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AUG 19 2016

OFFICE OF OPEN RECORDS

RECEIVED & FILED  
COMMONWEALTH COURT  
OF PENNSYLVANIA  
17 AUG 2016 14 06

MAILING ADDRESS OF COURT:

Chief Clerk  
Commonwealth Court of Pennsylvania  
Pennsylvania Judicial Center  
601 Commonwealth Avenue, Suite 2100  
P.O. Box 69185  
Harrisburg, PA 17106-9185

1378 CD 3016

RE: CYNTHIA DIVEGLIA  
(Your Name - Petitioner)

v.

PENNSYLVANIA STATE POLICE  
(Name of Government Agency/Board/Office/Department)

Dear Chief Clerk:

Enclosed are the original and one copy of the petition for review I am filing as Petitioner (pro se – proceeding without a lawyer) and a certificate of service showing I have sent copies of my petition for review to (1) the government agency/board/office/department that entered the order that I am appealing, (2) the Attorney General of Pennsylvania, and (3) any other party to the proceedings conducted by the government agency/board/office/department.

Also enclosed is the required filing fee, made payable to the Commonwealth Court of Pennsylvania OR a completed and signed Application for Leave to Proceed *In Forma Pauperis* (IFP) form.

Sincerely,

Cynthia A. Diveglia, esq.  
Petitioner Pro Se (proceeding without a lawyer)

NOTE: If the Petitioner is a corporation, it may NOT proceed *pro se*. A corporation MUST be represented by an attorney in court. See *Walacavage v. Excell 2000, Inc.*, 480 A.2d 281 (Pa. Super. 1984).

NOTE: You MUST file the original and one copy of the entire Petition for Review (pages 1-4) with the Chief Clerk of the Court at the mailing address on the top of this page, AND you MUST send copies of the entire Petition for Review (pages 1-4) to all other parties as indicated on Page 4.

COMMONWEALTH COURT OF PENNSYLVANIA

CYNTHIA DIVEGLIA

(Your Name)

Petitioner

v.

PENNSYLVANIA STATE POLICE

(Name of Government Agency/Board/Office/Department)

Respondent

:  
:  
:  
: Docket No. \_\_\_\_\_ C.D. \_\_\_\_\_  
:  
: Agency/Board/Office/Department  
: Decision No. AP 2016-0923  
:  
:  
:

PETITION FOR REVIEW  
(Appellate Jurisdiction)

1. This court has appellate jurisdiction over this matter by reason of Section 763(a)(1) of the Judicial Code, 42 Pa. C.S. §763(a)(1).

2. On July 26, 2016, the Pennsylvania Office of Open Records  
(date of decision) (Name of Government Agency/Board/Office/Department)  
entered an order at Decision No. \_\_\_\_\_.

3. The order of the government agency/board/office/department should be reversed because:

(Use these lines and another piece of paper, if needed, to explain specifically why you believe the order is wrong.)

(a) The order is wrongfully issued because the OOR, requested an indefinite extension of time to respond and issue the Final Determination because access to similar records as those at issue are currently being litigated before the Supreme Court (a.g. Pa. State Police v. Michelle Grove) 119 A.3d. 1102 (Pa. Cmwlth. 2015). The requested records should and must be ruled upon as the law now stands, not delayed.

Petition for Review  
Decision No. AP 2016-0A23

Paragraph 3 (continued).

until the law could possibly change to a decision more favorable to the Pennsylvania State Police.

(b) The Decision was also wrongfully entered for the reason that an enforcement action was filed with regard to the OOR's ability to receive dash/body camera video recordings for an in camera review, when said enforcement action was not ruled upon;

(c) A time extension was offered, and refused by OOR;

(d) Additional information was requested in order to be able to make a reasonable time extension, but no additional explanation or indication of consequence was provided by OOR.

Your Petitioner reserves the right to amend and supplement this Petition for Review.

4. WHEREFORE, Petitioner prays that this Court review and set aside the order and grant relief as may be just and proper.

