IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Docket No. 914 CD 2021

IN RE: APPEAL OF SAMANTHA MELAMED

BRIEF FOR APPELLEE PHILADELPHIA POLICE DEPARTMENT

Appeal from the July 23, 2021 Order of the Court of Common Pleas, the Honorable Joshua Roberts, at December Term, 2020 Docket No. 01744.

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COUNTERSTATEMENT OF JURISDICTION

The Office of Open Records (the "OOR") issued a Final Determination concerning a Right-to-Know Law request made to the Philadelphia Police Department. Appellant Samantha Melamed challenges a final order by the Court of Common Pleas affirming the OOR's Final Determination. This Court has jurisdiction over this matter pursuant 42 Pa. C.S. § 762(a)(4), and Pa. R.A.P. 341(a).

COUNTERSTATEMENT OF SCOPE AND STANDARD OF REVIEW

This case arises from a request made under the Pennsylvania Right-to-Know Law (the "RTKL"). The burden is on the responding agency to prove an exemption to the RTKL applies by a preponderance of the evidence. *Office of Governor v. Scolforo*, 65 A.3d 1095, 1101 (Pa. Cmwlth. 2013). Exemptions are to be narrowly construed. *Id.* at 1100.

When the issue is solely an assertion of legal error or a constitutional violation, this Court reviews the agency's RTKL decision *de novo*. *Bowling v. Office of Open Records*, 75 A.3d 453, 467-68, 474 (Pa. 2013). Moreover, when reviewing an OOR Final Determination, this Court is not limited to the rationale offered in the OOR's written decision. *Id.* at 460.

COUNTERSTATEMENT OF THE QUESTION PRESENTED

1. Did the Court of Common Pleas properly conclude that the Philadelphia Police Department's initial decision to discharge an officer does not become its "final action" of discharge—thus triggering disclosure requirements under the Right-to-Know Law—until after conclusion of the mandatory grievance arbitration process?

Suggested answer: Yes.

COUNTERSTATEMENT OF THE CASE

This case is an appeal from the Court of Common Pleas' denial of Appellant Samantha Melamed's appeal from the Final Determination of the Pennsylvania Office of Open Records (the "OOR"), dated December 4, 2020. The OOR's Final Determination denied Ms. Melamed's Right-to-Know Law request to the Philadelphia Police Department ("PPD") for the names and ranks of police officers discharged in 2020. The instant appeal centers on one narrow legal question: when a police officer's discharge becomes a "final action" such that PPD is obligated to disclose records of it under Section 708(b)(7)(viii) of the Right-to-Know Law.

A. Proceedings before the OOR.

On July 6, 2020, Appellant Samantha Melamed submitted a request to the PPD pursuant to Pennsylvania's Right-to-Know Law, 65 P.S. § 67.101 *et seq.* (the "RTKL") seeking: "[a]ny record that reflects police personnel dismissed in 2020, including name and rank and effective date of dismissal" (the "Request"). Reproduced Record ("R.R.") 001A.

Due to pandemic-related delays, PPD was not able to respond to her Request within five days, and as such, the Request was deemed denied under application of law. *See* R.R. 005a; *see also* 65 P.S. § 67.901. Ms. Melamed appealed PPD's constructive denial to the OOR. *Id.*

In conjunction with the appeal before OOR, PPD submitted affidavits from Lt. Barry Jacobs (PPD's Open Records Officer) as well as Ms. Rebecca Hartz (Deputy Director of Mayor's Office of Labor Relations). R.R. 017-20a. Lt. Jacobs explained that because all officers initially discharged had not yet completed the grievance arbitration process, no discharges had yet become "final actions." As such, Lt. Jacobs determined this information was still exempt from disclosure under the RTKL. R.R. 017a.

Similarly, Ms. Hart described the grievance arbitration process that follows when officers contest disciplinary action. She explained that if an arbitrator sustains an officer's grievance, it may require PPD to "expunge the notices of discipline—both the notices of the intended discipline and the notice of the final disciplinary action—from that employee's personnel file." R.R. 019-20a.

On December 4, 2020, the OOR issued its Final Determination, concluding that PPD records related to discharges still in the grievance process did not qualify as "final actions" of discharge subject to disclosure under Section 708(b)(7)(viii) of the statute. R.R. 026-33a.[1]

[1] The OOR did require the PPD to provide a list of officer discharges that became "final" in 2020 after completion of an officer's grievance arbitration process, even if the initial discharge in those cases had occurred prior to 2020. R.R. 031-32a. The PPD subsequently provided Ms. Melamed with this information. *See* R.R. 124a, 127a.

