



FINAL DETERMINATION

IN THE MATTER OF

**HEATH POSPISIL,
Requester**

v.

**LIMERICK TOWNSHIP,
Respondent**

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Docket No.: AP 2022-2682

On November 29, 2022, Heath Pospisil (“Requester”) filed an appeal with the Office of Open Records (“OOR”), challenging Limerick Township’s (“Township”) denial of their request filed pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.* The Request was denied pursuant to Section 708(b)(16) of the RTKL, 65 P.S. § 67.708(b)(16), as well as the Criminal History Record Information Act, 18 Pa.C.S. § 9106(c)(4).

The Township is a local law enforcement agency, and the Request seeks records concerning potential criminal conduct in the possession of the Township. 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.* Accordingly, the appeal is hereby transferred to the Appeals Officer for the Montgomery County District Attorney’s Office (“District Attorney’s

Office”) to determine whether the records are subject to access.¹ A copy of this final order and the appeal filed by the Requester will be sent to the Appeals Officer for the District Attorney’s Office.

For the foregoing reasons, the Requester’s appeal is **transferred** to the Appeals Officer for the District Attorney’s Office. 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 Montgomery 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: <https://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: December 6, 2022

/s/ Kyle Applegate

Kyle Applegate
Chief Counsel

Sent to: Requester (via email); Open Records Officer (via email); Appeals Officer for the Montgomery County District Attorney’s Office (via first class mail)

¹ The Commonwealth Court has noted that the OOR has the authority to transfer an appeal to “where [a requester] should have initially appealed.” *See Phila. Dist. Attorney’s Office v. Williams*, 204 A.3d 1062, *4 n.5 (Pa. Commw. Ct. 2019) (“... [A]lthough the onus for appealing from an RTKL denial to the proper appeals officer is on the requester, the OOR did not violate the law or any procedure in redirecting the appeal in this case”). Because the OOR does not have jurisdiction over this appeal, the OOR is redirecting the appeal to the appeals officer that has jurisdiction.

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