



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

**TYRONE JAMES,
Complainant**

v.

**YORK COUNTY,
Respondent**

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Docket No. AP 2010-1209

INTRODUCTION

Tyrone James (the “Requester”) filed a request pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§67.101, *et seq.*, with York County (the “County”) seeking prison visitation records. The County denied the request, stating that records do not exist, and the Requester timely appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **denied** and the County is not required to take any further action.

FACTUAL BACKGROUND

On December 1, 2010, the County received a request seeking “All (records) visitations records between Attorney Worrell D. Nero, Esquire, and Tyrone James...between January of 2001 through March of 2002...Documentations, Book files, Log-in Sheets, Phone calls.” (“Request”). The County denied the Request, stating the prison does not maintain the requested

records of visits. The Requester timely appealed the denial of the attorney log book to the OOR.¹ He asserts the records exist and the denial of access affects his due process rights.

On appeal, the County provides an Affidavit signed under penalty of perjury by the Warden of the York County Prison attesting that the prison “does not maintain records which would reflect visits between Attorney Nero and Tyrone James.”

LEGAL ANALYSIS

The RTKL 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. OOR*, 990 A.2d 813, 824 (Pa. Commw. 2010). 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.” 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. The decision to hold a hearing or not hold a hearing is discretionary and non-appealable. *Id.* 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.* Here, neither party requested a hearing and the OOR has the necessary, requisite information and evidence before it to properly adjudicate the matter.

The County is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. §§67.102 and 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. An agency bears the burden of proving the applicability of any cited exemptions. *See* 65 P.S. § 67.708(b).

¹ The Requester does not appeal the agency’s response, or lack of response, in regard to the remainder of the records requested. Therefore, the denial of the log book is the only subject of this appeal.

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) [t]he 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). Preponderance of the evidence has been defined as “evidence which as a whole shows that the fact sought to be proved is more probable than not.” BLACK’S LAW DICTIONARY 1064 (8th ed.); *see also Commonwealth v. Williams*, 567 Pa. 272, 786 A.2d 961 (2001).

The County provides an Affidavit signed under penalty of perjury by a person with actual knowledge that it does not maintain records reflecting visits between Attorney Nero and Tyrone James. Under the RTKL, such an affidavit may serve as sufficient evidence of the nonexistence of responsive records. *See Moore v. OOR*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010); *see, e.g., Treichler v. Washington Township Municipal Authority*, OOR Dkt. AP 2010-0680, 2010 PA O.O.R.D. LEXIS 578; *Anderson v. Dept. of State*, OOR Dkt. AP 2010-0642, 2010 PA O.O.R.D. LEXIS 552. The OOR holds that the County established that no responsive records exist.

Finally, an appeal of the denial of access to records under the RTKL is not the proper forum to raise due process issues regarding an unrelated matter. *See Moore*, 992 A.2d at 910.

CONCLUSION

For the foregoing reasons, Requester’s appeal is **denied** and the County is not required to take any further action. This Final Determination is binding on all parties. Within thirty (30) days of the mailing date of this Final Determination, any party may appeal to the York 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 Section 1303 of the RTKL. This Final Determination shall be placed on the OOR website
at: <http://openrecords.state.pa.us>.

FINAL DETERMINATION ISSUED AND MAILED: January 21, 2011

A handwritten signature in black ink, appearing to read "Audrey Buglione". The signature is fluid and cursive, with the first name "Audrey" written in a larger, more prominent script than the last name "Buglione".

**AUDREY BUGLIONE, ESQUIRE
APPEALS OFFICER**

Sent to: Tyrone James, Michael Flannelly, Esq.