

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Deree Norman,	:	
Petitioner	:	
	:	
v.	:	951 C.D. 2022
	:	
City of Philadelphia (Office of Open	:	
Records),	:	
Respondent	:	

PER CURIAM

MEMORANDUM AND ORDER

NOW, January 31, 2023, upon consideration of the “Application To Dismiss And/Or Transfer Appeal” (Application) filed by the City of Philadelphia (Respondent),¹ to which no response was filed by Deree Norman, *pro se*, (Petitioner), the Application is GRANTED, and the Petition for Review is DISMISSED as untimely.

On September 7, 2022, Petitioner filed a Petition for Review with this Court of a Final Determination of the Office of Open Records (OOR) that was issued and mailed on August 5, 2022.² OOR advised Appellant that he may file an appeal to the Court of Common Pleas of Philadelphia County (trial court) within 30 days of the mailing date. OOR Final Determination at 6. Instead of filing an appeal with the trial court, Appellant filed a Petition for Review with this Court.

¹ Respondent also sought a “Stay Of The Briefing Schedule While This Application Is Pending,” (Stay). This Court granted the Stay on November 29, 2022.

² Appellant submitted a records request under the Right-to-Know Law, Act of February 14, 2008, P.L. 6, *as amended*, 65 P.S. §§ 67.101-67.3104, to the City of Philadelphia, which was denied. Appellant then appealed to OOR.

When an appeal is erroneously filed with this Court, we may transfer it to the appropriate tribunal, which in this case is the trial court.³ 42. Pa.C.S. 5013(a). However, “a court may refuse, in the interest of judicial economy, to transfer a matter where that court determines that under no circumstances could the transferee tribunal grant the requested relief.” *Smock v. Commonwealth*, 436 A.2d 615, 617 (Pa. 1981). This is such a case. Appellant had until September 6, 2022, to file an appeal.⁴ Failure to file a timely appeal divests a court of jurisdiction. *C.E. v. Dep’t of Public Welfare*, 97 A.3d 828, 832 (Pa. Cmwlth. 2014).⁵ Thus, we decline to transfer the matter because the trial court is without jurisdiction to grant Appellant relief. Accordingly, we grant the Application and dismiss the above-captioned appeal.

³ Pursuant to Section 1302(a) of the Right-to-Know Law, “[w]ithin 30 days of the mailing date of the final determination of the appeals officer relating to a decision of a local agency . . . a requester . . . may file a petition for review . . . with the court of common pleas for the county where the local agency is located.” 65 P.S. § 67.1302(a).

⁴ We note that 30 days from August 5, 2022, was September 4, 2022, a Sunday. The following Monday was Labor Day, a national holiday. Thus, Appellant’s appeal deadline was Tuesday, September 6, 2022.

⁵ Under certain circumstances an untimely appeal may be heard *nunc pro tunc*. *Criss v. Wise*, 781 A.2d 1156, 1159 (Pa. 2001). However, Appellant declined to respond to the Application and, thus, there is no evidence of record that such circumstances are applicable to this case.