



**pennsylvania**  
OFFICE OF OPEN RECORDS

**FINAL DETERMINATION**

<b>IN THE MATTER OF</b>	:	
	:	
<b>JULIE CHOVANES,</b>	:	
<b>Requester</b>	:	
	:	
<b>v.</b>	:	<b>Docket No.: AP 2018-2095</b>
	:	
<b>PHILADELPHIA DISTRICT</b>	:	
<b>ATTORNEY’S OFFICE,</b>	:	
<b>Respondent</b>	:	

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

On April 19, 2018, Julie Chovanes (“Requester”) filed a RTKL request (“Request”) with the Philadelphia District Attorney’s Office (“Office”), seeking records related to the death of a named individual. On April 26, 2018, the Office extended its response period for thirty days, until May 29, 2018, pursuant to 65 P.S. § 67.902. On November 9, 2018, the Office responded to the Request, denying access to records because they relate to its criminal investigation, 65 P.S. § 67.708(b)(16), and that certain items of the Request are misdirected to the Office. In its response, the Office also stated that “[w]ith the Requester’s consent, the final response deadline was suspended until a final response was issued.”

On December 4, 2018, the Requester appealed to the OOR. On January 23, 2019, the Office submitted its position statement, reiterating its reasons for denial.

Pursuant to Section 902(b)(2), if an agency responds to a request in excess of thirty days following the original five business day response period, “the request is deemed denied unless the requester *has agreed in writing* to an extension to the date specified in the notice.” 65 P.S. § 67.902(b)(2) (emphasis added). The OOR asked the parties to submit a copy of the agreement to extend the date for responding to the Request to November 9, 2018. However, the parties did not produce any agreement in writing other than an email sent to the OOR on January 29, 2019 containing a paragraph that read:

This is an agreement, between the parties, having *nunc pro tunc* effect if necessary, and pursuant to Section 902, to extend the DA’s office response time beyond the 30 day extension, and is also including Ms. Chovanes’ agreement to extend said response to November 9, 2018.

Agreed: /s/ Julie Chovanes, Esq.

Agreed: /s/ Douglas M. Weck, Esq.

While the Requester and the Office appear to be in agreement to extend the deadline to respond to the Request, there is no indication in the record that the Requester and the Office agreed to extend the deadline in writing *prior* to the expiration of the initial thirty day extension on May 29, 2018, as required by the RTKL. Accordingly, the OOR has no option but to find that the Request was deemed denied on May 29, 2018. Pursuant to 65 P.S. § 67.1101(a)(1), an appeal must be filed within fifteen business days of the date upon which a request is deemed denied. Therefore, the Requester was required to file an appeal with the OOR no later than June 4, 2018; however, the OOR did not receive the appeal until December 4, 2018. Accordingly, the appeal is **dismissed as untimely**,<sup>1</sup> and the Office is not required to take any further action.

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<sup>1</sup> The Request seeks records that the Office asserts are related to a criminal investigation. It is worth noting that the OOR does not have jurisdiction to hear appeals related to criminal investigative records held by local law enforcement

The file is now closed and no further action will be taken. This Final Determination is binding on the parties. Within thirty days of the mailing date of this determination, either party may appeal to the Philadelphia County Court of Common Pleas. *See* 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 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.<sup>2</sup> This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: February 11, 2019**

/s/ Jill S. Wolfe

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APPEALS OFFICER  
JILL S. WOLFE, ESQ.

Sent to: Julie Chovanes, Esq. (via email only);  
Douglas Weck, Jr., Esq. (via email only)

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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.*

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