

FINAL DETERMINATION

DATE ISSUED AND MAILED: March 30, 2023

IN RE: *Robert Fennell v. Pennsylvania Department of Corrections*, OOR Dkt. AP 2023-0674

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

The appeal is untimely. The Request was mailed to the Department on November 21, 2022. The Department did not respond within five business days, and the Request was deemed denied on or about December 5, 2022.¹ 65 P.S. § 67.901. Appeals of deemed denied Right-to-Know requests must be filed within 15 business days of the deemed denial, or by December 28, 2022, in this instance.² 65 P.S. § 67.1101(a)(1). The appeal was postmarked on March 22, 2023. The Requester is not prohibited from refiling the request and, if necessary, filing a new appeal 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, you 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 as per 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.³

Issued by:

/s/ *Joshua Young*

Deputy Chief Counsel
Joshua Young, Esq.

Sent to: Requester (via first class mail), Agency Open Records Officer (via first class mail)

¹ The OOR allowed three additional mailing days for the Department to receive the Request. However, even if the OOR allowed an additional two weeks for mailing, the appeal was mailed to the OOR more than three months after the Request was mailed to the Department; therefore, the appeal would still be untimely.

² Due to the observance of the Thanksgiving Holiday, November 24th, 2022, and November 25th, 2022, do not count as business days.

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