



FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
PAULA KNUDSEN BURKE,	:	
Requester	:	
	:	
v.	:	Docket No.: AP 2025-0910
	:	
BERKS COUNTY DISTRICT	:	
ATTORNEY'S OFFICE,	:	
Respondent	:	

On March 17, 2025, Paula Knudsen Burke, Esq. (“Requester”) submitted a request (“Request”) to the Berks County District Attorney’s Office (“Office”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking various records from the arrest and prosecution of Justin Rutherford concerning two identified criminal docket numbers.¹ On March 21, 2025, the Office denied the Request, stating that the records were exempt from disclosure under the RTKL’s criminal investigative records exemption. *See* 65 P.S. § 67.708(b)(16). On April 9, 2025, the Requester appealed to the Office of Open Records (“OOR”), challenging the sufficiency of the Office’s search for records and asking the OOR to order disclosure of records that are not related to any criminal investigation.²

¹ Notably, the Request expressly seeks bodycam footage from the raid of Mr. Rutherford’s home, as well as his arrest. Pursuant to Act 22 of 2017, the OOR does not have jurisdiction over audio and video recordings created by law enforcement officers. *See* 42 Pa.C.S. §§ 67A03-67A05.

² The Requester also filed an appeal with the Appeals Officer for the Office.

The Office is a local law enforcement agency. 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.* Here, the Office submitted a sworn affidavit³ from Alisa Hobart, Esq. (“Hobart Affidavit”), the Office’s Chief of Appeals and Open Records Officer, who attests that the requested records relate to a criminal investigation. Hobart Affidavit, ¶¶ 3-4. Furthermore, with respect to the Requester’s argument regarding the sufficiency of the Office’s search, the Appeals Officer for the Office must necessarily be permitted to determine whether the Office conducted a good faith search for records to conclude whether the responsive records which do exist relate to a criminal investigation. Insofar as the Office is required to do a supplemental search and/or additional records are found exist, the Office has not raised any other grounds for withholding the records; therefore, the records would be subject to disclosure.⁴ Accordingly, because the Requester has already filed an appeal with the Appeals Officer for the Office, the OOR need not transfer the instant appeal thereto.

For the foregoing reasons, the Requester’s appeal is **dismissed**, and the Office need not take any further action with respect to the instant appeal. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, either party may

³ Under the RTKL, a sworn affidavit or statement made under the penalty of perjury may serve as sufficient evidentiary support. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010).

⁴ In the event additional records are identified and the Office raises new grounds for withholding the records over which the Appeals Officer for the Office lacks jurisdiction, the Commonwealth Court has noted that an appeals officer 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).

appeal to the Berks 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 65 P.S. § 67.1303, but as the quasi-judicial tribunal that adjudicated this matter, the OOR is not a proper party to any appeal and should not be named as a party.⁵ All documents or communications following the issuance of this Final Determination shall be sent to oor-postfd@pa.gov. This Final Determination shall be placed on the OOR website at: <https://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: 30 April 2025

/s/ Joshua T. Young

JOSHUA T. YOUNG
SENIOR DEPUTY CHIEF COUNSEL

Sent via e-file portal to: Paula Knudsen Burke, Esq.; Alisa Hobart, Esq., AORO

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