B. Appeals to the Court of Common Pleas and Commonwealth Court.

On December 29, 2020, Ms. Melamed appealed OOR's Final Determination to the Court of Common Pleas. R.R. 034a. Following briefing and oral argument, the Common Pleas affirmed the OOR's decision. *See* R.R. 128a; CCP Op. at p. 8.

Common Pleas concluded that because PPD is subject to mandatory and binding arbitration of its discharge decisions through Act 111 of 1968, its "final action" for RTKL disclosure purposes cannot take place "until the conclusion of the binding mandatory arbitration process." CCP Op. at p. 1. In other words, it concluded that "the mandatory grievance arbitration is a required and inevitable last step in the police officer discharge process." *Id.* at p. 7. Ms. Melamed timely appealed Common Pleas' Order to this Court.

SUMMARY OF ARGUMENT

The plain language of the of RTKL requires an agency to disclose discharge information in an employee's personnel file only when that information reflects the agency's "final action." When applied to the Philadelphia Police Department, both the OOR and Common Pleas correctly determined that because the PPD must participate in mandatory grievance arbitration, its initial decision to discharge an officer does not become its "final action" under the RTKL until an arbitrator reviews and upholds that discharge.

Ms. Melamed's interpretation of the RTKL would require PPD to prematurely disclose nonfinal discharge determinations to the public. In so doing, she bypasses the grievance arbitration procedure, and asks this Court ignore its own definition of "final action" in the RTKL context as the last step *in a process*. Her interpretation also conflicts with the explicit wording of the statute that information need only be disclosed when it reflects the final action of an agency that "results in" discharge. As a matter of common sense, the PPD cannot know whether its decision "results in" officer discharge until after an arbitrator upholds PPD's initial discharge determination.

Finally, although the one purpose of the RTKL is to increase public transparency, it is not the only relevant consideration, as Ms. Melamed suggests. The RTKL recognizes that the public's interest in disclosure must be weighed against other considerations, including employee privacy interests. As such, and even if this Court were to look beyond the statute's plain language, the PPD's approach to disclosing this information only until after conclusion of grievance arbitration strikes an appropriate balance between public transparency and officers' privacy interests in nonfinal information contained in their personnel files.

ARGUMENT

A. The records sought are exempt from disclosure because the PPD's decision to discharge an officer does not become final until after the discharge is upheld through the grievance arbitration process.

As the Court of Common Pleas correctly held, the records Ms. Melamed sought are exempt from disclosure under the RTKL, because under the plain terms and meaning of the statute, a discharge is not "final" until the grievance arbitration process is complete.

This case turns solely on a matter of statutory interpretation. "The object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly. The starting point in any statutory analysis is its "plain language" as that "generally provides the best indication of legislative intent." *Bd. of Revision of Taxes, City of Phila. v. City of Phila.*, 4 A.3d 610, 622 (Pa. 2010).

Section 708(b) of the statute exempts from disclosure "[i]nformation regarding discipline, demotion or discharge contained in a personnel file," but it contains an exception requiring disclosure of "the final action of an agency that results in demotion or discharge." *See* 65 P.S. § 67.708(b)(7)(viii). The inquiry here turns on whether an officer's discharge is considered "final action" when PPD initially makes its decision to discharge an officer (as Ms. Melamed argues), or, as Common Pleas correctly determined, when the discharge decision is ultimately upheld through the grievance arbitration process.

Where this Court has interpreted the term "final action" to mean the last stage in a process, Ms. Melamed's argument that initial discharge papers are subject to disclosure fails because mandatory grievance arbitration, *not* the PPD's initial decision, is the last stage of the process. Further, Ms. Melamed's interpretation cannot be correct because it renders explicit statutory text superfluous.

1. Through the statute's plain meaning, the PPD's "final action" does not occur until the end of the grievance arbitration process.

