

Lauren E. Sulcove
First Assistant District Attorney
Laura J. Kerstetter
Assistant District Attorney
Gerard N. Mangieri
Assistant District Attorney
Zachary I. Mills
Assistant District Attorney
Steven T. Smith
Assistant District Attorney



Ricky W. Lewis
Assistant District Attorney
Tiffany A. Watson
Assistant District Attorney
Clark A. Stiteler
Assistant District Attorney
Timothy D. Wilmot
Assistant District Attorney

Matthew D. Fogal
157 Lincoln Way East
Chambersburg, Pennsylvania 17201
Phone: (717) 261-3827 Fax: (717) 261-3832
Telecommunication Device for the Deaf: (717) 264-8474

January 6, 2016

Alberto Torres GN-8845
SCI Smithfield
PO Box 999
1120 Pike Street
Huntingdon, PA 16652

RECEIVED

JAN 11 2016

OFFICE OF OPEN RECORDS

RE: OOR Dkt. AP 2015-2746 Transfer of Appeal

Mr. Torres:

I am the Appeals Officer appointed by the Franklin County District Attorney pursuant to the "Right-to-Know Law" (RTK). This letter is in reference to a written request you made on November 15, 2015, sent via U.S. Mail to the Chambersburg Police Department ("the Agency") on November 16, 2015, and received by the "Agency" on or about November 24, 2016. Your request was that you "would like to know the name, address, and phone number" of the crime lab to which clothing items of yours were sent for the detection of gun powder residue.

Your request was denied by the Agency on November 25, 2015, on a "Right-to-know Response Form" mailed to you on the same date. In that document you were instructed about your appeal rights, including being informed that the Franklin County District Attorney's address is the recipient of any appeal requests. You were also informed that the basis for denying your request for information is that the requested information is related to a criminal investigation, and therefore exempt pursuant to subsection (b)(16) of the RTK law. On December 7, 2015, the Pennsylvania Office of Open Records (OOR) received a letter of appeal from you, regarding a "Right to Know Law Appeal - No Response from Agency".

In response to your December 7, 2015 letter of appeal sent to the OOR Executive Director, the OOR gave notice of appeal (Docket # 2015-2746). Both parties were informed that they could submit information and legal argument through December 16, 2015. Prior to that deadline, the Agency submitted a Brief in Support of its decision to deny the request. They further submitted an "Attestation of Nonexistence of Records" which was signed by the Open Records Officer for the Borough of Chambersburg.

On December 30, 2015, the OOR issued a Final Determination that the Chambersburg Police Department is a local law enforcement agency, and as such the OOR does not have jurisdiction to hear this appeal. The OOR transferred your appeal of the Agency's denial of your request to me, the duly appointed Appeals Officer for Franklin County District Attorney's Office. I received notice of the transfer of this appeal on January 4, 2016.

After a thorough investigation of the file and affirmation from both the Franklin County District Attorney and the Chambersburg Police Department I find that no items of clothing were sent to any crime-lab for detecting gun powder residue. Accordingly, I find that it is impossible to produce records of an event that never happened. Since the requested information does not and never has existed, the issue as to whether or not it is exempted from disclosure as "criminal investigative materials" is moot.

The Chambersburg Police Department's Denial of the request is appropriate and inevitable.

Respectfully Submitted,



Timothy D. Wilmot, Esquire
Appeals Officer
Office of Franklin County District Attorney

cc:

Matthew D. Fogal, Franklin County District Attorney
Kathleen A. Higgins, Esq.
Jamia L. Wright
Jean Byers