

how the \$4,186.00 amount deemed owed was reached and proof that the amount is accurate.” On August 30, 2016, the Commission denied the Request, arguing that the requested records are exempt from disclosure because they relate to a criminal investigation, 65 P.S. § 67.708(b)(16), and are confidential under the Crime Victims Act (“Act”), 18 P.S. § 11.709.

On September 21, 2016, the Requester appealed to the OOR, challenging the denial and stating grounds for disclosure. The OOR invited the parties to supplement the record and directed the Commission to notify third parties of their ability to participate in the appeal. *See* 65 P.S. § 67.1101(c).

On October 3, 2016, the Commission submitted a position statement, arguing that the withheld records are exempt from disclosure under the Act. The Commission also submitted the sworn affidavit of Derin Myers, the Commission’s Open Records Officer. In response to a request for clarification from the OOR, the Commission submitted a supplemental position statement on October 7, 2016, as well as the attestation of Kathleen Buckley, Acting Director of the Office of Victims’ Services (“OVS”). The Commission also provided an exemption log. The Requester did not submit additional evidence.

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” 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; however, 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, neither of the parties requested a hearing; however, the OOR has the requisite information and evidence before it to properly adjudicate this matter.

The Commission is a Commonwealth agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.301. Records in the possession of a Commonwealth agency are presumed to be 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 to respond within five business days. 65 P.S. § 67.901. An agency bears the burden of proving the applicability of any cited exemption(s). *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)).

In the instant matter, the Commission argues that the requested records are exempt from disclosure under Section 11.709 of the Act, which provides as follows:

General rule. All reports, records or other information obtained or produced by the bureau [of victims' services] during the processing or investigation of a claim shall be confidential and privileged, shall not be subject to subpoena or discovery, shall be used for no purpose other than the processing of a claim and, except as otherwise provided by law or as provided in this section, shall not be introduced into evidence in any judicial or administrative proceeding.

18 P.S. § 11.709(a). In support of its position, the Commission submits the attestation of Kathleen Buckley, Acting Director of OVS, who attests, in relevant part, as follows:

2. OVS was established under the ... Act to handle claims for compensation filed under the Act by victims of crime and others in the Commonwealth....
3. The Victims Compensation Assistance Program ("VCAP") is a part of OVS and handles the processing of such claims....
4. The conduct of OVS and VCAP business requires adherence to the Act and its provisions regarding the gathering of information and reports, and the production of records, in the course of processing claims for compensation, because claim files contain sensitive items including police reports and medical information.
5. In the instant matter, upon receipt of the ... [R]equest, my office staff conducted a thorough examination of files in the possession, custody and control of the [Commission] for records responsive to the [R]equest.
6. Additionally, this office inquired of relevant [Commission] personnel and relevant third parties ... whether the requested records exist in their possession....
9. The responsive records that are being withheld are described in the Exemption Log as the contents of claim file #05-06882.
10. Claim file #05-06882 consists of reports and other information obtained or produced by the VCAP staff in their investigation and processing of the claim.

11. The claim arose out of criminal actions for which [the Requester] was prosecuted.
12. The claim was filed by a claimant deemed eligible under the Act to file for compensation....
13. The records are being withheld from this ... [R]equest as records that are confidential and privileged under the ... Act

Here, the Request seeks records concerning money owed by the Requester in a specific criminal case. The Commission asserts that it has a claim file that is responsive to the Request. The Commission has sufficiently demonstrated, however, that the responsive records in its possession are confidential under the Act.¹ See 65 P.S. § 67.306 (“Nothing in this act shall supersede or modify the public or nonpublic nature of a record or document established in Federal or State law, regulation or judicial order or decree”); *Hite v. Pa. Dep’t of Revenue*, OOR Dkt. AP 2014-1945, 2015 PA O.O.R.D. LEXIS 38. See also *Walkauskas v. Town of McCandless*, OOR Dkt. AP 2013-1195, 2013 PA O.O.R.D. LEXIS 681.

The Requester asserts that he is entitled to the requested records because they pertain to his debt. The RTKL, however, is not the proper vehicle for obtaining records that are exempt, regardless of the status of the person requesting them, as the RTKL must be construed without regard to the requester’s identity. See *DiMartino v. Pa. State Police*, No. 340 C.D. 2011, 2011 Pa. Commw. Unpub. LEXIS 787, *18-19 (Pa. Commw. Ct. 2011); *Wheelock v. Pa. Dep’t. of Corr.*, OOR Dkt. AP 2009-0997, 2009 PA O.O.R.D. LEXIS 725 (stating the only information available under the RTKL is a “public record” available to all citizens regardless of personal status or stake in requested information).

¹ Because the requested records are exempt from disclosure under the Act, the OOR need not reach the Commission’s alternative grounds for denying access. See *Jamison v. Norristown Bor. Police Dept.*, OOR Dkt. AP 2011-1233, 2011 PA O.O.R.D. LEXIS 927.

CONCLUSION

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

FINAL DETERMINATION ISSUED AND MAILED: October 21, 2016

/s/ Magdalene C. Zeppos

APPEALS OFFICER
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Sent to: Early Fry, LR-0217;
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² *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).