



**pennsylvania**  
OFFICE OF OPEN RECORDS

**FINAL DETERMINATION**

<b>IN THE MATTER OF</b>	:
	:
<b>KEVIN SOUFFRANT,</b>	:
<b>Requester</b>	:
	:
<b>v.</b>	: <b>Docket No: AP 2016-1528</b>
	:
<b>LANCASTER COUNTY, OFFICE OF THE</b>	:
<b>DISTRICT ATTORNEY,</b>	:
<b>Respondent</b>	:

**INTRODUCTION**

Kevin Souffrant (“Requester”), an inmate at SCI-Huntingdon, submitted a request (“Request”) to the Lancaster County, Office of the District Attorney (“Office”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking written police interview notes.

On August 23, 2016, the Office denied the Request, claiming, among other things, that the requested records are exempt under Section 708(b)(16) of the RTKL as criminal investigative material, 65 P.S. § 67.708(b)(16), and the Criminal History Record Information Act (“CHRIA”), 18 Pa.C.S. §§ 9101-9193. On September 8, 2016, the Requester appealed to the OOR, challenging the denial and stating grounds for disclosure. Neither party made a submission on appeal.

The threshold question is whether the OOR has jurisdiction to hear this appeal. The issue of subject matter jurisdiction may be raised by the parties or the OOR, *sua sponte*. See *Weber v. Wyoming Valley Sch. Dist.*, 668 A.2d 1218 (Pa. Commw. Ct. 1995) (Secretary of Education permitted to raise issues of subject matter jurisdiction in an administrative proceeding under the Public School Code *sua sponte*). The OOR is authorized to hear appeals for all Commonwealth and local agencies. See 65 P.S. § 67.503(a).

The District Attorney's Office 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 involving 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.*

Based on a review of the materials submitted with the appeal, the Requester filed the instant Request with the Office after being denied access to records by the City of Lancaster's Department of Administrative Services. The Request seeks handwritten interview notes made by two named detectives during an interview with the Requester. Additionally, the Office's response notes that Requester was the defendant in the underlying criminal case. The OOR lacks jurisdiction to consider whether a record of a local law enforcement agency is subject to public access where the agency claims that the records are withheld under Section 708(b)(16) and either submits evidence demonstrating that a criminal investigation occurred or, based on the appeal documents or the language of the request itself, there is no dispute between the parties regarding the existence of a criminal investigation. See *Steinheiser v. Falls Twp.*, OOR Dkt. AP 2015-0323, 2015 PA O.O.R.D. LEXIS 378 (partially dismissing an appeal for lack of jurisdiction where the plain language of a request sought a police report and there was evidence of a criminal

investigation). Here, upon consideration the appeal documents, including the language of the Request and the Office's response, the Request, on its face, seeks records that could be related to a criminal investigation. Accordingly, this appeal is hereby transferred to the Appeals Officer for the Lancaster County District Attorney's Office as the OOR lacks jurisdiction to consider the merits of the appeal. *See Pennsylvanians for Union Reform v. Centre Cnty. Dist. Attorney's Office*, 139 A.3d 354 (Pa. Commw. Ct. 2016) (citing 42 Pa.C.S. § 5103(a) (relating to the process for handling improperly filed appeals)). A copy of this final order and the appeal filed by the Requester will be sent to the Appeals Officer for the Lancaster County District Attorney's Office.

For the foregoing reasons, the Requester's appeal is **transferred** to the Appeals Officer for the Lancaster County District Attorney's Office, and the Office is not required to take further action at this time. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, either party may appeal to the Lancaster 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.<sup>1</sup> This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

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

**FINAL DETERMINATION ISSUED AND MAILED: September 30, 2016**

*/s/ Kelly C. Isenberg*

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KELLY C. ISENBERG, ESQ.  
APPEALS OFFICER

Sent to: Kevin Souffrant (via U.S. Mail only);  
Susan Moyer, Esq. (via e-mail only);  
Lancaster County District Attorney's Office Appeals Officer