

2. Any traffic court warrants that have been lawfully and judicially issued for the arrest of Mr. Richard Lamont Stackhouse # FW8744 from April 2003 thru June 3, 2016 (Friday).
3. Any active or deleted detainers (Arrest Warrants, indictments) for the detainment of a Mr. Richard Lamont Stackhouse from April 2003 thru June 3, 2016 Friday.
4. Any lawfully, judicially issued sentencing orders for the detainment of a Mr. Richard Lamont Stackhouse #FW8744 from 6/29/04.

On June 14, 2016, the Department granted the Request in part as to the DC-300B Court Commitment and arrest report and stated that no other records exist.

On June 29, 2016, the Requester appealed to the OOR, challenging the denial and stating grounds for disclosure. The OOR invited the parties to supplement the record, and directed the Department to notify third parties of their ability to participate in the appeal. *See* 65 P.S. § 67.1101(c).

On July 1, 2016, the Department submitted a position statement, along with a declaration made under penalty of perjury by Andrew Filkosky, the Department's Open Records Officer. Mr. Filkosky attests that the responsive records were withheld because the Requester has an outstanding balance related to a previous RTKL request. The Requester did not submit anything to challenge the Department's affidavit.

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). An appeals officer may conduct a hearing to resolve an appeal. The decision to hold a hearing is discretionary and non-appealable. *Id.* The law also states that an appeals officer may admit into evidence testimony, evidence and documents that the appeals officer believes to be reasonably probative and relevant to an issue in dispute. *Id.* Here, neither party requested a hearing; however, the OOR has the necessary, requisite information and evidence before it to properly adjudicate the matter.

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

Section 708 of the RTKL clearly places the burden of proof on the public body to demonstrate that a record is exempt. In pertinent part, Section 708(a) states: “(1) The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence.” 65 P.S. § 67.708(a). Preponderance of the evidence has been defined as “such proof as leads the fact-finder ... to find that the existence of a contested fact is more probable than its nonexistence.” *Pa. State Troopers Ass’n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Pa. Dep’t of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

An agency may deny access to public records where a requester has failed to pay fees incurred in responding to a prior request for records. *See* 65 P.S. § 67.901; *see also* *Riches v. Chester County*, OOR Dkt. AP 2015-2636, 2015 O.O.R.D. LEXIS 2148; *Brown v. Pa. Dep't of Health*, OOR Dkt. AP 2015-0251, 2015 PA O.O.R.D. LEXIS 291; *Rohland v. Luzerne County*, OOR Dkt. AP 2014-0515, 2014 PA O.O.R.D. LEXIS 412. In his declaration, Mr. Filkosky attests that the Requester has failed to pay outstanding fees in the amount of \$2.36 for records relating to a prior RTKL request, which the Department docketed as RTKL 0643-16. Under the RTKL, a statement made under the penalty of perjury is competent evidence to sustain an agency's burden of proof. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). Based on the evidence submitted, the Department has established that the Requester owes outstanding fees to the Department; and therefore, the Department permissibly denied the Request. *See* 65 P.S. § 67.901.

CONCLUSION

For the foregoing reasons, the Requester's appeal is **denied**, and the Department is not required to take any further action. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal or petition for review 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, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.¹ This Final Determination shall be placed on the website at: <http://www.openrecords.pa.gov>.

¹ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

FINAL DETERMINATION ISSUED AND MAILED: July 28, 2016

/s/ Charles Rees Brown

Charles Rees Brown
Chief Counsel

Sent to: Richard Stackhouse (FW 8744) SCI-Benner Township;
Chase Defelice, Esq. (via e-mail only);
Andrew Filkosky (via e-mail only)