



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
MARCUS PROFIC,	:	
Requester	:	
	:	
v.	:	Docket No.: AP 2019-2612
	:	
BERKS COUNTY DISTRICT	:	
ATTORNEY’S OFFICE,	:	
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.* For the following reason, the appeal is dismissed.

On November 14, 2019, the Berks County District Attorney’s Office (“Office”) received a request (“Request”) from Marcus Profic (“Requester”), an inmate at SCI-Mahanoy, pursuant to the RTKL, seeking a statement provided by Evelio Rivera to either the Berks County Court of Common Pleas or the Office. The Request was dated November 6, 2019, and postmarked November 13, 2019.

On November 21, 2019, the Office denied the Request, claiming the record did not exist in its possession, custody or control.

On December 17, 2019, the Requester filed an appeal with the OOR, arguing that the Request was deemed denied. *See* 65 P.S. § 67.901.

On January 2, 2020, the Office submitted a position statement claiming it had responded in a timely manner, but also noting that upon review of the file following the appeal, the responsive record was located and provided to the Requester.

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 denied or deemed denied. The Requester's appeal was placed in the Pennsylvania Department of Corrections' mail system on December 17, 2019, and, pursuant to the "prisoner mailbox rule," is considered filed on that date. *See Commonwealth v. Jones*, 700 A.2d 423, 426 (Pa. 1997).

Because the appeal was due on December 16, 2019, 15 business days after the Office's November 21, 2019 response, the appeal is **dismissed as untimely**, and the Office is not required to take any further action.¹

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 Final Determination, either party may appeal to the Berks County Court of Common Pleas. *See* 65 P.S. § 67.1301/1302(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

¹ During the course of the appeal, the Office submitted evidence showing that it provided all records responsive to the Request to the Requester on January 2, 2020. Therefore, if the appeal was timely, it would be dismissed as moot.

and should not be named as a party.² This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: January 13, 2020

/s/ Erin Burlew

APPEALS OFFICER
ERIN BURLEW, ESQ.

Sent to: Marcus Profic, GD1505 (via US mail only);
Alisa Hobart, Esq. (via email only)

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