

Zeppos, Magdalene

From: Zeppos, Magdalene
Sent: Monday, February 13, 2017 1:19 PM
To: 'MSmith@centreda.org'
Subject: FW: Final Determination: McKown v. Centre County DA's Office (OOR Dkt. AP 2017-0120 and OOR Dkt. AP 2017-0252)
Attachments: 2017-0252_McKown-CentreCountyDA'sOffice_FD.pdf

From: Zeppos, Magdalene
Sent: Monday, February 13, 2017 1:18 PM
To: 'MSmith@centreda.org'
Subject: Final Determination: McKown v. Centre County DA's Office (OOR Dkt. AP 2017-0120 and OOR Dkt. AP 2017-0252)

Dear Attorney Smith:

Attached, please find the Final Determination issued in the above matter. Thank you.



Magdalene C. Zeppos, Esquire
Appeals Officer
Office of Open Records
Commonwealth Keystone Building
400 North Street, Plaza Level
Harrisburg, PA 17120-0225
(717) 346-9903 | mzeppos@pa.gov
<http://openrecords.pa.gov> | [@OpenRecordsPA](https://twitter.com/OpenRecordsPA)

Confidentiality Notice: This electronic communication is privileged and confidential and is intended only for the party to whom it is addressed. If received in error, please return to sender.

Zeppos, Magdalene

From: Microsoft Outlook
To: MSmith@centreda.org
Sent: Monday, February 13, 2017 1:20 PM
Subject: Relayed: FW: Final Determination: McKown v. Centre County DA's Office (OOR Dkt. AP 2017-0120 and OOR Dkt. AP 2017-0252)

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

MSmith@centreda.org (MSmith@centreda.org)

Subject: FW: Final Determination: McKown v. Centre County DA's Office (OOR Dkt. AP 2017-0120 and OOR Dkt. AP 2017-0252)



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

| | | |
|-------------------------------|---|---------------------------------|
| IN THE MATTER OF | : | |
| | : | |
| HOBSON MCKOWN, | : | |
| Requester | : | |
| | : | |
| v. | : | Docket No.: AP 2017-0252 |
| | : | |
| CENTRE 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.* Upon review of the file, the appeal is dismissed for the following reason:

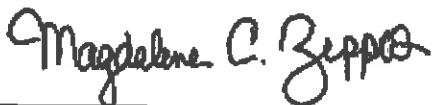
On January 5, 2017, Hobson McKown (“Requester”), an inmate at the Centre County Correctional Facility, filed a RTKL request (“Request”) with the Centre County District Attorney’s Office (“Office”), seeking records relating to a private criminal complaint filed by the Requester. On January 12, 2017, the Office invoked a thirty-day extension of time to respond to the Request. *See* 65 P.S. § 67.902(b)(2). On February 6, 2017, the Requester filed an appeal with the OOR, asserting that the Department failed to timely respond and that the Request was, therefore, deemed denied.¹

¹ The Requester initially filed two appeals challenging the Office’s response. The first appeal, docketed at OOR Dkt. AP 2017-0120, involved a request for the same records as the instant Request. However, the Requester stated in that

Because the appeal was filed prior to the date that the Office's response was due, the appeal is **dismissed as premature**. The Requester is not precluded from filing a new appeal within fifteen business days of the date his Request is denied or deemed denied pursuant to the requirements of 65 P.S. § 67.1101(a)(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 Centre County Court of Common Pleas. *See* 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. 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.² This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: February 13, 2017



APPEALS OFFICER
MAGDALENE C. ZEPPOS, ESQ.

Sent to: Hobson McKown. 16-1028;
Mark Smith, Esq. (via e-mail)

appeal that he was withdrawing the request that was the subject of the appeal. Because the appeal involved in OOR Dkt. AP 2017-0120 involves the same agency, requester, and records as the instant appeal, the appeal is consolidated into OOR Dkt. AP 2017-0252. *See* 65 P.S. § 67.1102(b)(3) (stating that "the appeals officer shall rule on procedural matters on the basis of justice, fairness, and the expeditious resolution of the dispute"). Additionally, the Deficiency Order issued in the instant appeal due to the Requester's failure to include a copy of the Office's response is hereby rescinded. *See* 65 P.S. § 67.1303(b).