Cynthia A. Diveglia  
(Your signature)

Cynthia A. Diveglia  
(Your printed name)

41 Berkey Road  
(Your street address)

East Berlin, Pa 17316  
(City, State, and Zip Code)

717-476-1220  
(Your telephone number)

August 17, 2016  
(Today's date)

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**NOTICE TO PARTICIPATE (Pa. R.A.P. 1513(d))**

[This notice is for any other party to the proceedings conducted by the government agency/board/office/department who is not named as a respondent. You must send a copy of the entire Petition For Review (pages 1-4) to all such other parties.]

You have not been named as a respondent; however, you were a party before the government agency/board/office/department whose decision is sought to be reviewed.

If you intend to participate in this proceeding in the Commonwealth Court, you must serve and file a Notice of or Application for Intervention under Rule 1531 of the Pennsylvania Rules of Appellate Procedures within 30 days.

CERTIFICATE OF SERVICE

I certify that I sent by certified mail, return receipt requested, a true and correct copy of the Petition for Review (pages 1-4) to these parties:

- (1) Government Agency/Board/Office/Department (Name and address):

Joshua T. Young, Esq.  
OFFICE OF OPEN RECORDS  
COMMONWEALTH KEYSTONE BLDG.  
400 NORTH ST., PLAZA LEVEL  
HARRISBURG, PA 17120-0225

- (2) Attorney General of Pennsylvania  
16th Floor, Strawberry Square  
Harrisburg, PA 17120

- (3) Other party, if any, to the proceedings conducted by the government agency/board/office/department who is not named as a respondent (Name and address):

DEPUTY AGENCY OPEN RECORDS OFFICER  
P.S.P. BUREAU OF RECORDS & IDENTIFICATION  
RTK OFFICE, 1800 ELMERTON AVE.  
HARRISBURG, PA 17110

(Attach additional pages as needed for additional parties.)

(CONTINUED)

Cynthia A. Diveglia  
(Your signature)

Cynthia A. Diveglia  
(Your printed name)

41 Benkey Rd  
(Your street address)

East Berlin, Pa 17316  
(City, State, and Zip Code)

717-476-1220  
(Your telephone number)

AUG. 17, 2016  
(Today's date)

NOTE: You MUST file the original and one copy of the entire Petition for Review (pages 1-4) with the Chief Clerk of the Court at the mailing address on Page 1 of this form, AND you MUST send copies of the entire Petition for Review (pages 1-4) to all other parties as indicated above.

## CERTIFICATE OF SERVICE

4, WILLIAM A. ROZLER, J.D.  
P.S.P. AGENCY OPEN RECORDS OFFICER  
BUREAU OF RECORDS AND IDENTIFICATION  
RIGHT TO KNOW LAW/SUBPOENA OFFICE  
1800 ELMERTON AVENUE  
HARRISBURG, PA 17110

5, NOLAN MECKS, ESQ.  
PENNSYLVANIA STATE POLICE  
1800 ELMERTON AVENUE  
HARRISBURG, PA 17110



**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

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<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

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<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*

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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)

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



**From:** Cynthia Diveglia winterspringfarm@icloud.com  
**Subject:** Re: Diveglia v. PSP; AP 2016-0923  
**Date:** July 14, 2016 at 1:23 PM  
**To:** Young, Joshua joshyoung@pa.gov  
**Cc:** Nolan Meeks nomeeks@pa.gov, Rozier, William A wrozier@pa.gov, Cindy Diveglia winterspringfarm@icloud.com

Dear Msr. Young, Meeks, and Rozier,

I do not agree to an extension of time to issue a Final Determination on my request, based upon the information that you have provided. If you feel you can provide additional information for my reconsideration, please do.

