

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Stevie Boyd,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 206 C.D. 2012
	:	
Department of Corrections,	:	Submitted: February 22, 2013
	:	
Respondent	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE COHN JUBELIRER**

FILED: April 5, 2013

Stevie Boyd, pro se, petitions for review of a Final Determination of the Office of Open Records (OOR) denying his appeal from the Department of Corrections' (DOC) denial of his Right-to-Know Law¹ (RTKL) Request (Request) seeking records showing money deducted from Boyd's institutional accounts. For the reasons that follow, we affirm.²

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

² We note that Boyd filed a Motion for an Enlargement of Time to File a Reply Brief with this Court on January 2, 2013 seeking a thirty-day extension based upon his alleged lack of access to the law library. Our Court granted his motion and ordered Boyd to file a reply brief on or before February 5, 2013; however, Boyd did not file a reply brief. On February 8, 2013, Boyd
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Boyd is an inmate currently housed at the State Correctional Institution at Mahanoy (SCI-Mahanoy). On November 29, 2011, Boyd filed his Request with the DOC seeking “a copy of the full accounting of all monies garnered [sic] from my institutional account at SCI-Somerset and here at SCI-Mahanoy as the result of misconduct number #B197907.” (Request.) The DOC denied Boyd’s Request on December 5, 2011 because the requested records were not records of the DOC, and the records were exempt from disclosure pursuant to certain exceptions set forth in Section 708 of the RTKL, 65 P.S. § 67.708.³ (Denial at 1-3.) The DOC also stated that the requested records were not public based upon a constitutional right to

filed a Letter Request for Additional Time to File a Reply Brief with this Court seeking a sixty-day extension based upon his placement in disciplinary confinement. By Order entered February 13, 2013, we denied Boyd’s letter request because it lacked proof of service on the DOC and the reason set forth therein was insufficient. Now before this Court for disposition is another motion for an indefinite enlargement of time filed by Boyd with this Court on February 19, 2013. Therein, it is not clear what relief Boyd is seeking. Boyd alleges that he is currently confined in the restrictive housing unit; therefore, he requires an extension of time until he is released from the restrictive housing unit to process this matter, which he characterizes as a criminal case, against the DOC. The allegations contained in Boyd’s February 19th motion reveal that he believes he is required to appear in person before this Court to litigate his appeal. However, as this Court’s Order of February 15, 2013 states, Boyd’s appeal has been submitted on briefs for our review, without oral argument, meaning that we will decide Boyd’s appeal solely on the briefs submitted by him and the DOC. As such, Boyd is not required to appear in person before this Court with respect to his appeal. Moreover, to the extent Boyd is seeking another extension to file a reply brief, our review of the record and the issues presented show that the denial of a request to file a reply brief would not prejudice Boyd. Accordingly, we will deny Boyd’s motion for an enlargement of time filed with this Court on February 19, 2013.

³ Specifically, that the records were exempt from disclosure pursuant to the: (1) personal identification information exception, Section 708(b)(6), 65 P.S. § 67.708(b)(6); (2) public safety exception, Section 708(b)(2), 65 P.S. § 67.708(b)(2); (3) personal security exception, Section 708(b)(1)(ii), 65 P.S. § 67.708(b)(1)(ii); (4) criminal investigation exception, Section 708(b)(16), 65 P.S. § 67.708(b)(16); and (5) non-criminal investigation exception, Section 708(b)(17), 65 P.S. § 67.708(b)(17). (Denial at 1-3.)

privacy and the Criminal History Record Information Act, 18 Pa. C.S. §§ 9101–9183. (Denial.)

On December 27, 2011, Boyd appealed the DOC's denial of his RTKL Request to the OOR. Therein, Boyd argued that the DOC's reasons for denying his Request were erroneous because: (1) he is seeking information that pertains to his inmate accounts, not a third party seeking information regarding other inmates' accounts; (2) he is not seeking any investigative information related to the misconduct; (3) he did not send his Request to the RTKL office, but rather the DOC; (4) the information requested pertains only to him; (5) disclosure of the transactions from his own accounts poses no threat to the safety or security of anyone; and (6) he has a legal right to disclosure of the requested information. (OOR Appeal at 3-4.) The OOR invited the parties to supplement the record. (OOR Letter, December 28, 2011.) In response, Boyd provided a position statement, along with copies of his monthly account statements. (Boyd's OOR Response.) The DOC also provided a position statement, along with copies of its various policies, including the Inmate Handbook. (DOC's OOR Response.)

Upon review, the OOR determined, based upon the Inmate Handbook and the DOC's policies, that inmate accounts, which are created and administered by the DOC, were records of the DOC pursuant to Section 102 of the RTKL, 65 P.S. § 67.102. The OOR determined further that the requested records were exempt from

disclosure pursuant to Section 708(b)(6)(i)(A) of the RTKL,⁴ commonly referred to as the personal identification information exception, because the records contained personal financial information as that term is defined in the RTKL. Section 102 of the RTKL defines “personal financial information” as “[a]n individual’s personal credit, charge or debit card information; bank account information; bank, credit or financial statements; account or PIN numbers and other information relating to an individual’s personal finances.” 65 P.S. § 67.102. The OOR described inmate account records as showing “money in an inmate’s account, along with deposits and withdrawals made to and from that account.” (Final Determination at 5.) Thus, the OOR determined that the inmate account records sought by Boyd were the functional equivalent of bank statements and constituted “personal financial information” within the meaning of the RTKL. The OOR did not consider the other reasons for the DOC’s denial of Boyd’s RTKL Request. (Final Determination at 5.) Accordingly, the OOR denied Boyd’s appeal. Boyd now petitions this Court for review.⁵

⁴ 65 P.S. § 67.708(b)(6)(i)(A). Section 708(b)(6)(i)(A) provides, in pertinent part, that personal identification information, including “[a] record containing all or part of a person’s . . . financial information,” is exempt from disclosure to a requestor. Id.

