



FINAL DETERMINATION

IN THE MATTER OF

**ANDREA BURNS,
Requester**

v.

**PENNSYLVANIA DEPARTMENT OF
HEALTH,
Respondent**

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Docket No: AP 2023-0195

FACTUAL BACKGROUND

On January 20, 2023, Andrea Burns (“Requester”) submitted a request (“Request”) to the Pennsylvania Department of Health (“Department”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking certificates of life birth for eight individuals and listed their date and county of birth.¹ On January 27, 2023, the Department denied the Request, arguing that the responsive record is not accessible under the RTKL and that “Certificates of Live Birth, generally, are not open to public inspection.”²

On January 31, 2023, the Requester appealed to the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure. The OOR invited both parties to

¹ None of the birth dates listed are over 105 years old; accordingly, the Department notes that these birth records do not qualify as public records under the Vital Statistics Law. *See* 35 P.S. § 450.801

² The Department also explained to the Requester that she needs to complete an Application for Certificate Copy of Birth Record and submit it to the Bureau of Health Statistics and Registries.

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 February 9, 2023, the Department submitted a position statement reiterating its grounds for denial. The Department claims that “[t]he records requested are specifically protected from disclosure by the Vital Statistics Law [(“VSL”)] of 1953.” The Department further notes that “[r]eports of live births can obtains directly from the Bureau of Health Statistics and Registries.” In support of its position, the Department submitted the attestation of Lisa Hasselbrook, Director & Registrar, Bureau of Health Statistics and Registries (“Bureau”).

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)).

The Department argues that the requested records are confidential vital statistics records under the VSL, 35 P.S. §§ 450.101-450.1003. Section 801 of the VSL provides:

The vital statistics records of the [D]epartment and of local registrars shall not be open to public inspection except as authorized by the provisions of this act and the regulations of the Advisory Health Board. Neither the [D]epartment nor local registrars shall issue copies of or disclose any vital statistics record or part thereof created under the provisions of this or prior acts except in compliance with the provisions of this act and the regulations of the Advisory Health Board. When one

hundred five (105) years have elapsed after the date of birth or fifty (50) years have elapsed after the date of death, the records shall become public records. To ensure the proper safekeeping of original birth records after one hundred five (105) years and death records after fifty (50) years the records shall be maintained by the State Archives.

35 P.S. § 450.801. Section 105 of the VSL defines “vital statistics” as including, “the registration, preparation, transcription, collection, compilation, analysis and *preservation of data pertaining to births*, adoptions, legitimations, deaths, fetal deaths, marital status and data incidental thereto.” 35 P.S. § 450.105. (emphasis added).

The Department argues that “[t]he records requested ... are explicitly nonpublic under the [VSL]” and that “[v]ital statistics are not a ‘public record’ subject to the RTKL, and cannot be converted into a public record by any provision of the RTKL nor obtained through the RTKL process.” The OOR agrees, as the Request seeks records concerning the “Certificate of Live Birth,” information that, pursuant to the VSL, may only be released upon following the course outlined in 35 P.S. § 450.804.³ Consequently, the OOR finds that the Department has established that the requested information is not subject to public access in the present appeal.

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 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

³ Again, the OOR notes that the Department informed the Requester how to obtain a certified copy of the original Certificate of Live Birth by completing an Application for Certified Copy of Birth Record and by mailing a copy to the Bureau of Health Statistics and Registries.

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: February 16, 2023

/s/ Catherine R. Hecker

CATHERINE R. HECKER, ESQ.
APPEALS OFFICER

Sent via portal to: Andrea Burns;
 Danica Hoppes;
 Anna LaMano

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