

OOR Confirms that Requests for “Updates” are Not Proper Under the RTKL

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In *Frederick v. Caln Township Police Department*, AP 2019-1059 (Aug. 1, 2019), the requester sought an update on his case against another individual by submitting a RTKL request to the police department (“Department”). Specifically, the Request sought:

a complete update on [the Requester’s] case against [individual]. Opened case last October 2018. I would like to know who has made a statement and on what date. What is being done to find out where the items are and who has them. Who is in charge of the investigation.

The Department denied the Request, arguing that records pertaining to the case relate to a criminal investigation.

On appeal, the Department identified two incident reports and claimed that all responsive records relate to a criminal investigation. 65 P.S. § 67.708(b)(16). Although the Department identified incident reports, the OOR concluded that the portion seeking “a complete update on my case” was not a request for records as required by Sections 702 and 703 of the RTKL. Moreover, the remainder of the Request asked questions instead of seeking records.

Because the Request did not identify any records sought, but instead sought an update on an investigation and asked the Department questions regarding the investigation, the OOR concluded that the Request was not proper and that there was no right to appeal to the OOR. See 65 P.S. § 67.1101(a)(1) (“If a written request for access to a record is denied or deemed denied, the requester may file an appeal with the Office of Open Records...”).

Finally, because the Request did not seek the incident reports identified by the Department, the OOR concluded that it was not required to decide whether the identified incident reports were criminal investigatory materials that are exempt under Section 708(b)(16) of the RTKL.

This case confirms that Requesters must request records under the RTKL and have no appeal rights if they instead ask questions or seek updates. As discussed previously, it is not always clear if a request is proper, so Open Records Officers should always work with their solicitor prior to denying a request on the basis that it asks questions.

If you have any questions or comments, please do not hesitate to contact Chris Voltz or any of the other Municipal and School Attorneys at Tucker Arensberg, P.C.