



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
CRAIG WILLIAMS,	:	
Requester	:	
	:	
v.	:	Docket No. AP: 2016-1515
	:	
PHILADELPHIA DISTRICT	:	
ATTORNEY’S OFFICE,	:	
Respondent	:	

INTRODUCTION

Craig Williams (“Requester”) an inmate at SCI-Albion, submitted a request (“Request”) to the Philadelphia District Attorney’s Office (“Office”) seeking records relating to his conviction. The Office denied the Request, stating that the records relate to a criminal investigation and is also seeking a judicial record. The Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **granted in part** and **transferred in part** and the Office is required to take any further action as directed.

FACTUAL BACKGROUND

On August 16, 2016, the Request was filed seeking:

1. The guilty plea offer in 1988 for Com v. Craig Williams.
2. All Commonwealth witness statements in 1987 to 1988.

3. Venire list.
4. Voir dire handwritten notes by Andrea Foulke former state D.A.
5. Item receipt number for the weapon.

On August 23, 2016, the Office denied the Request, claiming that the requested records are related to a criminal investigation, 65 P.S. § 67.708(b)(16), and that the venire list is a judicial record.

On September 7, 2016, the Requester appealed to the Office of Open Records (“OOR”). On September 23, 2016, the Office submitted a position statement, along with an affidavit from of B.J. Graham-Rubin, Chief of Litigation for the Office, attesting that the records sought are records of a criminal investigation exempt under 65 P.S. § 67.708(b)(16) and the Criminal History Record Information Act (“CHRIA”), 18 Pa.C.S. §§ 9101 *et seq.* Ms. Rubin-Graham further attests that the venire list is a record created by the Pennsylvania judiciary; and is, therefore, a record of a judicial agency. On September 30, 2016, the Office submitted additional evidence arguing the venire list is a judicial record.

LEGAL ANALYSIS

“The objective of the Right to Know Law ... is to empower citizens by affording them access to information concerning the activities of their government.” *SWB Yankees L.L.C. v. Wintermantel*, 45 A.3d 1029, 1041 (Pa. 2012). Further, this important open-government law is “designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials and make public officials accountable for their actions.” *Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), *aff’d* 75 A.3d 453 (Pa. 2013).

The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. § 67.503(a). An appeals officer is required “to review all information filed relating to the request” and may consider testimony, evidence and documents that are reasonably probative and relevant to the matter at issue. 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. The law also states that an appeals officer may admit into evidence testimony, evidence and documents that the appeals officer believes to be reasonably probative and relevant to an issue in dispute. *Id.* The decision to hold a hearing is discretionary and non-appealable. *Id.*; *Giurintano v. Pa. Dep’t of Gen. Servs.*, 20 A.3d 613, 617 (Pa. Commw. Ct. 2011). Here, neither party requested a hearing; however, the OOR has the necessary, requisite information and evidence before it to properly adjudicate the matter.

The Office is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.302. Records in possession of a local agency are presumed public unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. Upon receipt of a request, an agency is required to assess whether a record requested is within its possession, custody or control and respond within five business days. 65 P.S. § 67.901. An agency bears the burden of proving the applicability of any cited exemptions. *See* 65 P.S. § 67.708(b).

Section 708 of the RTKL clearly places the burden of proof on the public body to demonstrate that a record is exempt. In pertinent part, Section 708(a) states: “(1) The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence.” 65 P.S. § 67.708(a)(1). Preponderance of the evidence has been defined as “such proof as leads the fact-finder ... to find that the existence of a contested fact is more probable

than its nonexistence.” *Pa. State Troopers Ass’n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Pa. Dep’t of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

1. The guilty plea, witness statements, voir dire notes and item receipt are records of a criminal investigation

The Office is a local agency. 65 P.S. § 67.102. The OOR does not have jurisdiction to hear appeals related to criminal investigative records held by local law enforcement 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.* During the course of this appeal, the Office submitted evidence demonstrating that the requested records could potentially relate to a criminal investigation. Under the RTKL, an affidavit may serve as sufficient evidentiary support. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). Accordingly, this appeal is hereby transferred to the Appeals Officer for the Philadelphia County District Attorney’s Office. *See Pennsylvanians for Union Reform v. Centre Cnty. Dist. Attorney’s Office*, 139 A.3d 354 (Pa. Commw. Ct. 2016) (citing 42 Pa.C.S. § 5103(a) (relating to the process for handling improperly filed appeals)). A copy of this final order and the appeal filed by the Requester will be sent to the Appeals Officer for the Philadelphia County District Attorney’s Office.