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



ORDER
NOTICE OF FILING DEFICIENCY

February 6, 2017

Hobson McKown, 16-1028
Centre County Correctional Facility
700 Rishel Hill Road
Bellefonte, PA 16823

Re: Hobson McKown v. Centre County District Attorney's Office,
Docket No. 2017-0252

Dear Mr. McKown:

The Office of Open Records has received correspondence from you indicating that you wish to file an appeal of an agency's denial of a Right-to-Know Law request. In order to review the agency's denial of your request for records, the record on appeal is required to include both the request and the agency's response. *See* 65 P.S. § 67.1303(b). A review of your correspondence reveals that the required item(s) indicated below were/was not included with your correspondence:

- Request
- Agency Response

In order to cure this deficiency in the appeal, **you are required to file the above documents that were not included with the appeal** within seven (7) calendar days of the date of this letter. In addition, you are required to serve a copy of the document(s) upon the agency from which you requested the records.

FAILURE TO FILE THE REQUIRED DOCUMENT(S) WILL RESULT IN YOUR APPEAL BEING DISMISSED AS OF COURSE.

Respectfully yours,

/s/ Magdalene C. Zeppos

Magdalene C. Zeppos, Esq.
Appeals Officer

cc: Agency Open Records Officer



February 6, 2017

Via First Class Mail only:

Hobson McKown, 16-1028
Centre County Correctional Facility
700 Rishel Hill Road
Bellefonte, PA 16823

Via E-Mail only:

Stacy Parks Miller, Esquire
Open Records Officer
County of Centre
Office of the District Attorney
102 S. Allegheny Street
Courthouse, Room 404
Bellefonte, PA 16823
spmiller@centreda.org

RE: OFFICIAL NOTICE OF APPEAL – DOCKET #AP 2017-0252

Dear Parties:

Please review this information carefully as it affects your legal rights.

The Office of Open Records (“OOR”) received this appeal under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101, *et seq.* on February 6, 2017. This letter describes the appeal process. A binding Final Determination will be issued pursuant to the timeline required by the RTKL. In most cases, that means within 30 calendar days.

OOR Mediation: This is a voluntary, informal process to help parties reach a mutually agreeable settlement on records disputes before the OOR. To participate in mediation, both parties must agree in writing. If mediation is unsuccessful, both parties will be able to make submissions to the OOR, and the OOR will have 30 calendar days from the conclusion of the mediation process to issue a Final Determination.

Note to Parties: Statements of fact must be supported by an affidavit or attestation made under penalty of perjury by a person with actual knowledge. Any factual statements or allegations submitted without an affidavit will not be considered. The agency has the burden of proving that records are exempt from public access (*see* 65 P.S. § 67.708(a)(1)). **To meet this burden, the agency must provide evidence to the OOR.** The law requires the agency position to be supported by sufficient facts *and* citation to all relevant sections of the RTKL, case law, and OOR Final Determinations. An affidavit or attestation is required to show that records do not exist. Blank sample affidavits are available on the OOR’s website.

Submissions to OOR: Both parties may submit information and legal argument to support their positions by **11:59:59 p.m. seven (7) business days from the date of this letter.** *Submissions sent via postal mail and received after 5:00 p.m. will be treated as having been received the next business day.* The agency may assert exemptions on appeal even if it did not assert them when the request was denied (*Levy v. Senate of Pa.*, 65 A.3d 361 (Pa. 2013)).

Include the docket number above on all submissions related to this appeal. Also, any information you provide to the OOR must be provided to all parties involved in this appeal. Information shared with the OOR that is not also shared with all parties will not be considered.

