable to determine what specific records are being requested. Under Pennsylvania’s Right to Know Act, a request “should identify or describe the records sought with *sufficient specificity* to enable the agency to ascertain which records are being requested.” 65 P.S. § 67.703 (emphasis added). Where “the request for information is not sufficiently specific, the agency has no obligation to comply with the request because such lack of specificity prevents the agency from determining whether to grant or deny the request.” *Esty v. Borough of Dunmore*, 720 A.2d 827, 831 (Pa. Cmwlth. 1998). “Under the Right to Know Act, all the agency is required to do is make the records available for inspection; it is up to the requester to conduct the search.” *Tapco v. Township of Neville*, 695 A.2d 460, 461 (Pa. Cmwlth. 1997).

The requirement of specificity is necessary to (1) ensure that a requestor provides enough information so that “an agency can determine whether to grant or deny the request[;]” *Nanayakkara v. Casella*, 681 A.2d 857, 859-60 (Pa. Commw. 1996), and (2) “to prevent agencies from suffering undue interference and obstruction of their daily functions; . . . [which] would be unavoidable if agency officials always could be subjected to broad and unlimited requests for documents and records.” *Mooney v. Temple Univ. of the Commonwealth Sys. of Higher Educ. Bd. Of Trustees*, 292 A.2d 395, 397 n.8 (Pa. 1972) (“requests for inspection [must] be specific and particular seeking disclosure of named documents or records rather than broad and unlimited requests for undefined bodies of documents or records”); *see also, e.g., Arduino v. Borough of Dunmore*, 720 A.2d 827, 831 (Pa. Commw. 1998) (holding that a request for “‘all records’ related to the disbursement of the funds for [certain] public projects” lacked sufficient specificity), *appeal denied*, 741 A.2d 195 (Pa. 1992); *Hunt. v. Pa. Dep’t of Corr.*, 698 A.2d 147, 149 (Pa. Commw. 1997) (holding that requests, including a request for all documents given by Department of Corrections to inmate and by inmate to Department, lacked sufficient specificity).

Pennsylvania courts have compared such broad, sweeping requests to discovery-type requests which, while potentially proper in the context of civil litigation, are improper under the Act. *Berman v. Pa. Convention Ctr. Auth.*, 901 A.2d 1085, 1089 (Pa. Commw. 2006) (holding that request for “‘[t]he most recent plans, construction, and design documents’ relating to” the convention center expansion was “more in the nature of a discovery request than a proper request for public records”); *Associated Builders and Contractors, Inc. v. Pa. Dep’t of Gen Servs.*, 747 A.2d 962, 965-66 (Pa. Commw. 2000) (holding that requests “akin to document requests under the civil discovery rules, *i.e.*, ‘any and all documents relating to [subject matter]’” lack sufficient specificity); *accord PSP v. OOR*, 995 A.2d. 515, 517 (Pa. Commw. 2010) (“The portion of the request seeking any and all records, files or communications [concerning subject matter] is insufficiently specific for the PSP to respond to the request.”). Such broad requests have been, and will be, denied.

Moreover, the Office of Open Records has held that when a request is “susceptible to two different meanings . . . the necessary clarity for providing responsive records is absent.” *See Rhoads v. Western Berks Water Authority*, AP 2010-1184 (OOR Jan. 13, 2011); 65 P.S. § 67.703.

Your request fails to specify the type of record requested, the time frame your request, or even clear subject matters. The City cannot be required to interpret a request, or conduct research in order to attempt to determine what records the requestor is seeking. *See Rhoads v. Western Berks Water Authority*, AP 2010-1184 (OOR Jan. 13, 2011) AP 2010-1184 (OOR Jan. 13, 2011); *accord Campbell v. Palmerton Area School District*, AP 2011-0133, 20100 PA O.O.R.D. LEXIS 151 (OOR March 21, 2011) (“[A]n agency cannot be required to . . . perform research in order to complete a request.”) (collecting cases); *accord Ford v. Dept of State*, AP 2010-0555, 2010 PA O.O.R.D. LEXIS 485 (OOR July 16, 2010); *Glance v. Fairview Tp.*, AP 2009-0674, 2009 PA O.O.R.D. LEXIS 104 (OOR Sept. 2, 2009).

