



**pennsylvania**  
OFFICE OF OPEN RECORDS

**DECISION IN LIEU OF FINAL DETERMINATION**

<b>IN THE MATTER OF</b>	:	
	:	
<b>CYNTHIA DIVEGLIA,</b>	:	
<b>Requester</b>	:	
	:	
<b>v.</b>	:	<b>Docket No.: AP 2016-0923</b>
	:	
<b>PENNSYLVANIA STATE POLICE,</b>	:	
<b>Respondent</b>	:	

**INTRODUCTION**

Cynthia Diveglia (“Requester”) submitted a request (“Request”) to the Pennsylvania State Police (“PSP”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking audio and video recordings associated with a particular PSP incident report. The PSP denied the Request, citing the Criminal History Record Information Act (“CHRIA”), 18 Pa.C.S. §§ 9101 *et seq.*, and stating that the records relate to a criminal investigation. The Requester appealed to the Office of Open Records (“OOR”). As the Requester declined to agree to an extension of time for the OOR to issue a final determination in this matter, the appeal was deemed denied by operation of law on July 25, 2016.

**FACTUAL BACKGROUND**

On April 7, 2016, the Request was filed, stating as follows:

Complaint incident number # H06-2342590  
Request dash cam recording-unedited, from Tpr Isaac C. White’s dash cam. The recording of the traffic stop was made by Cpl. James S. Flanagan, from MVR of

car #H6-12. The compact disc was secured in the MVR custodial locker. Please provide an exact duplicate of the recording on a compact disc.

On April 14, 2016, the PSP invoked a thirty-day extension of time to respond to the Request. *See* 65 P.S. § 67.902(b). On May 16, 2016, the PSP denied the Request, citing CHRIA and stating that the records are related to a criminal investigation, 65 P.S. § 67.708(b)(16).

On May 25, 2016, the Requester appealed to the OOR, challenging the denial and stating grounds for disclosure. The OOR invited both parties to supplement the record and directed the PSP to notify any third parties of their ability to participate in the appeal. *See* 65 P.S. § 67.1101(c).<sup>1</sup>

On July 13, 2016, the OOR sent correspondence to the parties noting that the records at issue in this matter are similar to the records at issue in numerous other appeals pending before the OOR (*Collazo v. Pa. State Police*, OOR Dkt. AP 2016-0320, *Hamill v. Pa. State Police*, OOR Dkt. AP 2016-0349, *Schillinger and the Times-Tribune v. Pa. State Police*, OOR Dkt. AP 2016-0533 and *Blanchard and the York Daily Record v. Pa. State Police*, OOR Dkt. AP 2016-0858). *See* 65 P.S. § 67.1101(b)(1). In these cases, the OOR ordered the PSP to produce the requested records for *in camera* review; however, the PSP declined to provide the records to the OOR. The requesters agreed to an extension of time so that the OOR could obtain a court order directing the PSP to produce the records for *in camera* review.

Likewise, the OOR asked the Requester to agree to an extension so that the OOR could conduct an *in camera* review of the requested audio/video recording and, if necessary, obtain a court order directing the PSP to produce the recording to the OOR for *in camera* review. On July 13, 2016, the Requester declined to grant the OOR an indefinite extension of time to issue the final determination, but offered the possibility of extending the deadline to September 2, 2016. By

---

<sup>1</sup> On her appeal form, the Requester granted the OOR an additional thirty days to issue the final determination in this matter, which was due to be issued on or before July 25, 2016.

correspondence dated the same day, the OOR explained that that the pending court actions before the Pennsylvania Supreme Court<sup>2</sup> and the Commonwealth Court<sup>3</sup> were unlikely to be resolved before September 2, 2016. As a result, the OOR again requested an indefinite extension of time to issue the final determination on this matter. On July 14, 2016, the Requester declined to grant the OOR any extension of time to issue its final determination.

### LEGAL ANALYSIS

“The objective of the Right to Know Law ... is to empower citizens by affording them access to information concerning the activities of their government.” *SWB Yankees L.L.C. v. Wintermantel*, 45 A.3d 1029, 1041 (Pa. 2012). Further, this important open-government law is “designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials and make public officials accountable for their actions.” *Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), *aff’d* 75 A.3d 453 (Pa. 2013).