Agency Must Notify Third Parties: If records affect a legal or security interest of an employee of the agency; contain confidential, proprietary or trademarked records of a person or business entity; or are held by a contractor or vendor, **the agency must notify such parties of this appeal immediately and provide proof of that notice to the OOR within seven (7) business days from the date on this letter.** Such notice must be made by (1) providing a copy of all documents included with this letter; and (2) advising that interested persons may request to participate in this appeal (*see* 65 P.S. § 67.1101(c)).

Commonwealth Court has held that “the burden [is] on third-party contractors ... to prove by a preponderance of the evidence that the [requested] records are exempt.” (*Allegheny County Dep’t of Admin. Servs. v. A Second Chance, Inc.*, 13 A.3d 1025, 1042 (Pa. Commw. Ct. 2011)). **Failure of a third-party contractor to participate in an appeal before the OOR may be construed as a waiver of objections regarding release of the requested records.**

Law Enforcement Records of Local Agencies: District Attorneys must appoint Appeals Officers to hear appeals regarding criminal investigative records in the possession of a local law enforcement agency. If access to records was denied in part on that basis, the Requester should consider filing a concurrent appeal with the District Attorney of the relevant county.

If you have any questions about the appeal process, please contact the assigned Appeals Officer (contact information is enclosed) – and be sure to provide a copy of any correspondence to all other parties involved in this appeal.

Sincerely,



Erik Arneson
Executive Director

Enc.: Assigned Appeals Officer contact information
Entire appeal as filed with OOR

REQUEST TO PARTICIPATE BEFORE THE OOR

Please accept this as a Request to Participate in a currently pending appeal before the Office of Open Records. The statements made herein and in any attachments are true and correct to the best of my knowledge, information and belief. I understand this statement is made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities.

NOTE: The requester filing the appeal with the OOR is a named party in the proceeding and is NOT required to complete this form.

OOR Docket No: _____

Today's date: _____

Name: _____

IF YOU ARE OBJECTING TO THE DISCLOSURE OF YOUR HOME ADDRESS, DO NOT PROVIDE THE OFFICE OF OPEN RECORDS WITH YOUR HOME ADDRESS. PROVIDE AN ALTERNATE ADDRESS IF YOU DO NOT HAVE ACCESS TO E-MAIL.

Address/City/State/Zip _____

E-mail _____

Fax Number: _____

Name of Requester: _____

Address/City/State/Zip _____

Telephone/Fax Number: _____ / _____

E-mail _____

Name of Agency: _____

Address/City/State/Zip _____

Telephone/Fax Number: _____ / _____

E-mail _____

Record at issue: _____

I have a direct interest in the record(s) at issue as (check all that apply):

- An employee of the agency
- The owner of a record containing confidential or proprietary information or trademarked records
- A contractor or vendor
- Other: (attach additional pages if necessary) _____

I have attached a copy of all evidence and arguments I wish to submit in support of my position.

Respectfully submitted, _____ (must be signed)

Please submit this form to the Appeals Officer assigned to the appeal. Remember to copy all parties on this correspondence. The Office of Open Records will not consider direct interest filings submitted after a Final Determination has been issued in the appeal.



pennsylvania

OFFICE OF OPEN RECORDS

APPEALS OFFICER:

Magdalene C. Zeppos, Esquire

CONTACT INFORMATION:

**Commonwealth of Pennsylvania
Office of Open Records
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225**

PHONE:

(717) 346-9903

FACSIMILE:

(717) 425-5343

E-MAIL:

mzeppos@pa.gov

**Preferred method of contact
and submission of information:**

EMAIL

**Please direct submissions and correspondence related
to this appeal to the above Appeals Officer. Please include the case
name and docket number on all submissions.**

**You must copy the other party on everything you submit
to the OOR.**

The OOR website, <http://openrecords.pa.gov>, is searchable and both parties
are encouraged to review prior final determinations involving similar records
and fees that may impact this appeal.