Cindy Diveglia

On Jul 13, 2016, at 1:45 PM, Young, Joshua <joshyoung@pa.gov> wrote:

Dear Ms. Diveglia:

Thank you for your e-mail, a copy of which is included below for ease of reference by Attorney Meeks. The OOR has requested an indefinite extension of time to issue its Final Determination in this matter because access to similar records as those at issue in the above-referenced appeal is currently being litigated before the Pennsylvania Supreme Court. Additionally, an enforcement action has been filed in the Commonwealth Court with respect to the OOR's ability to receive dash/body camera video recordings for *in camera* review. We do not believe that either of these actions will be resolved prior to September 2, 2016. Therefore, please confirm whether you will agree to an extension later than September 2, 2016, or to the indefinite extension initially requested by the OOR.

As always, please be sure to copy opposing counsel on all future correspondence in this matter.

Very truly yours,

<image001.jpg> **Joshua T. Young** |Attorney  
 Office of Open Records  
 Commonwealth Keystone Building  
 400 North St., Plaza Level  
 Harrisburg, PA 17120-0225  
 (717) 346-9903 | <http://openrecords.pa.gov>  
[joshyoung@pa.gov](mailto:joshyoung@pa.gov) | @OpenRecordsPA

**Confidentiality Notice:** This electronic communication is privileged and confidential and is intended only for the party to whom it is addressed. If received in error, please return to sender.

**From:** Cynthia Diveglia [<mailto:winterspringfarm@icloud.com>]  
**Sent:** Wednesday, July 13, 2016 1:32 PM  
**To:** Young, Joshua  
**Subject:** Re: Diveglia v. PSP; AP 2016-0923

Dear Atty. Young,

I apologize for not understanding your policy, however, I have some time constraints on my end which was the purpose of this request. Could you please see if you could possibly have the requested information to me by September 2, 2016? Thank you for your kind cooperation.

Cindy Diveglia

On Jul 13, 2016, at 11:53 AM, Young, Joshua <joshyoung@pa.gov> wrote:

Dear Ms. Diveglia:

Thank you for your e-mail. It is the Office of Open Records' ("OOR") general practice to seek an indefinite extension of time to issue its Final Determination when *in camera* inspection of records is necessary, given the time needed to gather and review the records and prepare the Final Determination. Many requesters grant the OOR an indefinite extension; however, in the past, we have had some requesters grant the OOR a ninety-day extension of time with the possibility of future extensions, if needed. Would you be willing to grant the OOR a ninety-day extension of time to issue the Final Determination?

Thank you for your kind attention to this matter.

Very truly yours,

<image001.jpg> **Joshua T. Young** | Attorney  
Office of Open Records  
Commonwealth Keystone Building  
400 North St., Plaza Level  
Harrisburg, PA 17120-0225  
(717) 346-9903 | <http://openrecords.pa.gov>  
[joshyoung@pa.gov](mailto:joshyoung@pa.gov) | [@OpenRecordsPA](#)

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**From:** Cynthia Diveglia [<mailto:winterspringfarm@icloud.com>]  
**Sent:** Wednesday, July 13, 2016 11:03 AM  
**To:** Young, Joshua  
**Cc:** Meeks, Nolan; Rozier, William A  
**Subject:** Re: Diveglia v. PSP; AP 2016-0923

Dear Atty, Young.

Is it possible to tighten up this request just a bit as "indefinite" is a bit broad. Could we say 30 days, or 45 days? If there is a reason I am certainly willing to listen to that reasoning, as I am fully willing to cooperate and be flexible in the interest of justice.

Cindy Diveglia

On Jul 13, 2016, at 10:49 AM, Young, Joshua <[joshyoung@pa.gov](mailto:joshyoung@pa.gov)> wrote:

Dear Ms. Diveglia:

I write to request an indefinite extension of time to issue the Final Determination in the above-referenced Right-to-Know matter for the purpose of conducting an *in camera* inspection of records withheld by PSP. At your earliest convenience, please confirm whether you will agree to the requested extension.

Thank you for your kind attention to this matter.

Very truly yours,

<image001.jpg> **Joshua T. Young** |  
Attorney  
Office of Open Records  
Commonwealth Keystone  
Building  
400 North St., Plaza Level  
Harrisburg, PA 17120-0225  
(717) 346-9903 |  
<http://openrecords.pa.gov>  
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[@OpenRecordsPA](#)

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