



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
MARY CHMURA CONN,	:	
Requester	:	
	:	
v.	:	Docket No.: AP 2016-1323
	:	
ALLEGHENY COUNTY HEALTH	:	
DEPARTMENT,	:	
Respondent	:	

INTRODUCTION

Mary Chmura Conn, Esq. (“Requester”) submitted a request (“Request”) to the Allegheny County Health Department (“Department”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking reports regarding an investigation conducted by the Department. The Department denied the Request, arguing that the records are confidential under state law. The Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **denied**, and the Department is not required to take any further action.

FACTUAL BACKGROUND

On July 20, 2016, the Request was filed,¹ referencing “an investigation into the discovery of Legionella cases at [UPMC Presbyterian Hospital]” and requesting “a copy of [the Department’s] preliminary and/or final reports of the investigation regarding said Legionella cases.” On July 27, 2016, the Department denied the Request, arguing that the records are confidential under the Disease Prevention and Control Law of 1955 (“DPCL”), 35 P.S. § 521.15.

On August 9, 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 Department to notify any third parties of their ability to participate in this appeal. *See* 65 P.S. § 67.1101(c).

On August 24, 2016, after being provided an extension of time to make a submission, the Department submitted a position statement, reiterating its argument that the records are confidential under the DPCL.

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).

¹ The Request was dated July 14, 2016; however, it did not mention the RTKL and was directed to the Department’s Director, rather than Allegheny County’s Open Records Officer. The Request was ultimately forwarded to Allegheny County’s Open Records Officer, who received the Request on July 20, 2016 and responded on behalf of the Department.

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 local agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.302. Records in possession of a local 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)).

As a preliminary matter, the Department argues that the Requester failed to comply with Section 1101(a) of the RTKL, which requires appeals to “state the grounds upon which the requester asserts that the record is a public record ... and ... *address any grounds stated by the agency for delaying or denying the request.*” 65 P.S. § 67.1101(a)(1) (emphasis added); *see also Pa. Dep’t of Corr. v. Office of Open Records*, 18 A.3d 429, 434 (Pa. Commw. Ct. 2011) (“[I]t is appropriate and, indeed, statutorily required that a requester specify in its appeal to Open Records the particular defects in an agency’s stated reasons for denying a RTKL request”). Pursuant to this section, the Commonwealth Court has held that a requester must “state why the records [do] not fall under the asserted exemptions and, thus, [are] public records subject to access.” *Saunders v. Pa. Dep’t of Corr.*, 48 A.3d 540, 543 (Pa. Commw. Ct. 2012); *see also ACLU of Pa. v. City of Pittsburgh*, No. 2213 C.D. 2013, 2015 Pa. Commw. Unpub. LEXIS 382 (Pa. 2015) (holding that an appeal did not sufficiently address an agency’s grounds by “simply argu[ing] that the RTKL places the burden of proof upon the [agency] and that the [agency] has provided no ... information in support of its assertion that” the records were exempt).

Here, the Requester filed her appeal using the OOR’s online Appeal Form.² In the appeal, the Requester states that “the requested records are public records in the possession, custody or control of the Agency” and that “the records do not qualify for any exemptions under § 708 of the RTKL, are not protected by a privilege, and are not exempt under any Federal or State law or regulation.” A general statement that records are public and not subject to an exemption is sufficient to meet the requirements of Section 1101(a)(1) of the RTKL. *See Barnett v. Pa. Dep’t of Pub. Welfare*, 71 A.3d 399, 406 (Pa. Commw. Ct. 2013). Therefore, the Requester’s appeal meets the requirements of Section 1101(a)(1), and the OOR may reach the merits of the appeal.

² Available at <http://www.openrecords.pa.gov/Appeals/AppealForm.cfm>.

The Request seeks reports regarding an investigation conducted by the Department into the presence of Legionella at UPMC Presbyterian Hospital.³ The Department argues that these reports are confidential under the DPCL, which states, in relevant part:

State and local health authorities may not disclose reports of diseases,⁴ *any records maintained as a result of any action taken in consequence of such reports*, or any other records maintained pursuant to this act or any regulations, to any person who is not a member of the department or of a local board or department of health, except where necessary to carry out the purposes of this act. State and local health authorities may permit the use of data contained in disease reports and other records, maintained pursuant to this act, or any regulation, for research purposes, subject to strict supervision by the health authorities to insure that the use of the reports and records is limited to the specific research purposes.

35 P.S. § 521.15 (emphasis added). Any record made confidential under another state law is not considered a public record under the RTKL. *See* 65 P.S. § 67.102 (defining “public record”); 65 P.S. § 67.305(a)(3); *see also* 65 P.S. § 67.3101.1 (“If the provisions of [the RTKL] regarding access to records conflict with any other federal or state law, the provisions of [the RTKL] shall not apply”). The DPCL makes confidential “any records maintained as a result of any action taken in consequence of [reports of diseases].” 35 P.S. § 521.15. As a result, any reports stemming from the Department’s investigation are explicitly confidential under the DPCL.

While the DPCL permits disclosure for “specific research purposes” and “where necessary to carry out the purposes of this act,” there is no evidence that either of these situations are present here. As a result, the Department has demonstrated that it may withhold any responsive reports pursuant to the DPCL. *See* 65 P.S. § 67.708(a)(1).

³ Neither party disputes that an investigation was conducted. Further, the Requester does not dispute the Department’s authority to conduct such an investigation. *See* 35 P.S. § 521.3(a) (stating that “[l]ocal boards and departments of health shall be primarily responsible for the prevention and control of communicable and non-communicable disease....”).

⁴ In this case, Legionellosis is a disease which is “reportable by health care practitioners and health care facilities within ... 24 hours after being identified by symptoms, appearance or diagnosis.” 28 Pa. Code § 27.21a(b)(1); *see also* 28 Pa. Code § 27.22(b) (regarding reporting by clinical laboratories).

CONCLUSION

For the foregoing reasons, 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 to the Allegheny 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 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.⁵ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: September 7, 2016

/s/ Kyle Applegate

APPEALS OFFICER
KYLE APPLGATE, ESQ.

Sent to: Mary Chmura Conn, Esq. (via e-mail only);
Michael Parker, Esq. (via e-mail only)

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