While the RTKL does not define "final action," this Court filled that gap in *Silver v. Borough of Wilkinsburg*, where it construed the common and approved meaning of "final" in this context as "forming or occurring at the end . . . or constituting the last element in a series, process or procedure[;]" and "action" as 'the process of acting or doing . . . [a]n act or deed." 58 A.3d 125, 128 (Pa. Cmwlth. 2012) (internal quotations and citation omitted).[2]

Thus, analyzing the plain language of the RTKL alongside this Court's common usage definition of "final" as "the last element" in a "process," Common Pleas properly observed that PPD's decision to discharge an officer is, in fact, *a*

[2] "When the words and phrases of a statute are not defined by the statute, Section 1903(a) of the Statutory Construction Act provides that [a court] shall construe the words and phrases 'according to rules of grammar and according to their common and approved usage . . . ." *Office of Gen. Counsel v. Bumstead*, 247 A.3d 71, 79 (Pa. Cmwlth. 2021) (quoting 1 Pa. C.S. § 1903(a)).

process. And, where mandatory grievance arbitration is the "inevitable last step in the police officer discharge process," there is no "final action" within the meaning of the statute until that arbitration process concludes. CCP Op. at p. 7.

This was the only logical conclusion because discharge is not a unilateral decision that PPD can make. Rather, Act 111 mandates, as a term of a police officer's employment, collective bargaining and grievance processes to review discharge and discipline.[3] Through this process, an arbitrator can undo PPD's initial decision to discharge and award reinstatement. Indeed, when an arbitrator overturns a disciplinary charge, the arbitrator also has the power to direct that all information regarding the discipline be expunged from an officer's personnel file. It could hardly be said that PPD's initial decision is its "final action" where at the end of an appellate process, the arbitrator can erase evidence of it entirely.[4] Because reinstatement is

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[3] As Common Pleas explained, Act 111 of 1968, 43 P.S. § 271.1 *et seq.*, "creates, *as a term of employment* for police officers and fire fighters, a binding grievance arbitration procedure for disciplinary matters." CCP Op. at p. 5, n. 3 (emphasis added) (citing *Upper Gwynned Twp. v. Upper Gwynedd Twp. Police Ass'n*, 777 A.2d 1187, 1190 (Pa. Cmwlth. 2001)).

[4] The record contains two such examples of officers dismissed by PPD and later reinstated pursuant to binding arbitration. R.R. 125a. Officer Christian Fenico was initially discharged on August 15, 2019, and then reinstated as a PPD officer on March 22, 2021. *Id.* Additionally, in the case of Officer Javier Montanez, the arbitrator ruled that the City did not have just cause to discharge him and ordered the City to delete all references to his discharge in his personnel file. *Id.* Both officers are currently on the force; therefore, their initial dismissal notice records were clearly not "final actions."

possible, Common Pleas correctly concluded that PPD's action cannot be its "final action" for purposes of disclosure under the RTKL. *Id.* at p. 6.

Common Pleas did not formulate this analysis in a vacuum. Rather, its decision is in line with the reasoning employed by the OOR in two other cases considering this issue. In both *Nolen* and *Hofius*, the OOR confirmed that where an employee's notice of discharge is subject to further review under the grievance arbitration process, the notice itself is not yet the agency's "final action" of discharge. *See Nolen v. Phila. Police Dep't*, No. AP 2017-1039, 2017 WL 3124453, at *1 (Pa. Off. Open Rec. July 19, 2017); *Hofius v. Old Forge Sch. Dist.*, No. AP 2017-2319, 2018 WL 852246, at *2 (Pa. Off. Open Rec. Feb. 9, 2018) (concluding that a termination letter, later rescinded, did not reflect a "final action").[5]

Further, and although cited as "instructive" by Ms. Melamed, this Court's analysis in *Highlands* actually supports the conclusion that until completion of the

[5] *See also, e.g.*, *Black v. Pa. State Police*, No. AP 2016-0203, 2016 WL 1407811, at *3 (Pa. Off. Open Rec. April 7, 2016) (finding a request for discharge information moot where Pennsylvania state police provided the officer's final arbitration award, concluding that the award constituted "final action" of the police department). While these OOR decisions are not binding on this Court, they are nevertheless "entitled to great weight and should not be disregarded or overturned except for cogent reasons[.]" *Spicer v. Com. Dep't of Pub. Welfare*, 428 A.2d 1008, 1009 (Pa. Cmlwth. 1981) (quotation omitted); *see also, e.g.*, 1 Pa. C.S.A. § 1921(c)(8) ("When the words of a statute are not explicit, the intention of the General Assembly may be ascertained by considering, among other things . . . (8) Legislative and *administrative* interpretations of such statute." (emphasis added)).

