



FINAL DETERMINATION

IN THE MATTER OF

**RODNEY BURNS,
Requester**

v.

**PHILADELPHIA OFFICE OF THE
DISTRICT ATTORNEY,
Respondent**

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Docket No: AP 2022-1794

INTRODUCTION

Upon review of the appeal filed with the Office of Open Records (“OOR”) to the above-referenced docket number, it is determined that the appeal is **dismissed as untimely** for the following reason:

On May 31, 2022, Rodney Burns (“Requester”), an inmate at SCI-Huntingdon, submitted a request (“Request”) to the Philadelphia Office of the District Attorney (“Office”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking complaints against staff and actions taken due to complaints. On June 2, 2022, the Office invoked a thirty-day extension during which to respond. 65 P.S. § 67.902(b).

On July 5, 2022, the Office denied the Request, arguing that some records relate to a criminal investigation, and some are records of another agency.¹ 65 P.S. § 67.708(b)(16).

On July 29, 2022², 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 Office to notify any third parties of their ability to participate in this appeal.³ 65 P.S. § 67.1101(c).

Pursuant to 65 P.S. § 67.1101(a)(1), an appeal must be filed within fifteen business days of the date upon which a request is denied. 65 P.S. § 67.1101(a)(1). The appeal had to be filed within 15 business days of the date of the Office's final response, or by July 26, 2022. Because the Requester filed his appeal on July 29, 2022, the appeal is untimely and must be dismissed.⁴

For the foregoing reasons, the appeal is **dismissed as untimely**, 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 or petition for review to the Philadelphia 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 according to Section 1303 of the RTKL. 65 P.S. § 67.1303. 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 website at: <http://openrecords.pa.gov>.

¹ It is unclear when the Requester received the final response from the Office. However, the OOR relies on the date that the final response was mailed and there is nothing in the record to demonstrate that the final response was sent on any other day than July 5, 2022.

² Pursuant to the "prisoner mailbox rule," this appeal is considered filed upon its placement in the mail. See *Commonwealth v. Jones*, 700 A.2d 423, 426 (Pa. 1997). July 29, 2022 is the date that the envelope for the appeal is postmarked, and thus deemed filed.

³ On August 10, 2022, the Requester mailed a submission to the OOR.

⁴ The Requester is not prohibited from refiling the Request and, if necessary, filing a new appeal pursuant to the requirements of 65 P.S. § 67.1101(a)(1).

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

FINAL DETERMINATION ISSUED AND MAILED: AUGUST 16, 2022

/s/ Matthew Eisenberg

APPEALS OFFICER
MATTHEW EISENBERG, ESQ.

Sent to: Rodney Burns, BY-9149 (via US Mail only);
Josh Niemtzow, Esquire (via email only)