

FINAL DETERMINATION

DATE ISSUED AND MAILED: January 25, 2023

IN RE: *Robert Fennell v. Pennsylvania Department of Corrections*, OOR Dkt. AP 2023-0058

Upon review of the appeal filed with the Office of Open Records (“OOR”) to the above-referenced docket number, as well as the Pennsylvania Department of Corrections (“Department”) submission, it is determined that the appeal is **DISMISSED** because:

The appeal is premature. The appeal states that the Request was filed on November 21, 2022 and deemed denied.¹ On November 29, 2022, the Department invoked a thirty-day extension to respond to the Request. *See* 65 P.S. § 67.902(b). An appeal may only be filed from the denial or deemed denial of a request and the Department **still had time to respond to the Request when the appeal was filed**. Thus, the appeal must be dismissed as premature. Upon receipt of a denial from the Department or a deemed denial of the Request, the Requester may file an appeal with the OOR pursuant to the requirements of 65 P.S. § 67.1101(a)(1).

For this reason, the Department is not required to take any further action. Within thirty days of the mailing date of this Final Determination, either party may appeal or petition for review with 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; 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 65 P.S. § 67.1303.

Issued by:

/s/ Bandy L. Jarosz

BANDY L. JAROSZ, ESQ.
APPEALS OFFICER

Sent to: Robert Fennell (via First Class Mail only)
Richard Salvia, Esq. (via portal only)
Andrew Filkosky (via portal only)

¹ The Requester did not provide a deemed denial date in the appeal. Per the Department’s submissions on January 20, 2023, the Department received a copy of the Request on November 28, 2022. An extension notice was mailed to the Requester on November 29, 2022, which noted the extension of the Final Response deadline under the RTKL until January 4, 2023. *See* Han Attestation ¶¶ 4, 5.

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