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R. SETH WILLIAMS
District Attorney

June 29, 2016

By post (Mr. Stubbs) & electronic mail (BJ Graham-Rubin)

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Re: OOR Forward of Stubbs Appeal from the Philadelphia District Attorney's Office's Denial of Request for Criminal Investigative Files

Dear Mr. Stubbs and Ms. Graham-Rubin:

This letter constitutes the final determination of the Appeals Officer for the Philadelphia District Attorney's Office concerning Mr. Stubbs's appeal from the denial by the Philadelphia District Attorney's Office of his request for records under Pennsylvania's Right-to-Know Law, which was forwarded by the Office of Open Records. For the reasons set forth below, the appeal is dismissed.

BACKGROUND

On May 26, 2016, Mr. Stubbs (the Requestor) submitted a request to the Philadelphia District Attorney's Office (the DAO) under the Right-to-Know Law (the RTKL), 65 P.S. §§ 67.101-67.3104. Specifically, he sought:

Any and all discovery material in relations [sic] to Commonwealth vs. Stubbs Case # CP-51-CR-0012902-2011, including but not limited to arrest reports; arrest warrants; affidavit of probable cause; scientific evidence reports; all statements; and any and all other discovery material; all with limited redaction.

On June 2, 2016, the DAO sent its final response, denying the request on the ground that the Requester sought criminal investigative records. See 65 P.S. § 67.708(b)(16) (exempting from disclosure "[i]nformation assembled as a result of the performance of any inquiry, formal or informal, into a criminal incident or an allegation of criminal wrongdoing"); 18 Pa.C.S. § 9106(c)(4) ("Investigative and treatment information shall not be disseminated to any department, agency or individual unless the department, agency or individual requesting the information is a

criminal justice agency . . .”). The DAO explicitly informed the Requester that any appeal from its decision based on the criminal-investigative-records exemption must be filed with the DAO no later than fifteen business days from the date of its response. Notwithstanding those instructions, on or about June 6, 2016, the Requester filed an appeal with the Pennsylvania Office of Open Records (OOR).

On June 29, 2016, the OOR issued a final determination, determining that the Requester’s appeal related to criminal investigative records and that the OOR therefore did not have jurisdiction to hear the appeal. The same day, the OOR forwarded the appeal to the Appeals Officer for the DAO.

LEGAL ANALYSIS

The RTKL grants the DAO Appeals Officer the exclusive jurisdiction to hear and decide appeals related to criminal investigative records. 65 P.S. §§ 503(d)(2), 1101(a)(1); *see Barros v. Martin*, 92 A.3d 1243, 1246 (Pa. Commw. 2014) (explaining that where “the appeal . . . relates to access to criminal investigative records, the appeal is heard by an appeals officer designated by the District Attorney and not OOR”). Such appeals must be filed “within 15 business days of the mailing date of the agency’s response.” 65 P.S. § 67.1101(a)(1).

This forwarded appeal is untimely. The Requester was required to file his appeal with the DAO Appeals Officer by June 23, 2016. Instead, he filed his appeal with the OOR without filing a timely appeal with the DAO Appeals Officer. By the time the OOR forwarded the Requester’s incorrectly filed appeal on June 29, 2016, the time for his appeal to the DAO Appeals Officer already expired. Although the OOR attempted to do the Requester a courtesy by forwarding his appeal to the DAO Appeals Officer, it was the Requester’s responsibility to direct his appeal correctly. *See Faulk v. Philadelphia Clerk of Courts*, 116 A.3d 1183, 1186 (Pa. Commw. 2015) (rejecting claim that OOR was required to transfer improperly filed appeal to correct appeals officer because RTKL “plac[es] the initial onus for compliance on a requester . . . includ[ing] properly directing the appeal to the designated appeals officer”).

For the foregoing reasons, this appeal is dismissed. This final determination is binding on all parties. Within thirty days of the date of this letter, either party may appeal to the Philadelphia County Court of Common Pleas. 65 P.S. § 67.1302(a). All parties must be served notice of the appeal. The DAO Appeals Officer also shall be served notice and have an opportunity to respond in accordance with applicable court rules. *Id.* § 67.1303.

Sincerely,

/s/ Douglas Weck

Douglas Weck
Appeals Officer
Office of the District Attorney of Philadelphia