appellate or other administrative processes challenging that discharge, there can be no "final action" of an agency that triggers the RTKL disclosure requirements. *See* Melamed Br. at p. 11 (citing *Highlands Sch. Dist. v. Rittmeyer*, 243 A.3d 755 (Pa. Cmwlth. 2020)). *Highlands* examined the same RTKL exemption at issue here, but in the public school context. It concluded that a school district did not need to disclose the names of two employees placed on unpaid leave and pending discharge before conclusion of the disciplinary process in place—which, pursuant to the School Code, included a full hearing before the school board. *Id.* at 763-64 ("[S]hould the disciplinary process in this matter ultimately result in the demotion or discharge of the employees at issue, then records relating to that discipline will no longer be exempt from disclosure under the RTKL.") In other words, this Court recognized that there could be no "final action" of the school district until those employees exercised their due process right to challenge that initial decision. *See id.* at 758, 764. The same reasoning should apply equally to police officers pursuing grievance arbitration.[6] *Highlands* also acknowledged, as the PPD does in this case,

[6] Ms. Melamed also cites *Silver v. Borough of Wilkinsburg* to distinguish the fact that she does not seek information regarding an officer's prior discipline (which is squarely exempt under the RTKL) but seeks "***only*** records that reflect 'police personnel dismissed in 2020' . . . ." Melamed Br. at p. 12 (emphasis original) (citing *Silver v. Borough of Wilkinsburg*, 58 A.3d 125 (Pa. Cmwlth. 2012)). In *Silver*, this Court held that a borough properly redacted disciplinary information from an employee termination letter in response to an RTKL request, finding that although the termination letter was the "record" reflecting the borough's "final action" of discharge, the prior disciplinary information contained in the letter was

that the requested information need not "remain confidential in perpetuity"—it is subject to disclosure under the RTKL only when the discharge is affirmed after completion of the disciplinary process. *Id.* at 764.

Relatedly, even if this Court were to find the RTKL ambiguous (it is not), the PPD's interpretation is consistent with other provisions of the RTKL that evince the General Assembly's intent to shield records that are not considered final and subject to further deliberation or decision-making. [7]

In contrast, Ms. Melamed argues that the PPD's decision to discharge an officer is the agency's "final action" regardless of whether the discharge is subject to further review under the grievance or other administrative process. The Court of Common Pleas properly rejected this approach as "too narrow." CCP Op. at p. 5. Again, Ms. Melamed's reasoning that the agency process is completely separate

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still exempt under Section 708(b)(7)(viii). *Id.* at 129. Ms. Melamed's discussion of *Silver* misses the point because *Silver* only addresses *what* information needs to be disclosed, *i.e.* final discharge information, but not prior discipline. *Silver* does not discuss the sole issue in this case, which is *when* final discharge information (not disciplinary information) needs to be disclosed, *i.e.* before or after completion of the agency's disciplinary process.

[7] *See* 1 Pa. C.S. § 1921(c)(5) (if statutory language is ambiguous, intent can be ascertained through consideration of "other statutes upon the same or similar subjects"); *see, e.g.*, 65 P.S. § 67.708(b)(9) (exempting draft records); *id.* at § 67.708(b)(10)(i)(A) (exempting predecisional records); *id* at § 67.708(b)(12) (exempting notes and working papers); *cf.* 65 P.S. § 67.708(b)(14) (exempting various unpublished educational works); *cf.* 65 P.S. § 67.708(b)(21)(i) (exempting draft meeting minutes).

from subsequent appeal or grievance process simply ignores the fact that required collective bargaining under Act 111 renders these processes one and the same.[8]

Ignoring Act 111's clear import, Ms. Melamed resorts to contextual argument by pointing out that a separate subsection in Section 708(b) exempts certain arbitration materials arising from the collective bargaining process from disclosure. *See* 65 P.S. § 708(b)(8)(ii).[9] In doing so, she suggests that the General Assembly's decision to create this separate exemption evinces its intent to separate the agency's initial discharge decision with the grievance arbitration process. Melamed Br. at p. 14.

However, Ms. Melamed draws the wrong lesson from the RTKL's decision to address arbitration records separately. On its face, the exemption in 708(b)(8)(ii) simply limits the specific type of materials that must be produced from arbitration proceedings. It requires the production of only the award, but does not require

[8] On this point, Ms. Melamed incorrectly asserts that PPD is using its Collective Bargaining Agreement ("CBA") with the FOP to evade the requirements of the RTKL. *See* Melamed Br. at pp. 16-17. Nothing in the CBA "contracts away" requirements under the RTKL or otherwise prevents records of final actions of demotion or discharge from being disclosed.