2. The Office has not shown that the venire list is a judicial record, nor provided sufficient evidence to withhold the record from public access

The Office argues that the OOR does not have jurisdiction over the venire list because it is a request for a record of a judicial agency. *See* 65 P.S. § 67.503(b). The Office relies on two Commonwealth Court decisions to support its position. First, in *Lackawanna Cnty. v. Office of*

Open Records, the Commonwealth Court addressed whether records of a county-provided computer pertaining to judicial employees accessible by both the county and the judicial agency were “judicial records.” 2 A.3d 810 (Pa. Commw. Ct. 2010). The Court concluded that the records were of a judicial agency and Lackawanna County’s possession of the records did not alter the fact that the records were produced by a judicial employee and pertained to activities of a judicial employee. *Id.* at 813. Secondly, in *Grine v. Cnty. of Centre*, the Commonwealth Court addressed whether phone records were records of a judicial or local agency, wherein the local agency made payments for the judiciary’s cellular services. 138 A.3d 88 (Pa. Commw. Ct. 2016). The Court stated that when discerning whether a record qualifies as a record “of” a particular agency, it must look to the subject matter of the records. *Id.* at 95, citing *Megeurian v. Office of Attorney Gen.*, 86 A.3d 924 (Pa Commw. 2013). The Court found that “the judiciary retains control over records showing the activities of uniform judicial system personnel.” Further, the Court held, “because the phone records documents activities of judicial personnel ... the RTKL mandates the County Open Records Officer direct the request to the appropriate judicial agency.” *Id.* at 100.

In the present matter, the Office suggests that *Lackawanna County* and *Grine* support its position that the venire list is a judicial record. However, those cases both focused on the judiciary’s supervisory control over its personnel. Although the venire list is created by the Pennsylvania judiciary and contains the names of individuals summoned for jury duty, the Office fails to provide any evidence of how this record is a record that documents the activities of

judicial personnel as discussed by the Court in both of its decisions.¹ Accordingly, the OOR has jurisdiction over the Office's denial of the venire list.

Further, the Office has not provided any evidence to withhold public access of the venire list under the RTKL. The Office's conclusory affidavit stating that the "venire list contains the names of jurors who voted to convict Appellant" and that "providing it to Appellant would endanger the safety of those jurors" is insufficient evidence to sustain its burden of proof. *See Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013) ("[A] generic determination or conclusory statements are not sufficient to justify the exemption of public records"). Based on the evidence in this appeal, the Office has not met its burden of withholding the venire list from public disclosure.

CONCLUSION

For the foregoing reasons, the Requester's appeal is **granted in part** and **transferred in part** to the Appeals Officer for the Philadelphia County District Attorney's Office and the Office is required to provide a copy of the venire list within thirty days. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, either 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 as per Section 1303 of the RTKL.² This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

¹ It is also worth noting that *Grine* stresses the importance of a local or Commonwealth agency to direct a request seeking judicial records to the appropriate judicial agency as required under the RTKL. 65 P.S. § 67.502(b)(1). It does not appear that the Office has directed the request for the venire list to the appropriate judicial agency, yet argues that the Request is seeking a judicial record.

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

FINAL DETERMINATION ISSUED AND MAILED: October 6, 2016

/s/ Jill S. Wolfe
JILL S. WOLFE, ESQ.
APPEALS OFFICER

Sent to: Craig Williams, BX-9919;
Micahel Scalera, Esq. (via e-mail only);
Appeals Officer for the Philadelphia County District Attorney's