

OOOR RESPONSE TO PETITION FOR RECONSIDERATION

DATE ISSUED AND MAILED: November 8, 2021

IN RE: *McCoy, DiStefano, & The Phila. Inquirer v. PSERS*, OOR Dkt. AP 2021-1856

In this Final Determination, the OOR found that certain records generated prior to a formal investigation commenced in March 2021 were exempt noncriminal investigative records, as there were three distinct noncriminal investigations that were conducted by PSERS. The Requester has filed for reconsideration, arguing that PSERS was performing routine duties, as opposed to noncriminal investigations, prior to the commencement of the formal investigation.

The OOR believes that an additional examination of this issue is necessary and would be beneficial for any judicial review of its Final Determination. Specifically, the OOR requests that the parties to further address how the Commonwealth Court's decisions in *Pa. Dep't of Public Welfare v. Chawaga*, 91 A.3d 257 (Pa. Commw. Ct. 2014), *California Univ. of Pa. v. Schackner*, 168 A.3d 413 (Pa. Commw. Ct. 2017), *Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515 (Pa. Commw. Ct. 2011), and other cases involving an agency's performance of routine duties apply to the actions taken by PSERS.

For this reason, the petition is **GRANTED**. We note here that in the absence of applicable OOR regulations regarding petitions for reconsideration, this office will follow the procedures set forth in Pennsylvania General Rules of Administrative Practice and Procedure, 1 Pa. Code § 35.241.

PSERS may file a response in the form of a response within 15 days of the issuance of this order, or by November 23, 2021. The response shall be confined to the issue upon which reconsideration has been granted, i.e. whether PSERS conducted noncriminal investigations prior to the commencement of the formal investigation, and should address the above-cited cases, as well as any other case law PSERS deems relevant. 1 Pa. Code § 35.241(c). The Requester may also file a brief or position statement addressing case law in support of its position by that date. However, the Appeals Officer will not accept any new evidence from the parties on reconsideration; the submissions should be limited to legal argument, as the evidentiary record before the OOR is now closed. See generally *Pa. Dep't of Educ. v. Bagwell*, 131 A.3d 638, 656 n.12 (Pa. Commw. Ct. 2016).

Issued by:

/s/ Kyle Applegate

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