[9] Section 708(b)(8)(ii) provides that "in the case of the arbitration of a dispute or grievance under a collective bargaining agreement, an exhibit entered into evidence at an arbitration proceeding, a transcript of the arbitration or the opinion" is exempt from disclosure. 65 P.S. § 67.708(b)(8)(ii). This exemption has its own exception, requiring disclosure of "the final award or order of the arbitrator in a dispute or grievance procedure." *Id.*

production of other materials underlying the award, *i.e.* exhibits, transcripts, and the arbitrator's detailed written opinion. That limited aim—determining what arbitration materials should be disclosed—does not in any way suggest legislative intent to draw a line between the "agency" and "grievance" processes for determining what is a "final action" resulting in discharge. Further, this separation makes sense given that the exempted arbitration opinions, exhibits, and transcripts usually contain far more information than just the "final action" of discharge set forth in Section 708(b)(7)(viii). As such, the mere existence of these separate statutory exemptions does not support Ms. Melamed's broad extrapolation of legislative intent.

In sum, the plain meaning of "final action" in the employee discipline exemption encompasses the last stage in a process. Given the impact of Act 111, PPD's initial discharge information does not become final and disclosable until an arbitrator reviews and upholds that determination.

2. Ms. Melamed's interpretation is invalid because it disregards explicit statutory language.

Even more fundamentally, Ms. Melamed's interpretation cannot be correct when she ignores the statute's use of the phrase "that results in" discharge.

Again, the enumerated exception to the exempted discipline, demotion, and discharge information states: "This subparagraph shall not apply to the final action of an agency ***that results in*** demotion or discharge." 65 P.S. § 708(b)(7)(viii) (emphasis added). Ms. Melamed's position—that PPD must disclose information as

soon as it makes its initial discharge determination, notwithstanding the possibility of reinstatement—renders the General Assembly's explicit use of the phrase "***that results in***" meaningless. *Bd. of Revision of Taxes, City of Phila. v. City of Phila.*, 4 A.3d 610, 622 (Pa. 2010) (one should not construe a statute that renders any plain words of the statute superfluous).

If Ms. Melamed's interpretation were correct (which it is not), the General Assembly could have simply phrased the exception to read "[t]his paragraph shall not apply to the final action of the agency of demotion or discharge." It did not. Rather, the phrase "that results in" is an explicit qualifier evidencing the General Assembly's awareness that "information regarding discipline, demotion, or discharge" in a personnel file may not reflect ultimate employment status, and accommodates the reality that terminating a public sector employee is often a multi-stage process sometimes involving the decisions of third parties. 65 P.S. § 708(b)(7)(viii). Put simply, PPD cannot know whether its initial decision will "result in" a discharge until after the conclusion of the grievance arbitration process. Thus, requiring PPD to prematurely disclose this information (before they know the ultimate result) would render the statutory "that results in" phrase pointless.

Accordingly, and for all of the reasons set forth above, the plain language of the RTKL supports the conclusion that a police officer's discharge should not be

considered PPD's "final action" for purposes of the RTKL until after conclusion of the grievance arbitration process, and this Court should affirm on that basis alone.

B. Even if the RTKL's plain language were ambiguous, PPD's approach to releasing discharge information until conclusion of the grievance arbitration process properly balances privacy interests with public's interest in fulsome disclosure.

For the reasons discussed above, the statutory language here is plain and unambiguous. The "final action" in the disciplinary process is the conclusion of the mandatory grievance arbitration. On this point, Ms. Melamed asserts that the initial discharge decision *should* be disclosed because doing so supports the RTKL's goal of increasing government transparency. *See Bowling v. Office of Open Records*, 75 A.3d 453, 466 (Pa. 2013) (citing 1 Pa. C.S.A. § 1921(c)(6)) ("When words of a statute are not explicit, but ambiguous, a reviewing court looks to other principles of statutory construction, among them: the occasion and necessity for the statute . . . the mischief to be remedied; the object to be attained; [and] the consequences of a particular interpretation[.]").

However, the question before the Court is not what the RTKL *should* do. Rather, the question is what the General Assembly intended for it to do. And, for the reasons set forth above, it is clear that by using the term "final action," the General Assembly sought to limit disclosure to actions that are truly final. In any event, Ms. Melamed's argument that the records should be disclosed in the interest

of transparency overlooks the countervailing employee privacy concerns that the RTKL seeks to balance. *See* Melamed Br. at 19.

