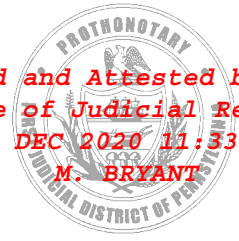


COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF PHILADELPHIA

Filed and Attested by the  
Office of Judicial Records  
29 DEC 2020 11:33 am  
M. BRYANT



REPORTERS COMMITTEE FOR FREEDOM  
OF THE PRESS

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*Attorney for Appellants*

\_\_\_\_\_  
SAMANTHA MELAMED and  
THE PHILADELPHIA INQUIRER  
PO Box 8263  
Philadelphia, PA 19101

Appellants

v.

\_\_\_\_\_  
PHILADELPHIA POLICE  
DEPARTMENT,  
750 Race Street  
Philadelphia, PA 19106

Appellee

COURT OF COMMON PLEAS  
Philadelphia County

\_\_\_\_\_ Term, 20\_\_  
No. \_\_\_\_\_

**NOTICE OF APPEAL**

Appellants Samantha Melamed and The Philadelphia Inquirer hereby appeal from the decision of the Office of Open Records issued on December 4, 2020 and indexed as O.O.R. Dkt. AP 2020-1213. A copy of the decision is attached as Exhibit A.

**JURISDICTION**

1. This Notice of Appeal is filed pursuant to Section 1302(a) of the Right to Know Law. 65 P.S. § 67.1302(a).

**PARTIES**

2. Appellant Samantha Melamed (“Requester”) is an adult individual employed as a reporter at The Philadelphia Inquirer, with a business address of PO Box 8263, Philadelphia, PA 19101.
3. Appellant The Philadelphia Inquirer is a for-profit public benefit corporation owned by the non-profit Lenfest Institute. The company’s multiple brand platforms—including

newspapers, Inquirer.com, e-Editions, apps, newsletters, and live events—reach a growing audience of more than 10 million people per month. Its business address is PO Box 8263, Philadelphia, PA 19101.

4. Appellee is the Philadelphia Police Department, a governmental unit with a business address of 750 Race Street, Philadelphia, PA 19106.
5. The following persons entered an appearance in the proceedings below:
  - a. Russell T. Crotts, Esq.  
Assistant City Solicitor  
Legislation and Legal Counsel Unit  
City of Philadelphia Law Department  
One Parkway Building  
1515 Arch Street  
Philadelphia, PA 19102  
[Russell.Crotts@phila.gov](mailto:Russell.Crotts@phila.gov)
  - b. Blake Eilers, Esq.  
Appeals Officer  
Office of Open Records  
333 Market Street, 16<sup>th</sup> Floor  
Harrisburg, PA 17101-2234  
[beilers@pa.gov](mailto:beilers@pa.gov)

### **RELEVANT BACKGROUND**

6. Requester, a journalist, has been reporting on the City of Philadelphia, including the Philadelphia Police Department, since she began her employment with The Philadelphia Inquirer in 2013. In the course of her reporting, she has filed Right to Know Law (“RTKL”) requests to obtain information about the law enforcement agency. At issue in the instant Notice of Appeal is one such request, discussed in additional detail below.
7. On January 6, 2020, Requester filed a RTKL request (the “First Request”) seeking “[a]ny record that reflects the police personnel dismissed in 2019, including the name and rank and effective date of dismissal” from the Philadelphia Police Department (“PPD”).
8. On February 14, 2020, the PPD provided Requester with a final response to the First Request. A true and correct copy of PPD’s final response letter is attached hereto as Exhibit B. The PPD granted in part and denied in part the First Request. *See* Ex. B. Specifically, the PPD stated that the First Request was “granted to the extent [it] seek[s] the final action of demotion or discharge for all PPD officers dismissed in 2019[,]” and denied “[t]o the extent [it] seek[s] records that reflect PPD officers dismissed in 2019 that are not the final action of demotion or discharge,” citing Section 708(b)(7)(viii) of the RTKL. *Id.*
9. On February 28, 2020, Requester appealed to the Office of Open Records the PPD’s partial denial of the First Request. A true and correct copy of her appeal is attached hereto as Exhibit C and incorporated by reference herein. In her appeal, Requester highlighted the discrepancy between the fact that “at least 20 people have been dismissed from the police department in the past year,” and the PPD’s response which consisted merely of “a single name.” Ex. C. Requester argued:

While the contents of a personnel file are exempt under 708(b)(7)(viii), the law specifically clarifies that the exemption “shall not apply to the final action of an agency that results in demotion or discharge.” These people were discharged from their jobs. While they may have filed appeals seeking to return to work through arbitration, the fact [that they’ve] filed an appeal doesn’t change the fact that this “final action” was taken by the department.

