

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Roger Buehl,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 198 C.D. 2015
	:	Submitted: June 19, 2015
Pennsylvania Department of	:	
Corrections,	:	
	:	
Respondent	:	

BEFORE: HONORABLE DAN PELLEGRINI, President Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE JAMES GARDNER COLINS, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
SENIOR JUDGE COLINS**

FILED: July 27, 2015

Roger Buehl (Petitioner) petitions, *pro se*, for review of a final determination of the Office of Open Records (OOR) that dismissed his appeal under the Right-to-Know Law¹ as untimely. We conclude that OOR erred in finding Petitioner's appeal untimely with respect to his claim that he was improperly charged copying costs for blank pages of records and remand that issue to OOR for further proceedings.

On September 11, 2014, Petitioner submitted to the Department of Corrections (DOC) a request under the Right-to-Know Law for four groups of documents, including the "[c]ontract between the PA DOC and the company

¹ Act of February 14, 2008, P.L. 6, 65 P.S. §§ 67.101–67.3104.

currently responsible for providing health care (medical treatment) for PA DOC prisoners” (the Contract Request) and “[t]he prescriptive authority, collaborative or written agreement with physician, and specialty certification for CRNP Nelson A. Ianuzzi, for his practice in providing health care services to SCI-Frackville prisoners” (the Ianuzzi Request). (Record Item (R. Item) 1, Petitioner’s Appeal to OOR, Reproduced Record (R.R.) at 3a.) On October 15, 2014, after extending its deadline to respond pursuant to Section 902 of the Right-to-Know Law, 65 P.S. § 67.902, DOC granted these two requests and one of Petitioner’s other requests in part, stating that it would provide “a redacted version of the contract with Correct Care Solutions, LLC” in response to the Contract Request and “a redacted record pertaining to the certification of [CRNP Ianuzzi]” in response to the Ianuzzi Request. (*Id.*, R.R. at 4a.) In this response, DOC also required Petitioner to prepay \$106.25, consisting of \$100.50 in copying costs at a rate of \$0.25 per page for 402 pages and \$5.75 in postage, before providing copies of the records. (*Id.*, R.R. at 4a, 9a.) Petitioner paid the \$106.25 by money order in November 2014 and DOC mailed Petitioner records responsive to his September 11, 2014 Right-to-Know Law request on December 4, 2014. (*Id.*, R.R. at 1a; R. Item 5, DOC Supplemental Submission to OOR, Declaration of DOC Open Records Officer.)

Petitioner filed an appeal to OOR dated December 19, 2014 and received by OOR on December 29, 2014, asserting that DOC overcharged him \$27.50 for 110 blank pages in the Correct Care Solutions, LLC Contract and that DOC had provided only licensing information with respect to CRNP Ianuzzi, and not the requested collaborative agreement and prescriptive authority. (R. Item 1, Petitioner’s Appeal to OOR, R.R. at 1a-2a, 10a.) OOR denied Petitioner’s appeal as untimely on the ground that the period for any appeal from these actions by

DOC began to run at the time of DOC's October 15, 2014 response to Petitioner's Right-to-Know request and that the deadline for any appeal was therefore November 5, 2014. (R. Item 6, OOR Final Determination at 2.)

The Right-to-Know Law permits a requester to appeal to OOR from an agency's denial of a record request, a failure by the agency to produce requested records without a response denying the request or the agency's requiring the requester to pay an unreasonable fee for the records. Sections 1101 and 1307 of the Right-to-Know Law, 65 P.S. §§ 67.1101, 67.1307; *State Employees' Retirement System v. Office of Open Records*, 10 A.3d 358 (Pa. Cmwlth. 2010). The requester must file such an appeal to OOR within 15 business days of the agency denial. 65 P.S. § 67.1101(a)(1).

Petitioner argues that his appeal to OOR was timely because it was an appeal from the DOC's December 4, 2014 actions of mailing him blank pages for which it had charged him copying costs and not including certain records requested in the Ianuzzi Request, not an appeal from DOC's October 15, 2014 response to his Right-to-Know Law request.²

We agree that OOR erred in dismissing the appeal of the alleged over-charge for blank pages as untimely. The October 15, 2014 letter set forth the per-page copying charge, the records and number of pages to which DOC was granting access, the total payment required, and the grounds for withholding and redaction of records. (R. Item 1, Petitioner's Appeal to OOR, R.R. at 4a-9a.) This appeal is not from any of those actions. Petitioner does not challenge the per-page charge

² Under the Right-to-Know Law, this Court exercises plenary, *de novo* review of OOR determinations involving Commonwealth agencies such as DOC. *Bowling v. Office of Open Records*, 75 A.3d 453, 477 (Pa. 2013).

for copying of \$0.25, or assert that the total charge of \$106.25 for the records to which DOC granted access constituted a denial of access. Nor does Petitioner appeal from the redactions themselves or the grounds for redaction. Petitioner's claim that the cost charged by DOC was unreasonable and a denial of access is that DOC allegedly charged copying costs for pages where nothing was provided. DOC did not disclose in its letter that it was providing and charging copying costs for blank pages redacted in their entirety. The alleged denial of which Petitioner complains on this issue therefore did not occur until December 4, 2014, when DOC provided the blank pages, and the time limit for filing an appeal on this issue began to run on December 4, 2014, not October 15, 2014.

