



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
WAYNE LEE PRATER, JR.,	:	
Requester	:	
	:	
v.	:	Docket No.: AP 2021-2330
	:	
CITY OF PHILADELPHIA POLICE	:	
DEPARTMENT,	:	
Respondent	:	

The Office of Open Records (“OOR”) received the above-captioned appeal under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.* Upon review of the file, the appeal is **dismissed** for the following reason:

On September 9, 2021, Wayne Lee Prater, Jr. (“Requester”), an inmate at SCI-Houtzdale, mailed a request (“Request”) to the City of Philadelphia Police Department (“Department”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking various records regarding two officers.

On October 26, 2021, the Requester mailed an appeal to the OOR, arguing that the Request had been deemed denied. *See* 65 P.S. § 67.901. The OOR invited the parties to supplement the record and directed the Department to notify third parties of their ability to participate in the appeal. *See* 65 P.S. § 67.1101(c).

On November 12, 2021, the Department submitted a position statement, asserting that the Request was not deemed denied, and that responsive records are exempt employee records, 65 P.S. §§ 67.708(b)(7)(vi) & (viii), are related to noncriminal investigations, 65 P.S. § 67.708(b)(17), and are protected by the Personnel Files Act, 43 P.S. § 1321. The Department also argues that certain records do not exist in the Department's possession, custody, or control. With its submission, the Department included a letter, timely notifying the Requester that the Request was denied. The Department also included an attestation made under the penalty of perjury by Sgt. Mark Mastropietro, Assistant Open Records Officer, who, among other things, affirms that the Department received the Request on September 15, 2021, and mailed a denial letter to the Requester on September 20, 2021.

An agency has five business days to respond to a request. 65 P.S. § 67.901. Here, the Department received the Request on September 15, 2021, and denied the Request on September 20, 2021, within the five-business-day window. Upon the denial of a request, a requester has 15 business days to file an appeal. 65 P.S. § 67.1101(a)(1). Here, the Request was denied on September 20, 2021; accordingly, the Requester had until October 12, 2021 to file an appeal with the OOR. However, the appeal was not postmarked until October 26, 2021, more than fifteen business days after the Request was denied.

Accordingly, the appeal is **dismissed as untimely**. Nothing in this Final Determination prevents the Requester from filing a new RTKL request for the same information and filing an appeal pursuant to the requirements of 65 P.S. § 67.1101(a)(1).

For the foregoing reasons, the Department 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 Philadelphia 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 according to 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.¹ This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: November 23, 2021

/s/ Blake Eilers
Blake Eilers, Esq.
Appeals Officer

Sent to: Wayne Lee Prater, Jr., KV1019 (via regular mail only);
Andy Segedin, Esq. (via email only);
Lt. Barry Jacobs (via email only);
Sgt. Mark Mastropietro (via email only)

¹ See *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).