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TIMOTHY CWIEK,

Appellant,

vs.

CITY OF PHILADELPHIA,

Appellee.

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:  
: PHILADELPHIA COUNTY  
: COURT OF COMMON PLEAS  
:  
: TRIAL DIVISION – CIVIL  
:  
: April Term, 2007  
:  
: No. 0156  
:  
:

**STIPULATED ORDER**

WHEREAS, on December 19, 2006, Timothy Cwiek (“Cwiek”), a reporter for the *Philadelphia Gay News*, as part of his newsgathering and reporting on the death of Nizah Morris, requested from the City of Philadelphia’s Police Department (hereinafter, the “Police Department”) complete copies of the 911 tapes relating to incidents involving Nizah Morris on December 22, 2002, including communications that had not been publicly released previously; and

WHEREAS, the Police Department has made certain statements, as memorialized in the affirmations attached hereto as Exhibits A and B respectively, including that the Police Department’s investigative file concerning Nizah Morris’s death (hereinafter the “Investigative File”) is missing; and

WHEREAS, the City of Philadelphia (hereinafter the “City”) is committed to fulfilling the Mayor’s pledge of transparency in the investigation into Nizah Morris’s death; and

WHEREAS, the City hereby represents that it and the Police Department have (1) used their best efforts to reconstitute the Investigative File, including, but not limited to, requesting all materials relevant to the investigation into Nizah Morris’s death from the Philadelphia District Attorney’s Office, Lucy Rourke, the Police Department’s Internal Affairs Unit, the Philadelphia

Police Advisory Commission, the Medical Examiner, and the City's files relating to *Wilkins v. City of Philadelphia*, No. 2:03-cv-05209-ER (E. D. Pa ) (hereinafter, the "Civil Case Files"); (2); received assurances from all the aforementioned individuals and entities that such materials have been provided; and (3) placed all such materials received into the Investigative File.

The City and Cwiek hereby stipulate and agree as follows:

1. The City will provide Cwiek and Masco Communications, Inc , owner of the *Philadelphia Gay News* (hereinafter, "PGN"), with full and complete access to the Investigative File. Cwiek and PGN shall be permitted to inspect and duplicate any and all records in the Investigative File during regular business hours. Notwithstanding the foregoing, Cwiek and PGN shall not have access to any records from the Civil Case Files covered by the City's attorney-client privilege, medical records protected by law (unless the City is presented with a valid written waiver authorizing release of medical records to Cwiek or PGN), or individuals' disciplinary and personnel records that were compiled for the Civil Case Files but that do not relate in any way to the death of Nizah Morris or the investigation thereof.

2 Upon written request from either Cwiek or PGN or upon written inquiry from Cwiek or PGN into whether additional materials have been placed in the Investigation File, the City will provide Cwiek and PGN with reasonably prompt access to the Investigation File pursuant to the terms of Paragraph 1.

3. If at any time the City Solicitor's Office learns that a record not previously produced hereunder has been found, it shall notify Cwiek and PGN's undersigned counsel, and Cwiek and PGN shall have access to that record pursuant to the terms of Paragraph 1.

4. Counsel for Cwiek and PGN may inquire with the City concerning its compliance with Paragraph 3; however, if counsel for Cwiek and PGN does not make such an inquiry, Cwiek and PGN do not waive any right to enforce the terms of this Stipulated Order

5. Subject to the third sentence of Paragraph 1 above, the City will not object to the release to Cwiek or PGN of any records relating to Nizah Morris's death, or the investigation into Nizah Morris's death, by any agency of the City, or any person or entity with whom the City has contracted and that has provided materials or performed services in connection with the investigation into the death of Nizah Morris, including, but not limited to, those entities and people referenced elsewhere in this Stipulated Order.

6. The above-captioned action is hereby voluntarily discontinued without prejudice. The Honorable Jane Cutler Greenspan shall retain jurisdiction to resolve any disputes arising under this Stipulated Order.

Dated: May 7, 2008

Respectfully submitted,

LEVINE SULLIVAN KOCH &  
SCHULZ, L.L.P.

CITY OF PHILADELPHIA  
LAW DEPARTMENT

By: 

Gayle C. Sproul  
gsproul@lskslaw.com  
Identification No. 38833  
Michael Berry  
mberry@lskslaw.com  
Identification No. 86351  
2112 Walnut Street, Third Floor  
Philadelphia, Pennsylvania 19103  
Telephone No.: (215) 988-9778

By: 

James P. Leonard, Esquire  
James.Leonard@phila.gov  
Identification No. 84170  
1515 Arch Street – 17th Floor  
Philadelphia, PA 19102  
Telephone No.: (215) 683-5064

*Attorneys for Appellee City of Philadelphia*


*Attorneys for Appellant Timothy Cwiek*

AND NOW, this 15 day of May 2008, it is SO ORDERED:

  
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GREENSPAN, J.

*Green*  
COPIES SENT  
PURSUANT TO Pa.R.C.P. 236(b)

MAY 15 2008

FIRST JUDICIAL DISTRICT OF PA  
USER I.D. 

# Exhibit A

TIMOTHY CWIEK,  
Appellant,

V.

THE CITY OF PHILADELPHIA,  
Appellee,

COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY  
TRIAL DIVISION

APRIL TERM, 2007  
NO. 000156

**AFFIRMATION OF THE PHILADELPHIA POLICE DEPARTMENT**

I, Lieutenant Michael Dwyer, hereby affirm:

1. I received a Right To Know request from Timothy Cwiek requesting an unredacted version of the 911 tapes relating to the Nizah Morris case.
2. I receive countless requests for investigative and non-public materials, and it would be impractical for me to review each one to determine if the requested records exists.
3. Having no reason to doubt Mr. Cwiek's assertion, but because there is State Supreme Court case law establishing 911 tapes are not public records, I denied his request.

Date: January 14, 2008

*Lt Dwyer #102*  
**Lieutenant Michael Dwyer**

## **Exhibit B**

TIMOTHY CWIEK,  
Appellant,

V.

THE CITY OF PHILADELPHIA,  
Appellee,

: COURT OF COMMON PLEAS  
: PHILADELPHIA COUNTY  
: TRIAL DIVISION  
:  
:  
: APRIL TERM, 2007  
: NO. 000156  
:

AFFIRMATION OF THE PHILADELPHIA POLICE DEPARTMENT

I, Officer Capt. Michael R. Costello, hereby affirm:

1. That the Police Department has conducted a thorough search for the investigative file relating to the death of Nizah Morris.
2. As part of the search, the Department has contacted the district attorney's office, the homicide unit, the internal affairs unit, the police advisory board, and the central archives.
3. The search has been conducted for a lengthy period, stretching over many weeks.
4. We are unable to locate the file, and conclude that the file has been lost at this time.
5. The search has located only two 911 tapes relating to the death of Nizah Morris.
6. These tapes have already been released to Appellant, Timothy Cwiek.
7. The original police radio tapes for the day of Nizah Morris' death have been destroyed according to normal police procedure.
8. Except for the two tapes already provided, we conclude that no additional 911 recordings exist relating to that case.
9. We conclude that we are unable to locate any additional responsive records to Mr. Cwiek's request, beyond what he has already been provided.

Date: January 10, 2008

Capt. Michael R. Costello # 28  
Commanding Officer