



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
ERNEST MORRIS,	:	
Requester	:	
	:	
v.	:	Docket No.: AP 2023-2862
	:	
MONTGOMERY COUNTY	:	
DISTRICT ATTORNEY’S OFFICE,	:	
Respondent	:	

On November 2, 2023, Ernest Morris (“Requester”), an inmate at SCI-Coal Township, mailed a request (“Request”) to the Montgomery County District Attorney’s Office (“District Attorney’s Office”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking “every letter addressed, faxed or emailed that list or identify each and every item of discovery the District Attorney’s Office disclosed” to specified attorneys regarding an identified criminal case number. The Office did not issue a timely response, and, on November 17, 2023, the Request was deemed denied.¹ *See* 65 P.S. § 67.902(b). On November 28, 2023, the Requester appealed to the Office of Open Records (“OOR”).²

¹ The OOR allows three additional business days for an agency to receive a request. Additionally, due to the observance of the Veterans’ Day holiday, Friday, November 10, 2023, was not considered a business day for the District Attorney’s Office.

² The appeal was postmarked November 22, 2023 and received by the OOR on November 28, 2023.

The Office is a local law enforcement agency, and the Request, on its face, seeks discovery records pertaining to a criminal court case. The OOR does not have jurisdiction to hear appeals related to criminal investigative records held by local law enforcement agencies. *See* 65 P.S. § 67.503(d)(2). Instead, appeals involving records alleged to be criminal investigative records held by a local law enforcement agency are to be heard by an appeals officer designated by the local district attorney. *See id.* Accordingly, the appeal is hereby transferred to the Appeals Officer for the Montgomery County District Attorney’s Office to determine whether the record relates to a criminal investigation.³ A copy of this final order and the appeal filed by the Requester will be sent to the Appeals Officer for the Office.

For the foregoing reasons, Requester’s appeal is **transferred** to the Appeals Officer for the Office. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, either party may appeal to the Montgomery County Court of Common Pleas. 65 P.S. § 67.1302(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. 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: <https://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: December 1, 2023

/s/ Joshua Young

Senior Deputy Chief Counsel
Joshua Young, Esq.

³ The Commonwealth Court has noted that the OOR has the authority to transfer an appeal to “where [a requester] should have initially appealed.” *See Phila. Dist. Attorney’s Office v. Williams*, 204 A.3d 1062, *4 n.5 (Pa. Commw. Ct. 2019) (“... [A]lthough the onus for appealing from an RTKL denial to the proper appeals officer is on the requester, the OOR did not violate the law or any procedure in redirecting the appeal in this case”).

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

Sent to: Requester (via first class mail), Open Records Officer,
Appeals Officer, Montgomery County District Attorney's Office (via first class mail)