

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Daniel J. Auerbach,	:	
Appellant	:	
	:	
v.	:	
	:	No. 298 C.D. 2025
City of Philadelphia	:	Submitted: June 16, 2026

BEFORE: HONORABLE ANNE E. COVEY, Judge
HONORABLE STACY WALLACE, Judge
HONORABLE STELLA M. TSAI, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE COVEY

FILED: September 3, 2026

Daniel J. Auerbach (Requester) appeals from the Philadelphia County Common Pleas Court's (trial court) January 17, 2025 order (entered January 21, 2025) affirming the Office of Open Records' (OOR) Final Determination that determined Requester's appeal was moot because the Philadelphia Sheriff's Office (Sheriff's Office) provided a record that responded to his Right-to-Know Law (RTKL)¹ request (Request) and the Sheriff's Office did not engage in bad faith. Requester presents two issues for this Court's review: (1) whether the trial court erred by refashioning the Request from *any list* to *a list*, thereby allowing the Sheriff's Office to create and produce a new and functionally useless summary document instead of producing the responsive database; (2) whether the trial court erred by refusing to find bad faith and denying Requester's request for attorney's fees. After review, this Court affirms.

¹ Act of February 14, 2008, P.L. 6, 65 P.S. §§ 67.101-67.3104.

On November 28, 2023, Requester sent the Request to the Sheriff's Office seeking "[a]ny list of real properties sold at sheriff's sale from January 1, 2023 to present." Original Record (O.R.) at 27.² In January 2024, after being granted an extension of time, the Sheriff's Office informed Requester that it had no list that was responsive to the Request. On January 5, 2024, Requester appealed to the OOR. In its January 19, 2024 position statement, the Sheriff's Office maintained that it did not create, have, or store a list that responded to Requester's Request. In his January 19, 2024 position statement, Requester asserted that the Sheriff's Office conducts sheriff's sales every month and the City of Philadelphia (City) contracts with a vendor, Bid4Assets, to facilitate those sales. Requester insisted that the City merely needs to log on to Bid4Assets' website and download the appropriate list(s) for Requester. On January 22, 2024, the OOR requested that the Sheriff's Office respond to Requester's position. On January 24, 2024, the Sheriff's Office provided its Open Records Officer's (ORO) affidavit, wherein the ORO stated that the Sheriff's Office located a means to obtain a list of properties sold, via Bid4Assets, and would provide the same to Requester. On January 25, 2024, the Sheriff's Office provided the responsive list it obtained from Bid4Assets to Requester.

After receiving the list, Requester argued to the OOR that it was insufficient. Requester specifically alleged that the list contained less data than the public-facing version available on the Bid4Assets' website, it was missing important information that would be reasonably expected to appear on the list, and the formatting suggested that the Sheriff's Office redacted/deleted some of the information. On January 30, 2024, in its Final Determination, the OOR concluded that Requester's appeal was moot because the Sheriff's Office provided a record responsive to his Request. Although Requester claimed that the Sheriff's Office had

² Because the Original Record pages are not numbered, this Court references electronic pagination herein.

not provided all responsive records, the OOR concluded that asking for *all responsive records* on appeal was an impermissible modification of the Request, which sought *any list*. The OOR additionally declined to find that the Sheriff's Office engaged in bad faith because there was insufficient evidence to support that the Sheriff's Office intentionally impeded Requester's access to the requested information. Requester appealed to the trial court. On August 29, 2024, the trial court held a hearing. By January 17, 2025 order (entered January 21, 2025), the trial court affirmed the OOR's Final Determination. Requester appealed to this Court.³

Requester first argues that the trial court committed a foundational legal error by inverting the RTKL's core mandate of liberal construction. Requester contends that by wrongly holding that the Sheriff's Office's production of *a list* satisfied Requester's Request for *any list*, the trial court sanctioned the substitution of a newly created, functionally useless summary in place of the complete and authentic public record. Requester asserts that this ruling provides a road map for any agency to defeat public scrutiny, subverting the RTKL's entire purpose.

³ This Court's "review of a trial court's order in a[n] RTKL dispute is 'limited to determining whether findings of fact are supported by [substantial] evidence or whether the trial court committed an error of law, or an abuse of discretion in reaching its decision.'" *Butler Area Sch. Dist. v. Pennsylvanians for Union Reform*, 172 A.3d 1173, 1178 n.7 (Pa. Cmwlth. 2017) (quoting *Kaplin v. Lower Merion Twp.*, 19 A.3d 1209, 1213 n.6 (Pa. Cmwlth. 2011)). "The scope of review for a question of law under the [RTKL] is plenary." *SWB Yankees LLC v. Wintermantel*, 999 A.2d 672, 674 n.2 (Pa. Cmwlth. 2010) (quoting *Stein v. Plymouth Twp.*, 994 A.2d 1179, 1181 n.4 (Pa. Cmwlth. 2010), *aff'd*, . . . 45 A.3d 1029 ([Pa.] 2012)).

In re Melamed, 287 A.3d 491, 497 n.11 (Pa. Cmwlth. 2022) (quoting *Borough of Pottstown v. Suber-Aponte*, 202 A.3d 173, 178 n.8 (Pa. Cmwlth. 2019)).

The City rejoins that the trial court and the OOR properly dismissed Requester's appeal because no live controversy has existed since January 25, 2024. The City retorts that three weeks into Requester's appeal to the OOR, the Sheriff's Office produced an 86-page list of all real properties sold at sheriff's sale between January 1, 2023, and the November 28, 2023 Request date, which was responsive to the Request as written. That production discharged the Sheriff's Office's duty under the RTKL and extinguished any live controversy.

