



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

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| IN THE MATTER OF | : | |
| | : | |
| KENNETH DAVENPORT, | : | |
| Requester | : | |
| | : | |
| v. | : | Docket No: AP 2016-1616 |
| | : | |
| SUSQUEHANNA COUNTY DISTRICT | : | |
| ATTORNEY’S OFFICE, | : | |
| Respondent | : | |

INTRODUCTION

Kenneth Davenport (“Requester”), an inmate at SCI-Dallas, submitted a request (“Request”) to the Susquehanna County District Attorney’s Office (“Office”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking the criminal statute with which a named individual was charged or specified pages of the individual’s criminal docket sheet. The Office denied the Request, and 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 Office is not required to take any further action.

FACTUAL BACKGROUND

On September 9, 2016, the Request was filed seeking:

The specific statutory provisions under Penna. Law for which Megan Fae Clough was charged leading to her plea of guilty for sexual incidents involving an 18-year-old.

In the alternative, please provide the first and second page of her Dkt. Showing the criminal information and charges being lodged.

On September 12, 2016, Susquehanna County (“County”) responded on behalf of the Office and denied the Request, claiming that the requested records are available through the County Clerk of Courts or by using the AOPC¹ website at <https://ujportal.pacourts.us/DocketSheets/CP.aspx>.

On September 23, 2016, the Requester appealed to the OOR, challenging the denial and stating grounds for disclosure. Specifically, the Requester argues that the Office is prohibited from denying access to public records by referring the Requester to a publicly accessible electronic source. The OOR invited both parties to supplement the record and directed the Office to notify any third parties of their ability to participate in this appeal. *See* 65 P.S. § 67.1101(c).

On September 27, 2016, the Office submitted a position statement reiterating its grounds for denial. The Office claims the requested records are available through publicly accessible electronic means. In support of its position, the Office submitted the affidavit of Robert Klein, Esquire (“Attorney Klein”), the County’s District Attorney. The Requester did not submit any additional information on appeal.

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 Administrative Office of Pennsylvania Courts.

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. 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.* 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, the parties did not request a hearing; however, the OOR has the requisite information and evidence before it to properly adjudicate the matter.

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).

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)(1). 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)).

In its response, the Office directed the Requester to the Clerk of Court’s Office and the AOPC’s publicly available website to obtain the requested records. In further support of its position, the Office submitted the sworn attestation of Attorney Klein in which he states that he conducted a thorough search of the Office’s files for responsive records. Attorney Klein also attests that after conducting a search and inquiring of relevant personnel, he determined that the responsive records are available through publicly accessible electronic means.

Section 704(b) of the RTKL permits an agency to respond to a request for records “by notifying the requester that the record is available through publicly accessible electronic means[.]” 65 P.S. § 67.704(b)(1). If a requester is unwilling or unable to access the records electronically, the requester may “submit a written request to the agency to have the record converted. ...” 65 P.S. § 67.704(b)(2). If the requester does not timely do so, an agency has no further obligation under the RTKL relative to a requester’s access to the particular requested record(s). An appeal to the OOR is not “a written request to the agency to have the record converted” such that it triggers an agency’s responsibility to take further action pursuant to Section 704(b)(2) of the RTKL. *See Borden v. Ridgebury Twp.*, OOR Dkt. AP 2011-1460, 2011 PA O.O.R.D. LEXIS 1223.

In the instant matter, there is no evidence that the Requester made a subsequent written request to the Office to convert the on-line records to paper form. Moreover, directing a

requester to an Internet website satisfies an agency's obligations under Section 704 of the RTKL. See *Citizens for Pa's Future v. Pa. Turnpike Comm'n*, OOR Dkt. AP 2015-0726, 2015 PA O.O.R.D. LEXIS 856. Accordingly, the Office's response regarding the requested records is permissible under Section 704 of the RTKL.

CONCLUSION

For the foregoing reasons, Requester's appeal is **denied**, and the Office 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 Susquehanna 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.² This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: October 19, 2016

/s/ Kelly C. Isenberg

APPEALS OFFICER
KELLY C. ISENBERG, ESQ.

Sent to: Kenneth Davenport (via U.S. Mail only);
Robert Klein, Esq. (via e-mail only);
R.S. Stoud (via e-mail only)

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