

## **FINAL DETERMINATION**

DATE ISSUED AND MAILED: May 18, 2022

IN RE: *Kelley Thomsen v. West Chester Borough Police Department*, OOR Dkt. AP 2021-1193

Upon review of the appeal filed with the Office of Open Records (“OOR”) to the above-referenced docket number, it is determined that the appeal is **DISMISSED** because:

**The appeal is premature.** The appeal states that the Request was submitted on May 17, 2022 and does not indicate that the Department issued a response.<sup>1</sup> The Department has five (5) business days upon receipt, or until May 24, 2022, to respond to the Request. 65 P.S. § 67.901. The appeal was filed on May 17, 2022. The Requester is not prohibited from filing a new appeal of any denial or deemed denial stemming from the Request, pursuant to the requirements of 65 P.S. § 67.1101(a)(1).

For this reason, the Department is not required to take any further action. Within thirty days of the mailing date of this Final Determination, you may appeal or petition for review with the Chester 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 court rules as per 65 P.S. § 67.1303. 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.<sup>2</sup>

Issued by:

/s/ Kyle Applegate

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Chief Counsel  
Kyle Applegate, Esq.

Sent to: Requester (via email), Agency (via email)

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<sup>1</sup> It is unclear if a request for records was ever submitted to the Police Department, as the request date is the same as the appeal date. If a request has not yet been submitted to the Department, the Requester is not prohibited from doing so. More information about filing a request can be found at <https://www.openrecords.pa.gov/RTKL/HowToFile.cfm>.

<sup>2</sup> *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).