



DISTRICT ATTORNEY'S OFFICE OF CHESTER COUNTY
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IN THE MATTER OF	:	DISTRICT ATTORNEY'S OFFICE
	:	
SHAWN DORWARD,	:	CHESTER COUNTY, PENNSYLVANIA
Requester	:	
	:	RIGHT TO KNOW APPEAL
v.	:	
	:	FINAL DETERMINATION
TREDYFFRIN TOWNSHIP	:	
POLICE DEPARTMENT,	:	DA-RTKL-A NO. 2016-001
Respondent	:	

INTRODUCTION

On December 7, 2015, Shawn Dorward, Esquire ("Requester") filed a right-to-know request with the Tredyffrin Township Police Department ("Respondent"), pursuant to the Right to Know Law ("RTKL"), 65 P.S. § 67.101, *et. seq.* On December 10, 2015, the Respondent denied the request. On December 18, 2015, Requester appealed to the Office of Open Records. Shawn Dorward (Requester) v. Tredyffrin Township Police Department (Respondent), Docket No. AP 2015-2866. On January 7, 2016, Jill S. Wolfe,

Esquire, issued a final determination, which transferred the appeal to the Chester County District Attorney's Office, which received the transfer on January 12, 2016.

FACTUAL BACKGROUND

On December 7, 2015, Shawn Dorward, Esquire ("Requester") filed a right-to-know request with the Tredyffrin Township Police Department ("Respondent"), pursuant to the Right to Know Law ("RTKL"), 65 P.S. § 67.101, *et. seq.* On December 10, 2015, the Respondent denied the request. On December 18, 2015, Requester appealed to the Office of Open Records. Shawn Dorward (Requester) v. Tredyffrin Township Police Department (Respondent), Docket No. AP 2015-2866. On January 7, 2016, Jill S. Wolfe, Esquire, issued a final determination, which transferred the appeal to the Chester County District Attorney's Office, which received the transfer on January 12, 2016.

On January 12, 2016, this Appeals Officer for the Chester County District Attorney's Office gave Notice to the parties of the following:

On December 7, 2015, Shawn Dorward, Esquire ("Requester") filed a right-to-know request with the Tredyffrin Township Police Department ("Respondent"), pursuant to the Right to Know Law ("RTKL"), 65 P.S. § 67.101, *et. seq.* On December 10, 2015, the Respondent denied the request. On December 18, 2015, Requester appealed to the Office of Open Records. Shawn Dorward (Requester) v. Tredyffrin Township Police Department (Respondent), Docket No. AP 2015-2866. On January 7, 2016, Jill S. Wolfe, Esquire, issued a final determination, which transferred the appeal to the Chester County District Attorney's Office, which received the transfer on January 12, 2016.

Unless the Requester agrees otherwise, as the appeals officer, I shall make a final determination, which shall be mailed to the Requester and the Respondent, **within 30 days of January 12, 2016,**

which is February 11, 2016. 65 P.S. § 67.1101(b)(1). If a final determination is not made within 30 days, the appeal is deemed denied by operation of law. 65 P.S. § 67.1101(b)(2). Prior to issuing a final determination, a hearing may be conducted. However, a hearing is generally not needed to make a final determination. The final determination shall be a final appealable order, and shall include a written explanation of the reason for the decision. 65 P.S. § 67.1101(b)(3).

The Supreme Court of Pennsylvania has held that a Respondent is permitted to assert exemptions on appeal, even if the agency did not assert them when the request was originally denied. Levy v. Senate of Pennsylvania, 619 Pa. 586, 65 A.3d 361 (2013).

The Commonwealth Court of Pennsylvania has held that, pursuant to 65 P.S. § 67.1101(a), the appeal shall state the grounds upon which the Requester asserts that the record is a public record and shall address any grounds stated by the agency for denying the request. When a Requester fails to state the records sought are public, or fails to address an agency's grounds for denial, the appeal may be dismissed. Padgett v. Pennsylvania State Police, 73 A.3d 644 (Pa. Cmwlth. 2013); Saunders v. Department of Correction, 48 A. 3d 540 (Pa. Cmwlth. 2012); Department of Corrections v. Office of Open Records, 18 A.3d 429 (Pa. Cmwlth. 2011).

If the parties wish to file responses, they must do so on or before **January 20, 2016**. I note that I have not received anything concerning the original request, the original denial, or the appeal filed, from the OOR. Consequently, the parties at a minimum must provide me with these documents.