DOC argues that OOR's dismissal of this claim can be affirmed on the ground that Petitioner's appeal was not timely even if the appeal period began to run on December 4, 2014. We do not agree. The 15 business days from December 4, 2014 within which Petitioner was required to file his appeal, 65 P.S. § 67.1101(a)(1), ended on Friday, December 26, 2014. Petitioner's appeal is dated December 19, 2014, well before that deadline. (R. Item 1, Petitioner's Appeal to OOR, R.R. at 1a-2a.) While the appeal was not received by OOR until Monday, December 29, 2014, the date that OOR received the appeal is not dispositive of whether it was timely filed. Under the prisoner mailbox rule, a *pro se* inmate's appeal is deemed filed on the date that he delivers the appeal to prison authorities or places his notice of appeal in the institutional mailbox. *Barros v. Martin*, 92 A.3d 1243, 1248-49 (Pa. Cmwlth. 2014) (applying prisoner mailbox rule to Right-to-Know Law appeal); *Kittrell v. Watson*, 88 A.3d 1091, 1096-97 (Pa. Cmwlth. 2014) (prisoner mailbox rule applies to all *pro se* appeals by inmates, including administrative appeals); *Sweesy v. Pennsylvania Board of Probation and Parole*,

955 A.2d 501, 502 (Pa. Cmwlth. 2008) (prisoner mailbox rule applies to administrative appeals). Therefore, unless Petitioner delivered the appeal to prison authorities or placed his appeal in the prison mailbox on Saturday December 27, 2014 or later, virtually immediately prior to its receipt by OOR, the appeal is timely.

Moreover, Petitioner had no notice that there was any dispute that his appeal was timely with respect to DOC's December 4, 2014 mailing. DOC did not contend in its filings with OOR that Petitioner's appeal was untimely with respect to its December 4, 2014 mailing of the records and argued only that it was untimely with respect to the October 15, 2014 response. (R. Item 3, DOC Submission to OOR, R.R. at 12a-13a; R. Item 5, DOC Supplemental Submission to OOR, R.R. at 16a-17a.) Accordingly, Petitioner must be given an opportunity to show when he delivered his appeal to prison authorities or placed it in the prison mailbox before his appeal of DOC's copying charges for blank pages can be dismissed as untimely. *Sweesy*, 955 A.2d at 502-03.

Because OOR erred in dismissing Petitioner's appeal of DOC's copying charges for blank pages as untimely, we reverse its decision with respect to that issue and remand to OOR to permit Petitioner to submit evidence in response to any contention by DOC that the appeal is untimely with respect to December 4, 2014 and to address the merits, unless OOR finds that Petitioner did not deliver his appeal to prison authorities or placed it in the prison mailbox on or before December 26, 2014. We express no opinion as to the merit or lack thereof of Petitioner's factual and legal claims concerning the copying charges for blank pages, and leave those issues for OOR to resolve in the first instance.

OOR, however, did not err in concluding that the appeal from the failure to produce documents in response to the Ianuzzi Request was untimely. In its October 15, 2014 response, DOC clearly stated that it was not producing all records sought in the Ianuzzi Request and that it was providing access only to a redacted copy of the CRNP's certification. (R. Item 1, Petitioner's Appeal to OOR, R.R. at 4a.) The October 15, 2014 response therefore denied access to the collaborative agreement and prescriptive authority that Petitioner seeks in this appeal and Petitioner was required to file any appeal from that denial within 15 business days of that denial, on or before November 5, 2014. There is no dispute that Petitioner did not appeal that denial until December 2014, long after the appeal period expired.³

For the foregoing reasons, we reverse and remand the final determination of OOR with respect to Petitioner's appeal of DOC's copying charges for blank pages and affirm its final determination with respect to DOC's failure to provide records.

JAMES GARDNER COLINS, Senior Judge

³ Indeed, Petitioner states that he was in fact granted access to the documents in question in response to a later request. (Petitioner's Br. at 6.) It therefore appears that Petitioner's misunderstanding of the October 15, 2014 response on this issue and failure to timely appeal were also harmless.

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Pennsylvania Department of	:	
Corrections,	:	
	:	
Respondent	:	

ORDER

AND NOW, this 27th day of July, 2015, the final determination of the Office of Open Records (OOR) is REVERSED with respect to Petitioner's appeal of the copying charge for blank pages and is REMANDED to OOR with instructions to permit Petitioner to introduce evidence as to when he delivered his appeal to prison authorities for mailing or placed it in the prison mailbox, if any challenge is asserted that said appeal is untimely with respect to December 4, 2014, and to address the merits of said appeal, unless OOR finds that Petitioner did not deliver his appeal to prison authorities for mailing or place it in the prison mailbox on or before December 26, 2014. The final determination of OOR is AFFIRMED as to Petitioner's appeal of the failure of the Department of Corrections to provide copies of requested records.

Jurisdiction relinquished.

JAMES GARDNER COLINS, Senior Judge