

[A]ll public records filed with [the Department] ... associated with 428 Old Street Road including, but not limited to, public and resident complaints, welfare checks, police visits, citations, [and] violations. We are seeking access to records cover the time period [from] January 1, 2008 to June 21, 2016.

On June 28, 2016, the Department denied the Request, stating that the requested records are protected by CHRIA.

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 15, 2016, the Department submitted a position statement, reiterating the argument above and further arguing that the records relate to a criminal investigation conducted by the Department, 65 P.S. § 67.708(b)(16), and contain personal identification information, 65 P.S. § 67.708(b)(6). In support of its arguments, the Department provided the sworn affidavit of Robert Hoopes, the Public Safety Director for the Lower Southampton Township. The Requester also submitted additional information on July 15, 2016. On the same day, the Department submitted a supplemental statement replying to the Requester's submission.¹

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

¹ The OOR extended the deadline for party submissions until the end of the day on July 15, 2016. *See* 65 P.S. § 67.1102(b)(3).

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” and may consider testimony, evidence and documents that are reasonably probative and relevant to the matter at issue. 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal; however, the decision to hold a hearing is discretionary and non-appealable. *Id.*; *Giurintano v. Pa. Dep’t of Gen. Servs.*, 20 A.3d 613, 617 (Pa. Commw. Ct. 2011). Here, neither of the parties requested a hearing; however, the OOR has the requisite information and evidence before it to properly adjudicate this matter.

The Department is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.302. Records in the possession of a local agency are presumed to be 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 to respond within five business days. 65 P.S. § 67.901. An agency bears the burden of proving the applicability of any cited exemption(s). *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)).

The Department alleges that the requested records are exempt under Section 708(b)(16) of the RTKL, which exempts from disclosure “[a] record of an agency relating to or resulting in a criminal investigation.” 65 P.S. § 67.708(b)(16). The Department is a local law enforcement agency. The OOR does not have jurisdiction to hear appeals related to criminal investigative records held by local law enforcement agencies. *See* 65 P.S. § 67.503(d)(2). Instead, appeals involve records alleged to be criminal investigative records held by a local law enforcement agency are to be heard by an appeals officer designated by the local district attorney. *See id.* Accordingly, the appeal is hereby transferred to the Appeals Officer for the Bucks County District Attorney’s Office. A copy of this final order and the appeal filed by the Requester will be sent to the Appeals Officer for the Bucks County District Attorney’s Office.

However, to the extent the Appeals Officer for the Bucks County District Attorney’s Office determines that any of the requested records do not relate to a criminal investigation conducted by the Department, such records must be released to the Requester because the Department has failed to submit evidence establishing that the records are otherwise exempt from disclosure under the RTKL. *See Hous. Auth. of the City of Pittsburgh v. Van Osdol*, 40 A.3d 209 (Pa. Commw. Ct. 2012) (holding that statements of counsel are not competent evidence); *City of Phila. v. Juzang*, July Term 2010, No. 2048 (Phila. Com. Pl. June 28, 2011) (“Because the letter written by City’s counsel is a legal brief, it cannot be ... evidence at all”).

CONCLUSION

For the foregoing reasons, the Requester's appeal is **transferred** to the Appeals Officer for the Bucks County District Attorney's Office and the Department is not required to take any further action at this time. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to the Bucks County Court of Common Pleas. 65 P.S. § 67.1302(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond according to court rules 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.² This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: 29 July 2016

/s/ Joshua T. Young

JOSHUA T. YOUNG, ESQ.
APPEALS OFFICER

Sent to: Jo Ciavaglia (via e-mail only);
Det./Sgt. Shane Hearn (via e-mail only);
Appeals Officer

² *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).