Even if a document is an account, voucher, contract, minute, order, or decision, it may still fall under an exception prohibiting mandatory disclosure. Relevant to your request is the language stating:

Provided, That the term public records shall not mean any report, communication or other paper, the publication of which would disclose the institution, progress or result of an investigation undertaken by an agency in the performance of its official duties...; it shall not include any record, document, material, exhibit, pleading, report, memorandum, or other paper, access to or the publication of which is prohibited, restricted or forbidden by statute law or order or decree of court, or which would operate to the prejudice or impairment of a person’s reputation or personal security.

As your request is insufficiently specific, the PPD is unable to assert all applicable grounds of denial but reserves the right to do so if your request is interpreted as seeking specific records, after a review of such records. Subject to, and without waiving the forgoing grounds of denial, your request would on its face appear to include records exempt from disclosure and all parts of your request are specifically denied to the extent you seek:

- Records protected by the attorney/client privilege, the attorney-work product doctrine or the deliberative process privilege, as such documents are not public records as that term is defined under the Act. 65 P.S. § 67.102; *see also, e.g., Redland Soccer Club v. Department of the Army*, 55 F.3d 827, 854 (3d Cir. 1995).
- Records reflecting information from the Law Department or outside counsel “in connection with pending or impending litigation.” *See, e.g., Schenck v. Twp. of Center*, 893 A.2d 849, 853- (Pa. Commw. Ct. 2006) (reading the Right-to-Know Act *in pari materia* with the Sunshine Act and holding that “all information from the solicitor relating to pending or impending litigation is inaccessible”); *accord Bd. of Supervisors of Milford Twp. v. McGogney*, 13 A.3d 569, 571 (Pa. Commw. 2011).

- Records that are “maintained by an agency in connection with ... law enforcement or other public safety activity that if disclosed would be reasonably likely to jeopardize or threaten public safety or public preparedness or public protection activity” 65 P.S. § 67.708(b)(2).
- Records containing personal identifying information exempt from disclosure pursuant to 65 P.S. § 67.708(b)(6) including (but not limited to), home addresses, cell phone numbers, home telephone numbers, and personal email addresses.
- Records reflecting “[1] internal, predecisional deliberations of an agency, its members, employees [2] predecisional deliberations between agency members, employees or officials and members, employees, or officials of another agency . . . or [3] any research, memos or other documents used in the predecisional deliberations.” 65 P.S. § 67.708(b)(10)(i)(A).
- Notes or working papers exempt from disclosure pursuant to 65 P.S. § 67.708(b)(12).
- Records relating to criminal or noncriminal investigations exempt from disclosure pursuant to 65 P.S. § 67.708(b)(16) or (17).

Therefore, because your request fails to provide the City with sufficient specificity to guide its determination, requests 1 through 10 are denied pursuant Section 703 of the Act.

However, pursuant to Section 901 of the Act in which the Department made a “good-faith effort” in inquiring if records were in possession of the Philadelphia Police Department that might be pertinent to this request. I have accessed all computer programs and training materials at my disposal and no documents pertaining to this request were located.

Should you wish to contest any part of this decision, other than the denial pursuant to 65 P.S. § 67.708(b)(16) regarding records relating to a criminal investigation, you may file an appeal with the Office of Open records as provided for in 65 P.S. § 67.1101. You have 15 business days from the mailing date of the PPD’s response to challenge the response. Please direct any appeal to the Office of Open Records, Commonwealth Keystone Building, 400 North Street, 4th Floor, Harrisburg, PA 17120-0225, and copy the undersigned open records officer.

To appeal the denial pursuant to 65 P.S. § 67.708(b)(16) regarding records relating to a criminal investigation, you may file an appeal with the Philadelphia District Attorney's Office as provided in 65 P.S. § 67.1101 and 65 P.S. § 503(d)(2). Please direct any appeal to DA Appeals Officer, Attn: Todd Mosser, Three South Penn Square, Philadelphia PA 19107-3499. You have 15 business days from the mailing date of the PPD's response to challenge the response, and copy the undersigned open records officer.

Please be advised that you may resubmit your request with more specific information as to which account, voucher, contract, minute, order, decision, document, or communication etc. you are seeking records about. Should you choose to do so; the City will at that time determine if the documents you specifically seek are Public Records as defined by the Act. However, if no appeal is made within the (15) business days of the mailing of this letter, then this correspondence will service to close this particular request with our office as permitted by law. Thank you for contacting the Philadelphia Police Department's Open Records Office.

FOR THE POLICE COMMISSIONER

Sincerely,



Lieutenant Michael Dwyer

Open Records Officer

Philadelphia Police Department

750 Race Street, Room 203

Philadelphia, PA 19106

FAX: 215-686-1183

Email: police.research@phila.gov