



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
ALTON BROWN,	:	
Requester	:	
	:	
v.	:	Docket No: AP 2016-1413
	:	
ALLEGHENY COUNTY DISTRICT	:	
ATTORNEY’S OFFICE,	:	
Respondent	:	

The Office of Open Records (“OOR”) received the above-captioned appeal under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 et seq. Upon review of the file, the appeal is dismissed for the following reason:

On August 1, 2016, Alton Brown (“Requester”), an inmate at SCI-Greene, purported to file a request (“Request”) with the Allegheny County District Attorney’s Office (“Office”), seeking all criminal informations filed against prisoners and prison staff of the State Correctional Institution – Pittsburgh for the past twenty years. As the Office did not respond to the Request within five business days or invoke an extension of time to respond, the Request was deemed denied on August 9, 2016. *See* 65 P.S. §§ 67.901, 67.902(b).

On August 23, 2016, the Requester filed an appeal with the OOR, stating grounds for disclosure. The OOR invited both parties to supplement the record and directed the Office to notify any third parties of their ability to participate in the appeal. *See* 65 P.S. § 67.1101(c).

The Office 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. 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 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).

On September 1, 2016, the Office submitted the sworn affidavit of Kevin McCarthy, Assistant District Attorney and Agency Open Records Officer, who attests that neither he nor anyone in the Office received the Request in this matter until it was forwarded by the OOR as part of the OOR's Official Notice of Appeal.

Under the RTKL, a sworn affidavit or statement made under the penalty of perjury may serve as sufficient evidentiary support. *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 Office has established that it did not receive the Request until it was forwarded by the OOR as part of the Official Notice of Appeal. Accordingly, the appeal is dismissed as premature. *See, e.g., Gilliam v. Allegheny County Police Dep't*, OOR Dkt. AP 2014-1096, 2014 PA O.O.R.D. LEXIS 869 (dismissing an appeal as premature where an agency provided evidence that it did not receive a request prior to an appeal being filed); *Conci v. Allegheny County Jail*, OOR Dkt. AP 2011-0401, 2011 PA O.O.R.D. LEXIS 919 (same). The Requester is not precluded from filing the Request with the Office and filing a new appeal within fifteen business days of the date his Request is denied or deemed denied pursuant to the requirements of 65 P.S. § 67.1101(a)(1).

The file is now closed and no further action will be taken. This Final Determination is binding on the parties. Within thirty days of the mailing date of this Final Determination, either party may appeal to the Allegheny County Court of Common Pleas. *See* 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.¹ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: September 14, 2016

/s/ Kelly C. Isenberg

APPEALS OFFICER
KELLY C. ISENBERG, ESQ.

Sent to: Alton Brown (via U.S. Mail);
Kevin F. McCarthy, Esq., AORO (via U.S. Mail)

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