⁵ This Court has noted that:

In reviewing a final determination of the OOR, this Court “independently reviews the OOR’s orders and may substitute its own findings of fact for that of the agency.” With regard to what evidence this Court may consider in reviewing a decision of the OOR, this Court “is entitled to the broadest scope of review” but “should consider the manner of proceeding most consistent with justice, fairness and expeditious resolution.” The RTKL does not prohibit this Court from considering evidence that was not before the OOR.

Department of Transportation v. Office of Open Records, 7 A.3d 329, 332 n.2 (Pa. Cmwlth. 2010) (citations omitted) (quoting Bowling v. Office of Open Records, 990 A.2d 813, 818, 820, (Continued...))

Under the RTKL, a “record” includes “[i]nformation, regardless of physical form or characteristics, that documents a transaction or activity of an agency and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency.” 65 P.S. § 67.102. Commonwealth agencies, such as the DOC, are required to provide public records to requesters in accordance with the RTKL. Section 301(a) of the RTKL, 65 P.S. § 67.301(a). Although the RTKL presumes a record in possession of a Commonwealth agency is a public record, the presumption does not apply to the exceptions set forth in Section 708. Section 305(a)(1) of the RTKL, 65 P.S. § 67.305(a)(1). Further, a “public record” is defined as a record of a Commonwealth agency that is not exempt under Section 708. 65 P.S. § 67.102. Section 708(a)(1) of the RTKL, 65 P.S. § 67.708(a)(1), places the burden on the agency to prove, by a preponderance of the evidence, that a particular record is exempt from public access.

In support of this appeal, Boyd does not include any issues in the Statement of Questions Involved portion of his brief or advance any arguments in the Argument portion with respect to the OOR’s Final Determination;⁶ therefore, he

823 (Pa. Cmwlth. 2010) (en banc), petition for allowance of appeal granted in part, 609 Pa. 265, 15 A.3d 427 (2011)).

⁶ Instead, Boyd contends that he was involved in an altercation with another inmate and, as a result of this misconduct, sanctions were imposed against him in the form of an assessment for the other inmate’s medical costs in the amount of \$3,586.97. Boyd contends further that the DOC began deducting funds from his inmate accounts to satisfy the \$3,586.97 assessment, and the DOC concealed the deductions by not providing Boyd with monthly account statements showing the deductions. Boyd argues that the DOC is violating his rights to due process by deducting money from his institutional accounts and that the DOC has a legal duty to provide him with a full itemized accounting of all monies deducted from his institutional accounts on a monthly basis. As relief, Boyd requests that this Court issue an order: (1) vacating the DOC’s
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has waived all issues pertaining to the OOR's Final Determination on appeal. See Pa. R.A.P. 2116 ("No question shall be considered unless it is stated in the statement of questions involved or is fairly suggested thereby."); Pa. R.A.P. 2119 ("The argument shall be divided into as many parts as there are questions to be argued."); Van Duser v. Unemployment Compensation Board of Review, 642 A.2d 544, 548 n.3 (Pa. Cmwlth. 1994) (holding that issues not briefed are waived). Thus, the OOR's determination that the records sought by Boyd in his RTKL Request were exempt from disclosure, pursuant to Section 708(b)(6)(i)(A) of the RTKL, because the records contained personal financial information, must be upheld. We do note, however, that the fact that the information Boyd sought pertained only to his own inmate accounts would not have been cause for reversing the OOR's Final Determination. As stated by this Court:

A prisoner making a request for his "inmate records" under the Right-to-Know Act is not granted any special access merely because he or she is the subject of the records. Rather, his right to those records is not more or less than that of any Pennsylvania citizen. The issue then is whether any citizen of Pennsylvania has the right to view the entire set of "inmate records" of a prisoner in a state correctional institution. The outcome of that issue is determined by whether the documents are "public records" under the Right-to-Know Act.

Nanayakkara v. Casella, 681 A.2d 857, 859 (Pa. Cmwlth. 1996) (footnote omitted). While this Court's decision in Casella involved a request for inmate records pursuant to the old RTKL, the reasoning is still relevant to the current RTKL.

assessment sanction and directing the DOC to immediately stop deducting money from his incoming funds; (2) directing the DOC to provide Boyd with a full itemized accounting of all monies deducted from his institutional accounts showing the date and amounts of funds received from which deductions were made; (3) directing the DOC to refund all monies taken from Boyd in violation of due process; and (4) directing the DOC to reimburse Boyd for all costs incurred by this action. (Boyd's Br. at 17.)

Here, the OOR found that the information requested by Boyd contained personal financial information within the meaning of the RTKL. Pursuant to Section 708(b)(6)(i)(A), personal identification information, including “[a] record containing all or part of a person’s . . . financial information,” is exempt from access by a requestor; therefore, it is not disclosable to any person, including Boyd, for any reason. Accordingly, the OOR did not err by upholding the DOC’s denial of Boyd’s RTKL Request.

For the foregoing reasons, the OOR’s Final Determination is affirmed.

RENÉE COHN JUBELIRER, Judge

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No. 206 C.D. 2012

ORDER

NOW, April 5, 2013, the Final Determination of the Office of Open Records entered in the above-captioned matter is **AFFIRMED**. It is further **ORDERED** that Petitioner's "Motion for An Enlargement of Time," filed with this Court on February 19, 2013, is **DENIED**.

RENÉE COHN JUBELIRER, Judge