RIGHT-TO-KNOW LAW ("RTKL") APPEAL OF DEEMED DENIAL

Date: 2017-02-01

Recipient of Appeal: Office of Open Records, Commonwealth Keystone Building, 400 North Street, 4th Floor, Harrisburg, PA, 17120-0225; tel#717-346-9903, fax#717-425-5343, email:openrecords@pa.gov

Requester: Hobson McKown, Inmate ID 16-1028, Centre County Correctional Facility, 700 Rishel Hill Road, Bellefonte, Pennsylvania, 16823-1488

Request submission means/date: via jail institutional mail circa ~~2016-12-26~~ 2017-01-02 21:26, to US mail

Agency: Centre County District Attorney's Office, Centre County Courthouse, Room 404, 102 South Allegheny Street, Bellefonte, Pennsylvania 16823-1986; tel#814-355-6735, fax#814-355-6756

Response submission means/date: US mail, postmark 2017-01-12

Denied access to following records:

A) the two-page private criminal complaint by Hobson Lyle McKown dated 09/25/2016, accusing one Denny Nau of two misdemeanors in office, (having been submitted to the Office of the District Attorney of Centre County via first class mail from the Centre County Correctional Facility on 09/25/2016,) B) the one-page letter to the District Attorney, Stacy Parks Miller, Esq., from Hobson McKown, with the enclosed two-page private criminal complaint aforementioned in item A, sent via certified mail and having been signed for by (illegibly) "/s/J---- B----" on or about November 7, 2016, C) any journal/log noting the receipt or processing or status of the above mailpieces/complaints/letters, by any person of the Office of the District Attorney or any other county employee, D) any record evidencing that Stacy Parks Miller herself viewed the letter or either copy of the criminal complaint, or the envelopes containing those documents, E) any regulation, rule, statement of policy, or other record, ("Policies") regarding the handling of private criminal complaints, including those Policies that co-extend to the handling of police criminal complaints, F) any Policies regarding the handling of mail or documents from one Hobson McKown, G) any records regarding a pre-approval complaint inquiry and/or any record regarding inquiry status.

Agency response:

January 12, 2017 Hobson McKown – Inmate #16-1028 Centre County Correctional Facility 700 Rishel Hill Road Bellefonte, PA 16823-1488 Re: Right to Know Request Dated 12/31/2016 To Whom It May Concern: Thank you for writing to the District Attorney's Office with your request for information pursuant to the Pennsylvania Right-To-Know law. On January 5, 2017, I became aware you made seven requests: 1) The two page private criminal complaint by Hobson Lyle McKown dated 9/25/2016, accusing one Denny Nau of two misdemeanors in office, (having been submitted to the Office of the District Attorney of Centre County via first class mail from the Centre County Correctional Facility on 9/25/2016). 2) The one page letter to the District Attorney, Stacy Parks Miller, Esq., from Hobson McKown, with the enclosed two page private criminal complaint aforementioned in item A, sent via certified mail and having been signed for by (illegibly), "/s/J---- B----" on or about November 7, 2016. 3) Any journal/log noting the receipt or processing or status of the above mail pieces/complaints/letters, by any person of the Office of the District Attorney or any other county employee. 4) Any record evidencing that Stacy Parks Miller herself viewed the letter or either copy of the criminal complaint, or the envelopes containing those documents. 5) Any regulation, rule, statement of policy, or other record, ("Policies") regarding the handling of private criminal complaints, including those Policies that co-extend to the handling of police criminal complaints. 6) Any policies regarding the handling of mail

RECEIVED

FEB 06 2017

OFFICE OF OPEN RECORDS

RIGHT-TO-KNOW LAW ("RTKL") APPEAL OF DEEMED DENIAL

or documents from one Hobson McKown. 7) Any records regarding a pre-approval complaint inquiry and/or any record regarding inquiry status. Your requests are being reviewed. I am unable to provide an answer within (5) days because, pursuant to Section 902 of the Right to Know law, a legal review is necessary to determine whether any requested documents that may exist satisfy your requests under the Right to Know law. Respectfully, /s/Mark S. Smith Esq. Mark Smith, Esquire Centre County First Assistant District Attorney MS/sy