The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. § 67.503(a). An appeals officer is required “to review all information filed relating to the request.” 65 P.S. § 67.1102(a)(2).

The PSP is a Commonwealth agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.301. Records in possession of a Commonwealth agency are presumed public unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. Upon receipt of a request, an agency is required to assess whether a record requested is within its possession, custody or control and respond within five business

---

<sup>2</sup> *Pa. State Police v. Michelle Grove*, 119 A.3d 1102 (Pa. Commw. Ct. 2015), *appeal granted*, 133 A.3d 282 (Pa. 2016) (“Grove I”); *Pa. State Police v. Casey Grove*, No. 1646 C.D. 2014, 2015 Pa. Commw. Unpub. LEXIS 714 (Pa. Commw. Ct. Sept. 28, 2015), *appeal pending* 801 MAL 2015 (“Grove II”).

<sup>3</sup> 370 M.D. 2016 (Pa. Commw. Ct. 2016)

days. 65 P.S. § 67.901. An agency bears the burden of proving the applicability of any cited exemptions. *See* 65 P.S. § 67.708(b).

“Under the RTKL, OOR is charged with developing an evidentiary record before its appeals officers to ensure meaningful appellate review.” *Twp. of Worcester v. Office of Open Records*, 129 A.3d 44, 57 (Pa. Commw. Ct. 2016) (citing *Pa. Dep’t of Educ. v. Bagwell*, 114 A.3d 1113 (Pa. Commw. Ct. 2015)). The RTKL mandates that the OOR issue final determinations “within 30 days of [its] receipt of the appeal” unless “the requester agrees otherwise.” *See* 65 P.S. § 67.1101(b)(1). Under the RTKL, only a requester has the power to extend the deadline for issuing final determinations, and, “[i]f the appeals officer fails to issue a final determination within 30 days, the appeal is deemed denied.” *See* 65 P.S. § 67.1101(b).

The records at issue are similar to numerous other appeals currently pending before the OOR (*Collazo*, *Hamill*, *Schillinger*, and *Blanchard*) and involve the same agency (the PSP). Because the PSP declined to provide similar records for the OOR’s *in camera* review in *Collazo*, *Hamill*, *Schillinger*, and *Blanchard*, the OOR sought an extension of time to issue the final determination in this matter from the Requester so that the OOR could order *in camera* review and, if necessary, pursue an enforcement action against the PSP related to its *in camera* order. The Requester initially declined the OOR’s request. In the interest of developing the evidentiary record before the OOR in order to “ensure meaningful appellate review” and because of the similarities between this appeal and the other appeals pending before the OOR, the OOR again asked the Requester to agree to an extension of time. After some discussion, the Requester again declined to agree to an extension.

Because the OOR has been unable to develop the evidentiary record before it, the OOR declines to issue a final determination in this matter. As a result, this appeal was deemed denied by operation of law on July 25, 2016. *See* 65 P.S. § 67.1101(b)(2).

As the OOR has not issued a final determination concerning the accessibility of the records at issue in this matter, the deemed denial of this appeal does not prejudice or otherwise affect the accessibility of the records requested here.

### CONCLUSION

The Requester's appeal was **deemed denied** by operation of law, and the PSP is not required to take any further action. Within thirty days of July 25, 2016, any party may appeal to the Commonwealth Court. 65 P.S. § 67.1301(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond as per Section 1303 of the RTKL. However, the OOR is not a proper party to any appeal and should not be named as a party.<sup>4</sup> This Decision In Lieu of Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

**ISSUED AND MAILED: July 26, 2016**

*/s/ Joshua T. Young*

---

JOSHUA T. YOUNG, ESQ.  
APPEALS OFFICER

Sent to: Cynthia Diveglia (via e-mail only);  
Nolan Meeks, Esq. (via e-mail only);  
William Rozier (via e-mail only)

---

<sup>4</sup> *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).