



FINAL DETERMINATION

IN THE MATTER OF

**ANTOINE HUNTER,
Requester**

v.

**FRANKLIN COUNTY DISTRICT
ATTORNEY'S OFFICE,
Respondent**

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Docket No.: AP 2021-0289

On January 4, 2021, Antoine Hunter ("Requester"), an inmate at SCI-Albion, submitted a request ("Request") to the Franklin County District Attorney's Office ("Office") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq.*, seeking the "[d]iscovery materials and all files involving case number: 1522-2016."¹ On January 11, 2021, the Office denied the Request, stating that the requested records relate to a criminal investigation. *See* 65 P.S. § 67.708(b)(16).

On February 9, 2021,² the Requester appealed to the Office of Open Records ("OOR"), challenging the denial and stating grounds for disclosure.³ The OOR invited both parties to

¹ The Office correctly notes that in the appeal, the Requester changed the Request language to read "[d]iscovery documents and all files/transcripts involving case no: 1522-2016." However, a request cannot be expanded or modified on appeal. *See, e.g., McKelvey v. Office of Attorney Gen.*, 172 A.3d 122, 125 (Pa. Commw. Ct. 2017) ("Once a RTKL request is submitted, the requester may not expand or modify the request on appeal") (citations omitted).

² In the appeal, the Requester granted the OOR an additional thirty days to issue a final determination. *See* 65 P.S. § 67.1101(b)(1).

³ The Requester's appeal was placed in the Department of Corrections' mail system on January 27, 2021, and, pursuant to the "prisoner mailbox rule," is considered timely filed. *See Commonwealth v. Jones*, 700 A.2d 423, 426 (Pa. 1997).

supplement the record and directed the Office to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On March 1, 2021, the Franklin County Assistant Solicitor submitted an unsworn statement on behalf of the Office, reiterating the Office's grounds for denial and arguing that this matter should be transferred to the Franklin County District Attorney's Office.

The threshold question in this matter is whether the OOR has jurisdiction to hear this appeal. The issue of subject matter jurisdiction may be raised by the parties or the OOR, *sua sponte*. See *Weber v. Wyoming Valley Sch. Dist.*, 668 A.2d 1218 (Pa. Commw. Ct. 1995) (Secretary of Education permitted to raise issues of subject matter jurisdiction in an administrative proceeding under the Public School Code, *sua sponte*). The OOR is authorized to hear appeals for all Commonwealth and local agencies. See 65 P.S. § 67.503(a).

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, it is undisputed that the records could relate to a criminal investigation, as the Request, on its face, seeks discovery materials and files related to a specific criminal case. See *Pa. Game Comm'n v. Fennell*, 149 A.3d 101 (Pa. Commw. Ct. 2016) (holding that the OOR must consider uncontradicted statements in the appeal filing when construing exemptions); see also *Office of the Governor v. Davis*, 122 A.3d 1185, 1192 (Pa. Commw. Ct. 2015) (*en banc*) (holding that an affidavit may be unnecessary when an exemption is clear from the face of the record). While the Assistant Solicitor states it is her understanding that the Requester has also filed an appeal with the Office, the OOR has not been presented with any

evidence to support the assertion. Therefore, this appeal is hereby transferred to the Appeals Officer for the Franklin County District Attorney's Office to determine whether the requested records are criminal investigative records.⁴ *See Pennsylvanians for Union Reform v. Centre Cnty. Dist. Attorney's Office*, 139 A.3d 354 (Pa. Commw. Ct. 2016) (citing 42 Pa.C.S. § 5103(a) (relating to the process for handling improperly filed appeals)). A copy of this final order and the appeal filed by the Requester will be sent to the Appeals Officer for the Franklin County District Attorney's Office.

For the foregoing reasons, the appeal is **transferred** to the Appeals Officer for the Franklin County District Attorney's Office, and the Office is not required to take further action at this time. 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 Franklin 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.⁵ This Final Determination shall be placed on the OOR website at: <https://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: April 14, 2021

/s/ Kelly C. Isenberg

KELLY C. ISENBERG, ESQ.
APPEALS OFFICER

⁴The 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").

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

Sent to: Antoine Hunter/ NE-8759 (via U.S. mail only);
Hannah Herman-Snyder, Esq. (via email only);
Jean Byers, AORO (via email only); and
Appeals Officer, Franklin DA's Office (via U.S. mail only)