



# pennsylvania

OFFICE OF OPEN RECORDS

## FINAL DETERMINATION

**IN THE MATTER OF**  
**ERNEST THOMAS, JR.,**  
**Complainant**

**v.**

**LEBANON COUNTY,**  
**Respondent**

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**Docket No. AP 2010-0344**

### **INTRODUCTION**

Ernest Thomas, Jr., (the “Requester”) submitted a request to Lebanon County (the “County”) pursuant to the Right-to-Know Law, 65 P.S. §§67.101 *et seq.*, (“RTKL”) seeking visitor log and mail log records. The County did not timely respond. The Requester timely appealed to the Office of Open Records (“OOR”).

For the reasons set forth in this Final Determination, the appeal is **dismissed as moot**, and the County is not required to take further action.

### **FACTUAL BACKGROUND**

On March 16, 2010, the Requester submitted a right-to-know request seeking copies of

1. Visitor logs/records for [Requester] ... and
2. Mail logs/records concerning business-type mail and legal mail of [Requester] and
3. records that indicate dates and duration [Requester] was an inmate [at the County]

for years 2004 through 2010 pertaining to the Lebanon County Correctional Facility (the “Request”). The County did not respond. The Requester timely appealed the deemed denial.

During the pendency of the appeal, the County Open Records Officer (ORO), Jamie Wogemuth, submitted records related to the visitor logs and incoming/outgoing mail, along with a request for the \$9.25 fee. He advised that “additional time is needed to research the records of dates and duration of your incarceration.” Two weeks later, the County provided additional records showing the dates and timeframe of his incarceration, at a cost of \$2.75.

The OOR asked the Requester to confirm whether any records remained outstanding. He did not respond. The County submitted a notarized affidavit citing 18 Pa. C.S. §4904, in which the ORO attested that the records provided were fully responsive to the Request (“Affidavit”).

### **LEGAL ANALYSIS**

The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. §67.503(a). The County is a local agency subject to the RTKL required to disclose public records. 65 P.S. §67.302. A record in possession of a local agency is presumed to be public unless it is exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. §67.305. However, an agency cannot provide a record that does not exist.

Here, the County submitted responsive records during the course of the appeal. The County then substantiated that no other responsive records exist, by submitting the Affidavit.

### **CONCLUSION**

For the foregoing reasons, the Requester’s Appeal is **dismissed as moot**. This Final Determination is binding on the parties. Within thirty (30) days of the mailing date of this Final Determination, either party may appeal to the Lebanon 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. This Final Determination shall be placed on the website at: <http://openrecords.state.pa.us>.

**FINAL DETERMINATION ISSUED AND MAILED: May 18, 2010**

A handwritten signature in cursive script that reads "Lucinda Glinn".

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**LUCINDA GLINN, ESQ.  
APPEALS OFFICER**

Sent to: Ernest Thomas, Jr.; Jamie Wolgemuth for County