



DISTRICT ATTORNEY'S OFFICE OF CHESTER COUNTY
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IN THE MATTER OF : DISTRICT ATTORNEY'S OFFICE
: JOHN PHILIPS, : CHESTER COUNTY, PENNSYLVANIA
Requester :
: RIGHT TO KNOW APPEAL
v. :
: FINAL DETERMINATION
WEST VINCENT TOWNSHIP, : DA-RTKL-A NO. 2018-005
Respondent :
:

INTRODUCTION

On February 14, 2018, Requester filed a right-to-know request with the Respondent, pursuant to the Right to Know Law ("RTKL"), 65 P.S. § 67.101, *et seq.* On March 5, 2018, the request was denied. On March 23, 2018, Requester appealed to the Office of Open Records. On May 23, 2018, the Office of Open Records transferred the appeal to the Chester County District Attorney's Office [AP 2018-0506], which was received on May 30, 2018.

FACTUAL BACKGROUND

On February 14, 2018, Requester, John Philips, filed a right-to-know request with the Respondent, West Vincent Township, pursuant to the Right to Know Law (“RTKL”), 65 P.S. § 67.101, *et. seq.*. Requester sought the following records: “Please provide a usable copy of Officer Fritz incident report & a usable copy of the dash cam video of the incident that occurred 12/12/17 at Font & Fairview Roads on East Nantmeal Twp.” On March 5, 2018, the request was denied. On March 23, 2018, Requester appealed to the Office of Open Records. On May 23, 2018, the Office of Open Records transferred the appeal to the Chester County District Attorney’s Office [AP 2018-0506], which was received on May 30, 2018.

On May 30, 2018, this Appeals Officer for the Chester County District Attorney’s Office gave Notice to the parties of the following:

On February 14, 2018, Requester filed a right-to-know request with the Respondent, pursuant to the Right to Know Law (“RTKL”), 65 P.S. § 67.101, *et. seq.*. On March 5, 2018, the request was denied. On March 23, 2018, Requester appealed to the Office of Open Records. On May 23, 2018, the Office of Open Records transferred the appeal to the Chester County District Attorney’s Office [AP 2018-0506], which was received on May 30, 2018.

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 May 30, 2018, which is June 29, 2018.** 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 Respondent should submit its response, if any, on or before June 11, 2018.

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). Merely citing exceptions to the required disclosure of public records or conclusory statements are not sufficient to justify the exemption of public records. Office of the Governor v. Scolforo, 65 A.3d 1095, 1103 (Pa. Cmwlth. 2013).

The Respondent Must Notify Third Parties: If records affect a legal or security interest of any person; contain confidential, proprietary, or trademarked records, of a person or business entity; the agency must notify such parties of this appeal immediately and provide proof of that notice. Such notice must advise that the interested person may request to participate in this appeal. *See* 65 P.S. § 67.1101(c).

The Requester should submit its response, if any, on or before June 18, 2018.

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).

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.

May 30, 2018 Letter of Chief Deputy District Attorney Nicholas J. Casenta, Jr.

On June 21, 2018, the Requester filed a Petition for Review, with the Court of Common Pleas of Chester County [2018-06380-CS], from the May 23, 2018 decision of the Office of Open Records to transfer the Right to Know appeal to the Chester County District Attorney's Office.

As the decision to transfer this appeal was under review by the Court of Common Pleas, the proceedings before this Appeals Officer were STAYED pending a decision by the Court of Common Pleas.

On January 2, 2019, the parties filed a Praecipe to Settle, Discontinue, and End the litigation in the Court of Common Plea. As the Requester and Respondent have settled this appeal in the Court of Common Pleas the appeal before this Appeals Officer is moot.

CONCLUSION

For the foregoing reasons, the appeal is **DISMISSED**, as moot and neither party is required to take any further action.

FINAL DETERMINATION ISSUED AND MAILED ON: January 7, 2019

Nicholas J. Casenta, Jr.

APPEALS OFFICER:

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FINAL DETERMINATION MAILED TO:

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