



**pennsylvania**  
OFFICE OF OPEN RECORDS

**FINAL DETERMINATION**

<b>IN THE MATTER OF</b>	:	
	:	
<b>JIM LOCKWOOD AND THE</b>	:	
<b>SCRANTON TIMES-TRIBUNE,</b>	:	
<b>Requester</b>	:	
	:	
<b>v.</b>	:	<b>Docket No: AP 2019-0279</b>
	:	
<b>CITY OF SCRANTON,</b>	:	
<b>Respondent</b>	:	

On January 14, 2019, Jim Lockwood, a reporter for the Scranton Times-Tribune (collectively, the “Requester”), submitted a request (“Request”) to the City of Scranton (“City”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking “video of all surveillance cameras in Scranton City Hall on Jan. 9, 2019, for the duration of that day, during normal business hours.”

On January 22, 2019, the City invoked a thirty-day extension of time to respond to the Request, 65 P.S. § 67.902(b); however, the City did not issue a timely final response, and the Request was deemed denied on February 21, 2019. 65 P.S. § 67.902(b)(2). On February 22, 2019, the City issued an untimely response, arguing that the requested video footage is exempt from disclosure because it relates to a criminal investigation, 65 P.S. § 67.708(b)(16)(ii).

On February 28, 2019, the Requester filed an appeal with the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure. The OOR invited both parties

to supplement the record and directed the City to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c). Neither party submitted additional information.

In its response of February 22, 2019, the City argues that the video footage is exempt from disclosure under Section 708(b)(16) of the RTKL. 65 P.S. § 67.708(b)(16). A local agency claiming that records are exempt under Section 708(b)(16) does not automatically divest the OOR of jurisdiction over an appeal.

Section 503(d) of the RTKL creates a two-step analysis for determining when cases should be heard by the OOR and when they should be heard by the appeals officer appointed by a District Attorney. 65 P.S. § 67.503(d). First, jurisdiction is properly transferred from the OOR to the District Attorney's Office when an appeal on its face involves records that relate to a criminal investigation. (e.g., search warrants, witness statements, etc.). *See Porter v. Allegheny County Sheriff's Office*, OOR Dkt. AP 2014-1910, 2014 PA O.O.R.D. LEXIS 1444 (transferring an appeal to the District Attorney where the request for a search warrant was on its face related to a criminal investigation).

Second, when it is unclear whether the requested records relate to a criminal investigation, the local agency must provide some evidence showing how the records relate to a specific criminal investigation. While a very low threshold for transferring a case is needed, an agency must provide more than a conclusory affidavit that merely repeats the language of Sections 503(d) and 708(b)(16). *See Bush v. Westtown-East Goshen Police Dep't*, OOR Dkt. AP 2016-1869, 2016 PA O.O.R.D. LEXIS 1708 (Agency submitted affidavit demonstrating how the requested records related to a specific criminal investigation); *Burgess v. Willistown Twp. Police Dep't*, OOR Dkt. AP 2013-1511, 2013 PA O.O.R.D. LEXIS 868 (holding that where a local agency made a

preliminary showing that records relate to a criminal investigation, the OOR lacked jurisdiction to consider the merits of the appeal).

In this case, the requested video footage of City Hall is not, on its face, a criminal investigative record. Additionally, the City has failed to submit evidence demonstrating how the records are related to any specific criminal investigation. The City has, therefore, failed to meet the threshold of proving that the video footage relates to a criminal investigation conducted by the City, and the OOR retains jurisdiction over this appeal. Furthermore, because the City has neither raised nor submitted evidence supporting any other reason for withholding the video footage, the City has not met its burden of proof under the RTKL. 65 P.S. § 67.708(a)(1).

For the foregoing reasons, the appeal is **granted**, and the City is required to provide all responsive records within thirty days. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal or petition for review to the Lackawanna 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. 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>1</sup> This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

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

**FINAL DETERMINATION ISSUED AND MAILED: 25 March 2019**

*/s/ Joshua T. Young*

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