Here, Requester requested: "*Any list* of real properties sold at sheriff's sale from January 1, 2023 to present." O.R. at 27 (emphasis added). The Sheriff's Office produced an 86-page *list* of all real properties sold at sheriff's sale between January 1, 2023, and November 28, 2023. *See* O.R. at 60-147.

In its Final Determination, the OOR declared:

[B]ased on the evidence provided, the [Sheriff's Office] has proven that it has provided records responsive to the Request, i.e., a list of all Sheriff's [s]ales from January 1, 2023 to November 28, 2023, to the Requester during the appeal. This was the sole issue at the time of the appeal. The Requester has not submitted any evidence demonstrating the list is not responsive to the Request. *See Pa. Dep't of Health v. Mahon*, 283 A.3d 929 (Pa. [Cmwlth.] 2022). Therefore, because the [Sheriff's Office] has provided the responsive record to the Requester during the appeal, the appeal is moot. *See Kutztown Univ. of Pa. v. Bollinger*, 217 A.3d 931 (Pa. [Cmwlth.] 2019) (holding that an appeal is properly dismissed as moot where no controversy remains).

Final Det. at 3.

Similarly, the trial court concluded:

[T]he [R]equest was for a list of the properties, which is what [Requester] received. As the [R]equest contained no reference to any of the additional information about the properties that [Requester] now seeks, any claims that the response should have included this information amounts

to an attempt to “modify, explain or expand a request on appeal,” which is impermissible. *See Pa. State Police v. Off[.] of Open [Recs.]*, 995 A.2d 515, 516 (Pa. Cmwlth. 2010). Additionally, th[e trial c]ourt did not agree with the interpretation that a request for *any* list requires production of all lists and all related information. Th[e trial c]ourt also notes that [Requester] has not presented a claim that anything is stopping him from submitting additional requests to seek access to the information not disclosed due to the wording of the [R]equest at issue. Therefore, th[e trial c]ourt agreed with the OOR in its [Final D]etermination that the scope of [Requester’s] [R]equest was less than [he] asserted on appeal.

Trial Ct. Op. at 4. This Court discerns no error in the OOR’s or the trial court’s reasoning. Accordingly, this Court holds that because the Sherriff’s Office produced the records requested, the OOR properly dismissed Requester’s appeal as moot.

Requester next argues that the trial court erred by refusing to find bad faith and denying Requester’s request for attorney’s fees. Specifically, Requester contends that the Sheriff’s Office acted in bad faith, first, by failing to conduct an adequate search before denying the Request, and, second, by submitting a materially false affidavit to the OOR. The City rejoins that the trial court acted well within its discretion in denying Requester’s request for bad faith attorney’s fees. The City asserts that the decision of whether or not to award attorney’s fees under Section 1304 of the RTKL, 65 P.S. § 67.1304, is committed to the trial court’s discretion and a reviewing court must uphold it unless it is manifestly unreasonable or arbitrary. The City maintains that the Sheriff’s Office timely responded to the initial Request under Section 902 of the RTKL, 65 P.S. § 67.902, and complied with all OOR deadlines. The City further maintains that the Sheriff’s Office promptly and candidly acknowledged its initial oversight and produced the requested list shortly after it became clear that the Sheriff’s Office could retrieve the list from Bid4Assets’ possession. The City insists that the Sheriff’s Office produced the record in full, without redactions or asserted exemptions.

Section 1304(a) of the RTKL provides:

Reversal of agency determination.--If a court reverses the final determination of the appeals officer or grants access to a record after a request for access was deemed denied, the court may award reasonable attorney fees and costs of litigation or an appropriate portion thereof to a requester if the court finds either of the following:

(1) the agency receiving the original request willfully or with wanton disregard deprived the requester of access to a public record subject to access or otherwise **acted in bad faith** under the provisions of th[e RTKL]; or

(2) the exemptions, exclusions or defenses asserted by the agency in its final determination were not based on a reasonable interpretation of law.

65 P.S. § 67.1304(a) (text emphasis added). “Section 1304(a)(1) [of the RTKL] ‘permit[s] recovery of attorney fees when the receiving agency determination is reversed, and it deprived a requester of access to records in bad faith.’ [*Uniontown Newspapers, Inc. v. Pa. Dep’t of Corr.*, 197 A.3d 825, 835 (Pa. Cmwlth. 2018) (Simpson, J., single-judge op.) (*Uniontown Newspapers I*)].” *Uniontown Newspapers, Inc. v. Pa. Dep’t of Corr.*, 243 A.3d 19, 34 (Pa. 2020) (*Uniontown Newspapers II*).⁴

Here, this Court has not reversed the Final Determination nor granted Requester access to any additional records. To the contrary, and as explained *supra*, this Court agrees with the City that the records produced satisfied the Request as written. Accordingly, this Court has no basis on which to award Requester reasonable attorney’s fees.

⁴ *Uniontown Newspapers II* affirmed *Uniontown Newspapers I*.

For all of the above reasons, the trial court's order is affirmed.

ANNE E. COVEY, Judge

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O R D E R

AND NOW, this 3rd day of September, 2026, the Philadelphia County Common Pleas Court's January 17, 2025 order (entered January 21, 2025) is affirmed.

ANNE E. COVEY, Judge