



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
DAVID BABCOCK,	:	
Requester	:	
	:	
v.	:	Docket No: AP 2022-2868
	:	
PENNSYLVANIA DEPARTMENT OF	:	
AGING,	:	
Respondent	:	

FACTUAL BACKGROUND

On December 20, 2022, David Babcock (“Requester”) submitted a request (“Request”) to the Pennsylvania Department of Aging (“Department”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking “[r]ecords on the [specified individual] Elder Abuse case done in September and October of 2022, by the Lancaster office of Aging via Leigh Ann Farling – Older Adult Protective Services Unit.”

On December 28, 2022, the Department denied the Request, arguing that the requested records are exempt pursuant to the Older Adult Protective Services Act as applied through Section 708(b)(17)(iv) of the RTKL. *See* 35 P.S. § 10225.101, *et seq.*; 65 P.S. § 67.708(b)(17)(iv) (exempting “[a] record of an agency relating to a noncriminal investigation, including: . . . (iv) A record that includes information made confidential by law.”)

On December 28, 2022, the Requester appealed to the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure. The OOR invited both parties to

supplement the record and directed the Department to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On January 12, 2023, the Department submitted a position statement reiterating its grounds for denial. The Department claims that the requested records are exempt as a matter of law pursuant to the Older Adults Protective Services Act. On January 17, 2023, the Requester submitted a position statement arguing that nothing in the RTKL prohibits disclosure and that the records should be provided to him as he alleges that he is the “subject of the report” under Section 10225.306(a) of the Older Adult Protective Services Act.

LEGAL ANALYSIS

The Department is a Commonwealth agency subject to the RTKL. 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. As an agency subject to the RTKL, the Department is required to demonstrate, “by a preponderance of the evidence,” that records are exempt from public access. 65 P.S. § 67.708(a)(1). Preponderance of the evidence has been defined as “such proof as leads the factfinder ... 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)).

Under the RTKL, the presumption that records in the possession of an agency are public records does not apply if the records are exempt from disclosure under any other federal or state law or regulation. 65 P.S. § 67.305. Relating to non-criminal investigative records, Section 708(b)(17) further specifies that noncriminal investigative records are exempt from public access if they are made confidential by another law. 65 P.S. § 67.708(b)(17)(iv). In the instant case, the

other state law that applies to the requested records is the Older Adult Protective Services Act (“OASPA”). The OAPSA provides as follows:

§ 10225.306. Confidentiality of records

(a) GENERAL RULE.-- Information contained in reports, records of investigation, client assessment and service plans shall be considered confidential and shall be maintained under regulations promulgated by the department to safeguard confidentiality. Except as provided below, this information shall not be disclosed to anyone outside the agency other than to a court of competent jurisdiction or pursuant to a court order.

(b) LIMITED ACCESS TO THE AGENCY'S PROTECTIVE SERVICES RECORDS.—

...

(3) A subject of a report made under section 302 [pertaining to referral to adult protective services] may receive, upon written request, all information contained in the report....

35 P.S. § 10225.306. The Regulations mentioned in subsection (a) read, in pertinent part:

Information in a protective services case record may not be disclosed, except as provided in this section....

(4) A subject of a report, a court-appointed guardian or an attorney providing legal services to the subject of the report made under § 15.23 (relating to receiving reports; general agency responsibility) may receive, upon written request, information contained in the report....

6 Pa. Code § 15.105. Under the OAPSA, the local county administers a protective services program through its local Area Agencies on Aging to, among other things, receive and investigate reports of alleged abuse, neglect, exploitation or abandonment of older adults. *See* 35 P.S. § 10225.303. In the instant case, Section 10225.306 of the OAPSA specifically designates the requested records as confidential.

While the status or relationship to records may entitle a requester to individual access under other laws or regulations, or by permission of the subject of the records, there is no exception under the RTKL that provides for public disclosure based upon an individual requester’s status or

relationship to the record. *DiMartino v. Pa. State Police*, No. 340 C.D. 2011, 2011 Pa. Commw. Unpub. LEXIS 787 (Pa. Commw. Ct. Sept. 19, 2011) (stating that “the requester’s status as representative of Decedent’s family has no bearing on whether the requested records are accessible through a RTKL request.”). Accordingly, the OOR may not consider the Requester’s argument that *he* should be entitled to the record, only whether the record should be available to the public at large.¹ Because the information requested expressly seeks records of an investigation, and such records are confidential under the OAPSA, the records sought are not subject to disclosure under the RTKL. *See Danvers v. Pa. Dep’t of Aging*, No. 2324 C.D. 2012, 2013 Pa. Commw. Unpub. LEXIS 564 (Pa. Commw. Ct. July 18, 2013) (holding that records regarding a complaint against Adult Protective Services were exempt from disclosure under the OAPSA)²; *Feldman v. Pa. Comm’n on Crime & Delinquency*, 208 A.3d 167, 176 (Pa. Commw. Ct. 2019); *McHugh v. Pa. Dep’t of Aging*, OOR Dkt. AP 2020-1059, 2020 PA O.O.R.D. LEXIS 2414; *McHugh v. Pa. Dep’t of Aging*, OOR Dkt. AP 2016-1866, 2016 PA O.O.R.D. LEXIS 1760; *Sensenig v. Pa. Dep’t of Aging*, OOR Dkt. AP 2016-0444, 2016 PA O.O.R.D. LEXIS 0165; *Bouman v. Pa. Dep’t of Aging*, OOR Dkt. AP 2013-2346, 2014 PA O.O.R.D. LEXIS 33; *Book v. Pa. Dep’t of Aging*, OOR Dkt. AP 2013-0503, 2013 PA O.O.R.D. LEXIS 309.³

CONCLUSION

For the foregoing reasons, the appeal is **denied**, and the Department is not required to take any further action. This Final Determination is binding on all parties. Within thirty days of the

¹ Requester argues that he is the “subject of the report” as defined by the OAPSA. Upon review of the evidence provided by Requester, he does not meet the definition of the “subject of the report” under the OAPSA as he is not an “older adult in need of protective services” for whose protection the investigation was initiated. See 6 Pa. Code §§ 15.2, 15.23; 15.105 & 15.155.

² An unreported opinion of the Commonwealth Court may be cited for its persuasive value. 210 Pa. Code § 69.414.

³ However, the Requester is not prohibited from requesting the records from the Department or other agency outside of the RTKL process and in accordance with the provisions of the OASPA.

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 as per 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.⁴ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: January 26, 2023

/s/ Catherine R. Hecker

CATHERINE R. HECKER, ESQ.
APPEALS OFFICER

Sent via email to: David Babcock, Requester
Deborah Hargett-Robinson, Esq.

⁴ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).