Concise statement addressing denial:

The District Attorney's Office was required to supply a reasonable date that the response was expected to be provided. To no indeterminate date can there be agreement, per *RTKL § 902(b)(2)*, which provides that "[t]he notice shall include a statement notifying the requester that the request for access is being reviewed, the reason for the review, a reasonable date that a response is expected to be provided and an estimate of applicable fees owed when the record becomes available. If the date that a response is expected to be provided is in excess of 30 days, following the five business days allowed for in section 901, the request for access shall be deemed denied unless the requester has agreed in writing to an extension to the date specified in the notice." No date was provided. The request is therefore deemed denied, and is concurrently appealed both to a *RTKL § 503(d)(2)* appeals officer, including for the determination as to whether any record requested is a criminal investigative record, and to a *RTKL § 503(a)(2)* appeals officer with the Office of Open Records.

Private criminal complaints (items A, B) are specifically excepted from being criminal investigative records. *RTKL § 708(b)(16)(i)*.

In all cases, Agency can be expected to comply with the RTKL and this request by grant in whole, or, in part, by redaction of documents which consist of nonpublic portions, if any.

Notice of additional pleas:

Requester requests that Agency, by agency head Stacy Parks Miller, exercises discretion to make any otherwise exempt record available for inspection and copying, as the public interest favors access to these records to review that the District Attorney's Office a) is properly receiving and processing mail, b) is complying with *Pa.R.Crim.P., Rule 506* regarding the private criminal complaint approval process, and c) is aware of the accusation of crimes against current and former officials. It is necessary that members of the public may come to realize that the private criminal complaint process is one of many tools for public redress of the public wrongs in public administration (for what can be more important, than that the government, and its agents, proceed and continue to proceed lawfully, to uphold law at the request of and for the benefit of its citizens,) as to show that it will not generally lead to retaliation, and as to show that lawful complaints and competent evidence will achieve proper ends in constraining our agents of government, thereby leading to fewer misprisions of felony and of misbehavior in office.

Concise assertion of legitimacy: The Request for records was sufficiently specific; the public records are in the possession, custody or control of the Agency; each record is not A) exempted under *RTKL § 708*, (subject to any redaction under *RTKL § 706*,) B) exempt from being disclosed under any other Federal or State law or regulation or judicial order or decree, or C) protected by a privilege; the Requester makes this statement to the best of his knowledge, or information and belief; the Requester hereby appeals.

So signed,



02/01/2017



pennsylvania

OFFICE OF OPEN RECORDS

STANDARD RIGHT-TO-KNOW REQUEST FORM

DATE REQUESTED: 12/31/2016

REQUEST SUBMITTED BY: E-MAIL U.S. MAIL FAX IN-PERSON

REQUEST SUBMITTED TO (Agency name & address): Open Records Officer, Centre Co. District Attorney Ofc, Courthouse Rm. 404, 102 S Allegheny St, Bellefonte, PA 16823-1986

NAME OF REQUESTER : Hobson McKown

STREET ADDRESS: Inmate 16-1028, Centre Co. Correctional Facility, 700 Rishel Hill Rd

CITY/STATE/COUNTY/ZIP(Required): Bellefonte, PA, County of Centre, 16823-1488

TELEPHONE (Optional): _____ EMAIL (optional): _____

RECORDS REQUESTED: **Provide as much specific detail as possible so the agency can identify the information. Please use additional sheets if necessary*

Please see reverse side of this paper. Request is substantially the same as the request issued by letter, dated December 25, 2016. This request is now provided on the uniform form, 65 P.S. § 67.505, to ensure compliance with the Right-To-Know Law, and to preserve right to appeal, if necessary.