*Id.*

10. On July 2, 2020, Requester notified the Office of Open Records that she was withdrawing her appeal of the First Request, docketed at *Samantha Melamed and The Philadelphia Inquirer v. Philadelphia Police Department*, Dkt. AP 2020-0436, based upon a conversation with a PPD attorney confirming that he would provide the requested records. A true and correct copy of Requester’s July 2, 2020 email memorializing the withdrawal of the appeal of the First Request is attached as Exhibit D.

### **PROCEDURAL HISTORY OF THE INSTANT REQUEST**

11. On July 6, 2020, Requester submitted a second RTKL request (the “Instant Request”) to the PPD seeking “[a]ny record that reflects the police personnel dismissed in 2020, including the name and rank and effective date of dismissal.” A true and correct copy of the Instant Request is attached hereto as Exhibit E and incorporated by reference herein.
12. On July 23, 2020, Requester appealed to the Office of Open Records the PPD’s failure to timely respond to the Instant Request. A true and correct copy of Requester’s appeal is attached hereto as Exhibit F and incorporated by reference herein.
13. On December 4, 2020, the Office of Open Records issued a determination as to the July 23, 2020 appeal. A true and correct copy of the Office of Open Records’ determination is attached hereto as Exhibit A. The determination stated that “while the Department is not required to produce records related to the termination of personnel who are *still involved in the grievance process*, it must produce records of personnel whose dismissal became final during the timeframe identified in the [Instant] Request[.]” Ex. A (emphasis added). Critically, in partially denying the Instant Request, the Office of Open Records relied on an affidavit produced by the PPD which claimed that “[a]ny records [it] maintains of officers dismissed in 2020 are *not final actions* of discharge because no officers that were dismissed by [the PPD] in 2020 have completed the arbitration process.” *Id.* (emphasis added).

### **STANDARD AND SCOPE OF REVIEW**

14. In adjudicating this matter, this Court may function as a fact finder and exercise plenary review and apply a de novo standard of review. *Bowling v. Office of Open Records*, 75 A.3d 453, 473 (Pa. 2013).
15. This Court may supplement the record to ensure “the broadest scope of review.” *Bowling*, 75 A.3d at 477.
16. Section 708(b)(7)(viii) of the Right to Know Law states that information regarding discipline, demotion or discharge contained in a personnel file shall be exempt from disclosure. However, that section expressly clarifies that requesters can access certain

information regarding an employee’s termination or demotion: “This subparagraph shall not apply to the final action of an agency that results in demotion or discharge.”

17. The plain language of the law makes clear that it is the “final action” of the agency that is relevant—not proceedings, lawsuits, grievances, or arbitration proceedings that may follow that final action.
18. Appellants reserve the right to supplement the record before the Court by briefing the question more fully in a later phase of this litigation, and, should the Court wish, by appearing before the Court at a hearing on this matter. To summarize: The documents sought by Appellants are public under the plain language of the Right to Know Law and should be released.

**RELIEF SOUGHT**

WHEREFORE, Samantha Melamed and The Philadelphia Inquirer enter this Notice of Appeal.

Respectfully submitted,

*/s/Paula Knudsen Burke*

\_\_\_\_\_  
Attorney for Samantha Melamed  
The Philadelphia Inquirer

Date: December 29, 2020

VERIFICATION

I, Samantha Melamed, hereby state that the facts above set forth in the Notice of Appeal are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

  
(signature)

Date: 12-29-2020

**CERTIFICATE OF COMPLIANCE**

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by:

Signature: */s/Paula Knudsen Burke*

Name: Paula Knudsen Burke

PA Attorney ID: 87607

**CERTIFICATE OF SERVICE**

I, Paula Knudsen Burke, hereby certify that a true and correct copy of the foregoing Notice of Appeal was served upon the parties below by Certified Mail (Return Receipt Requested).

Russell T. Crotts, Esq.  
Assistant City Solicitor  
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*/s/Paula Knudsen Burke*

\_\_\_\_\_  
Attorney for Samantha Melamed and  
The Philadelphia Inquirer

Date: December 29, 2020