To be clear: the PPD does not dispute that the public has an interest in eventually obtaining this information. However, the public's interest in transparency should also be weighed against the privacy interests in non-final discharge information contained in an officer's personnel file. The thirty (30) enumerated exemptions set forth in 708(b)—including shielding non-final discharge information—make clear that the General Assembly did not intend to elevate public transparency over all other considerations. *See* 65 P.S. § 67.708(b). Rather, these exemptions evince "legislative intent to shield numerous categories and subcategories of documents from disclosure in order to protect, *inter alia*, the Commonwealth's security interests and individuals' privacy rights." *Levy v. Senate of Pa.*, 65 A.3d 361, 382 (Pa. 2013); *cf. Bangor Area Educ. Ass'n v. Angle*, 720 A.2d 198, 201 (Pa. Cmwlth. 1998) (recognizing public school teachers' right to privacy right to information in their personnel files). Given these privacy and reputational implications (an issue that often litigated by the FOP),[10] simply waiting until the end of the grievance arbitration process to disclose this information protects the non-

[10] *See generally, e.g.*, *Fraternal Order of Police Lodge No. 5 by McNesby v. City of Phila.*, 267 A.3d 531 (Pa. Cmwlth. 2021); *Lutz v. City of Phila.*, 6 A.3d 669 (Pa. Cmwlth. 2010).

final discharge information in an officer's personnel file, as the plain language of the RTKL intended.

Finally, and to address a related matter, Ms. Melamed devotes part of her brief to discussing how other jurisdictions approach public disclosure under their open records laws, suggesting that in comparison, PPD does not do enough to maximize transparency. *See* Melamed Br. at pp. 20, 23. As an initial matter, she provides no indication whether the relevant open records laws in those jurisdictions contain similar phrasing that limits the required disclosures to "final actions resulting in discharge." In any event, PPD *does* make efforts to release more information than what is required under the RTKL by voluntarily publishing final arbitration opinions after conclusion of the grievance arbitration process. R.R. 124a; *see* 65 Pa. C.S. § 67.708(b)(8)(ii) (exempting arbitration opinions from disclosure). Although PPD's voluntary disclosure of these opinions is not relevant to the sole issue in this case (interpretation of the RTKL), publishing these opinions nevertheless demonstrates PPD's commitment to transparency.

The published arbitration opinions typically include: a factual background, an evaluation of the arguments made by each party, disciplinary information, information pertaining to internal affairs' investigation, an opinion of the arbitrator

(which includes analysis and reasoning), and the award itself.[11] R.R. 124-25a. Accordingly, the name, rank, and date of initial discharge for officers—which is all of the information that Ms. Melamed seeks—is publicly available once the relevant grievance process concludes, *plus* additional information and context.[12]

Providing these opinions *in toto* serves the interests of both the public *and* the subject police officers. First, it serves the public's interest by providing significantly more information and context than just a bare index of names and dates. With respect to the police officers' interests, publishing the full arbitration opinions—whether their discharges are ultimately upheld or not—provides context, parties' positions, and reasoning that would otherwise not exist if the PPD prematurely released the officer's name and date of initial discharge to reporters and allowing them to draw their own conclusions.

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[11] The posted opinions are available at https://www.phila.gov/departments/department-of-labor/grievance-arbitration-decisions/.
The City began posting the arbitration opinions in 2019. The opinions are redacted to prevent from disclosure certain personal identifying information that is exempt from disclosure under the RTKL. *See* R.R. 124-25a.

[12] Further still, because the posted arbitration materials include even those that *did not* result in discharge (*i.e.* where the officers were reinstated), this fact diminishes Ms. Melamed's concern that "an unelected, non-governmental arbitrator" is the sole gatekeeper of all discharge and disciplinary information. *See* Melamed Br. at p. 22.

Accordingly, PPD's current approach to disclosure comports with the plain language of the RTKL, but also strikes an appropriate balance between the competing considerations between an officer's privacy and the public's interest in this information.

CONCLUSION

For the foregoing reasons, Appellee, Philadelphia Police Department, respectfully requests that this Court affirm the Court of Common Pleas' order.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Pennsylvania Rule of Appellate Procedure 2135 because this brief contains 4,470 words, excluding the Supplementary Matter exempted by Pa. R. App. P. 2135(b).

/s/ Meghan Byrnes

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Date: March 16, 2022

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing **Brief for Appellee Philadelphia Police Department** upon the persons and in the manner indicated below, which satisfies the requirements of Pa. R.A.P. 121:

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