DO YOU WANT COPIES? YES NO

DO YOU WANT TO INSPECT THE RECORDS? YES NO

DO YOU WANT CERTIFIED COPIES OF THE RECORDS? YES NO

DO YOU WANT TO BE NOTIFIED IN ADVANCE IF THE COST EXCEEDS \$100 YES NO

**** PLEASE NOTE: RETAIN A COPY OF THIS REQUEST FOR YOUR FILES ****
**** IT IS A REQUIRED DOCUMENT IF YOU WOULD NEED TO FILE AN APPEAL ****

FOR AGENCY USE ONLY

OPEN-RECORDS OFFICER:

I have provided notice to appropriate third parties and given them an opportunity to object to this request

DATE RECEIVED BY THE AGENCY:

AGENCY FIVE (5) BUSINESS DAY RESPONSE DUE:

***Public bodies may fill anonymous verbal or written requests. If the requestor wishes to pursue the relief and remedies provided for in this Act, the request must be in writing. (Section 702.) Written requests need not include an explanation why information is sought or the intended use of the information unless otherwise required by law. (Section 703.)*

- A)** the two-page private criminal complaint by Hobson Lyle McKown dated 09/25/2016, accusing one Denny Nau of two misdemeanors in office, (having been submitted to the Office of the District Attorney of Centre County via first class mail from the Centre County Correctional Facility on 09/25/2016,)
- B)** the one-page letter to the District Attorney, Stacy Parks Miller, Esq., from Hobson McKown, with the enclosed two-page private criminal complaint aforementioned in item A, sent via certified mail and having been signed for by (illegibly) "/s/J--- B-----" on or about November 7, 2016,
- C)** any journal/log noting the receipt or processing or status of the above mailpieces/complaints/letters, by any person of the Office of the District Attorney or any other county employee,
- D)** any record evidencing that Stacy Parks Miller herself viewed the letter or either copy of the criminal complaint, or the envelopes containing those documents,
- E)** any regulation, rule, statement of policy, or other record, ("Policies") regarding the handling of private criminal complaints, including those Policies that co-extend to the handling of police criminal complaints,
- F)** any Policies regarding the handling of mail or documents received from one Hobson McKown,
- G)** any records regarding a pre-approval complaint inquiry and/or any record regarding inquiry status.

Henry, Faith

From: Microsoft Outlook
To: spmiller@centreda.org
Sent: Monday, February 06, 2017 4:03 PM
Subject: Relayed: McKown v. Centre County District Attorney's Office: OOR Dkt 2017-0252

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

spmiller@centreda.org (spmiller@centreda.org)

Subject: McKown v. Centre County District Attorney's Office: OOR Dkt 2017-0252



McKown v. Centre
County Distri...

Henry, Faith

From: DC, OpenRecords
Sent: Monday, February 06, 2017 4:02 PM
To: 'spmiller@centreda.org'
Subject: McKown v. Centre County District Attorney's Office: OOR Dkt 2017-0252
Attachments: 2017-0252_McKown_CentreCountyDistrictAttorney.pdf

Good Afternoon,

Please see the attached appeal that has been filed with the Office of Open Records. This matter has been assigned to an Appeals Officer (see page 5 of attachment for contact information). Please forward all future correspondence directly to the Appeals Officer and all other parties. Thank you!



Faith Henry

Administrative Officer
Office of Open Records
Commonwealth Keystone Building
400 North Street, Plaza Level
Harrisburg, PA 17120-0225

(717) 346-9903 | <http://openrecords.pa.gov>

Confidentiality Notice: This electronic communication is privileged and confidential and is intended only for the party to whom it is addressed. If received in error, please return to sender.

GREEN PINE
CLARK COUNTY
700 BOYLE AVE
BELLEVILLE, PA 16023-1486



POSTAGE WILL BE PAID BY ADDRESSEE
NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES

OFFICE OF THE
ATTORNEY GENERAL (1001111, 1001111, 1001111)
CORPORATION OF THE STATE OF
100 SOUTH ST, 4TH FLOOR
HARRISBURG, PA 17120-0000