



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
KENNETH JONES,	:	
Requester	:	
	:	
v.	:	Docket No: AP 2024-1279
	:	
MUNICIPALITY OF NORRISTOWN,	:	
Respondent	:	

FACTUAL BACKGROUND

On April 22, 2024,¹ Kenneth Jones (“Requester”), an inmate at SCI-Coal Township, submitted a request (“Request”) to the Municipality of Norristown (“Municipality”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

During an investigation, what is the [Municipality Police Department’s] procedure or protocol[] after a witness fails to identify a potential suspect in an eight person photo array.

As the Requester did not receive a response from the Municipality within five business days of the Request, or by April 29, 2024, the Requester asserts the Request was deemed denied on that date. *See* 65 P.S. § 67.901. On May 13, 2024,² the Requester filed an appeal with the

¹ While the Request is dated April 17, 2024, the Request was received by the Municipality on April 22, 2024. *See* O’Donnell Attestation ¶ 3.

² Although the appeal was received by the OOR on May 17, 2024, the Requester’s appeal was placed in the Pennsylvania Department of Correction’s mail system on May 13, 2024, and, pursuant to the “prisoner mailbox rule,” is considered timely filed. *See Commonwealth v. Jones*, 700 A.2d 423, 426 (Pa. 1997).

Office of Open Records (“OOR”) claiming that the Request was deemed denied. *Id.* The OOR invited both parties to supplement the record and directed the Municipality to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On April 26, 2024, the Municipality granted the Request. The Municipality provided records responsive to the Request. The responsive records were emailed to the Requester at the email address provided on the RTKL request form that was submitted to the Municipality.³

On June 7, 2024, the Municipality submitted a position statement, asserting that it provided a timely response to the Requester, granting the Request. In support of its position, the Municipality submitted an attestation made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities, authored by Thomas O’Donnell (“O’Donnell Attestation”), the Municipality’s Agency Open Records Officer (“AORO”).⁴

LEGAL ANALYSIS

The Municipality is a local agency subject to the RTKL. 65 P.S. § 67.302. Records in the possession of a local 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 Municipality 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 fact-finder ... 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)).

³ *See* Municipality Position Statement p. 2; *see also* Municipality Exhibit A; O’Donnell Attestation ¶ 5.

⁴ The Municipality’s submissions were received after the record closed; however, to develop the record, the submissions were considered. *See* 65 P.S. § 67.1102(b)(3) (stating that “the appeals officer shall rule on procedural matters on the basis of justice, fairness, and the expeditious resolution of the dispute”).

Based on the evidence provided,⁵ the Municipality provided responsive records to the Requester via mail during the pendency of the appeal.⁶ The Municipality provided an internal message providing the next step if a witness failed to identify a suspect. Additionally, the Municipality provided a blank copy of a “Sequential Photographic Array Presentation.” *See* Municipality Position Statement Exhibits A and B. Per the AORO, all responsive documents were located and provided to the Requester. *See* O’Donnell Attestation ¶¶ 4-6. This was the sole issue at the time of the appeal. The Requester has not submitted any evidence demonstrating the records provided are not responsive to the Request. Therefore, because the Municipality has provided the responsive records to the Requester during the appeal, the appeal is moot. *See Kutztown Univ. of Pa. v. Bollinger*, 217 A.3d 931 (Pa. Commw. Ct. 2019) (holding that an appeal is properly dismissed as moot where no controversy remains).

CONCLUSION

For the foregoing reasons, the appeal is **dismissed as moot**, and the Municipality 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 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.⁷ 65 P.S. § 67.1303. All documents or communications following the issuance of this Final Determination shall be sent

⁵ The Requester asserted no records were received from the Municipality at the time of the appeal. *See* Requester’s Appeal Documents.

⁶ As the Requester is an inmate, the responsive records were mailed to the Requester on June 7, 2024. *See* O’Donnell Attestation ¶ 6.

⁷ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

to oor-postfd@pa.gov. This Final Determination shall be placed on the OOR website at:
<http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: June 11, 2024

/s/ Bandy L. Jarosz

BANDY L. JAROSZ, ESQ.
APPEALS OFFICER

Sent to: Kenneth Jones, NH3258 (via First Class Mail only)
Kailie Melchior, Esq. (via portal only)
Thomas O'Donnell (via portal only)