Any statements of fact must be supported by an Affidavit made under penalty of perjury by a person with actual knowledge. However, legal arguments and citation to authority do not require Affidavits. All parties must be served with a copy of any responses submitted to this appeal officer.

January 12, 2016 Letter of Chief Deputy District Attorney Nicholas J. Casenta, Jr.

Neither party responded to the January 12, 2016 Letter of this Appeals Officer.

Consequently, a decision on the merits cannot be issued.

LEGAL ANALYSIS

The Chester County District Attorney's Office is authorized to hear appeals relating to access to criminal investigative records in the possession of a local agency located within Chester County. 65 P.S. § 67.503(d)(2) ("The district attorney of a county shall designate one or more appeals officers to hear appeals under Chapter 11 relating to access to criminal investigative records in possession of a local agency of that county. The appeals officer designated by the district attorney shall determine if the record requested is a criminal investigative record.").

The Tredyffrin Township Police Department ("Respondent") is a local agency subject to the RTKL that is required to disclose public documents. 65 P.S. § 67.302. Records of a local agency are presumed "public" unless the record: (1) is exempt under 65 P.S. § 67.708(b); (2) is protected by privilege; or (3) is exempt from disclosure under any other Federal or State law or regulation or judicial order or decree. 65 P.S. § 67.305.

"Nothing in this act shall supersede or modify the public or nonpublic nature of a record or document established in Federal or State law, regulation or judicial order or decree." 65 P.S. § 67.306.

The Respondent bears the burden of proving, by a preponderance of the evidence, that the document requested is exempt from public access. 65 P.S. § 67.708(a)(1). A preponderance of the evidence standard is the lowest evidentiary standard. The preponderance of evidence standard is defined as the greater weight of the evidence, *i.e.*, to tip a scale slightly is the criteria or requirement for preponderance

of the evidence. Commonwealth v. Brown, 567 Pa. 272, 284, 786 A.2d 961, 968 (2001), *cert. denied*, 537 U.S. 1187, 123 S.Ct. 1351, 154 L.Ed.2d 1018 (2003). “A ‘preponderance of the evidence’ is defined as ‘the greater weight of the evidence ... evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other...’ Black’s Law Dictionary 1301 (9th ed. 2009).” Mitchell v. Office of Open Records, 997 A.2d 1262, 1264 n.3 (Pa. Cmwlth. 2010); *See also* Commonwealth v. Williams, 532 Pa. 265, 284-286, 615 A.2d 716, 726 (1992) (preponderance in essence is proof that something is more likely than not).

When a party seeks to challenge an agency’s refusal to release information by appealing that party must address any grounds stated by the agency for denying the request. Department of Corrections v. Office of Open Records, 18 A.3d 429, 434 (Pa. Cmwlth. 2011); Padgett v. Pennsylvania State Police, 73 A.3d 644, 647-648 (Pa. Cmwlth. 2013). In Department of Corrections v. Office of Open Records, 18 A.3d 429 (Pa. Cmwlth. 2011), the Commonwealth Court stated in part:

Consequently, we agree with DOC that when a party seeks to challenge an agency’s refusal to release information by appealing to Open Records, that party must “address any grounds stated by the agency for ... denying the request.” This is a typical requirement in any process that aims to provide a forum for error correction. We do not see it as a particularly onerous requirement, whether the requester has the benefit of legal counsel or is *pro se*.

DOC v. OOR at 434.

I note that I have not received anything concerning the original request, the original denial, or the appeal filed, from the OOR. The parties have not provided me with these documents.

CONCLUSION

For the foregoing reasons, the appeal is **DISMISSED**, and a decision on the merits cannot be issued, as neither party responded to the January 12, 2016 Letter of this Appeals Officer.

FINAL DETERMINATION ISSUED AND MAILED ON: February 4, 2016

APPEALS OFFICER:

Nicholas J. Casenta, Jr.

Nicholas J. Casenta, Jr., Esquire
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FINAL DETERMINATION MAILED TO:

Shawn M. Dorward, Esquire
The McShane Firm, LLC
3601 Vartan Way, 2nd Floor
Harrisburg, PA 17110

William F. Martin, Open Records Officer
Tredyffrin Township
1100 DuPortail Road
Berwyn, PA 19312

INDEX OF APPENDICES

- APPENDIX "A"** Shawn Dorward v. Tredyffrin Police Department, 2015-2866
- APPENDIX "B"** January 12, 2016 Letter of CDDA Nicholas J. Casenta, Jr., Esquire
Appeals Officer for District Attorney's Office of Chester County