

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Curtis Govan, :
 : No. 2181 C.D. 2012
 Petitioner : Submitted: May 3, 2013
 :
 v. :
 :
 Department of Public Welfare, :
 :
 Respondent :

BEFORE: HONORABLE DAN PELLEGRINI, President Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FRIEDMAN

FILED: May 30, 2013

Curtis Govan petitions, *pro se*, for review of the October 22, 2012, order of the Office of Open Records (OOR), which dismissed Govan’s appeal for failing to address the Department of Public Welfare’s (DPW) agency open records officer’s (Officer) grounds for denial of access to records. We affirm.

On August 30, 2012, Govan submitted a Right-to-Know Law (RTKL)¹ request to the DPW’s Officer requesting Govan’s “juvenile records between 1982 and 1990.” More specifically, Govan sought any and all records or reports held by the DPW while he was in “various foster homes, group homes, shelters, juvenile

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

placements, hospitalizations, psychiatric reports, and psychiatric reports from The Harrisburg Institute of Psychiatry” (Govan’s RTKL Request, 8/30/12, at 1.)

After a thirty-day extension, on October 9, 2012, the Officer sent Govan a final response denying his request. The Officer interpreted Govan’s request as seeking a named juvenile individual’s medical and social services records. The Officer noted that “[t]he RTKL is not the proper vehicle for obtaining records that are exempt or nonpublic, regardless of the status of the person requesting them.” (Officer’s Denial, 10/9/12, at 2.)

The Officer specifically denied Govan’s request because: information relating to individuals receiving social services are exempt from disclosure, 65 P.S. §67.708(b)(28); any records that identify the name, home address, or date of birth of a person seventeen or younger, are exempt from disclosure, 65 P.S. §67.708(b)(30); records of a person’s medical, psychiatric or psychological history or disability status are exempt from disclosure, 65 P.S. §67.708(b)(5); medical assistance records that are recipient-specific are exempt from disclosure, 65 P.S. §67.708(b)(5) and (28); and recipient-specific records that contain an individual’s health information are protected by the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub.L. No. 104-191, 110 Stat. 1936 (1996).² (Officer’s Denial, 10/9/12, at 2-3.) Govan appealed to the OOR.

² The Officer, in an effort to help Govan, forwarded Govan’s request to the DPW’s Office of General Counsel (OGC) for further consideration outside of the RTKL. The OGC performed a search on Govan’s request for records dating back thirty years. Thereafter, the OGC notified Govan by letter that it did not have any of the records that he requested. (OGC Letter, 10/9/12, at 1.)

On October 22, 2012, the OOR dismissed Govan’s appeal because Govan “failed to address agency grounds for denial of access to records” and the appeal did not address his “denial under HIPAA.” (OOR Determination, 10/22/12, at 1.) On November 26, 2012, Govan petitioned this court for review.³

First, Govan contends that the Officer erred in denying him access to the records he requested because the reasons for the refusal are inapplicable to his circumstances.

Section 102 of the RTKL defines a “public record” as “[a] record, including a financial record, of a Commonwealth or local agency that: (1) is not exempt under section 708; (2) is not exempt from being disclosed under any other Federal or State law or regulation or judicial order or decree; or (3) is not protected by a privilege.” 65 P.S. §67.102. Under section 708(a)(1) of the RTKL, the Commonwealth agency or local agency has the burden to prove that a record is exempt from public access. 65 P.S. §67.708(a)(1). Pursuant to section 708(b) of the RTKL, certain public records are exempt from access. 65 P.S. §67.708(b).

Section 708(b)(30) of the RTKL exempts juvenile records “identifying the name, home address or date of birth of a child 17 years of age or younger” from disclosure. 65 P.S. §67.708(b)(30). Govan requested:

³ “The issues presented involve statutory interpretation and are pure questions of law over which our standard of review is *de novo* and our scope of review is plenary.” *Hearst Television Inc., v. Norris*, ___ Pa. ___, ___, 54 A.3d 23, 29 (2012).

to gain[] my juvenile records while I was in your care from 1982-1990. I am requesting copies of any/all records or reports held by your office while I was in various foster homes, group homes, shelters, juvenile placements, hospitalizations, psychiatric reports, and psychiatric reports from The Harrisburg Institute of Psychiatry, etc; (sic) until my emancipation.

(Govan RTKL Request, 8/30/12, at 1.) Therefore, the juvenile records Govan requested are exempt from disclosure pursuant to section 708(b)(30) of the RTKL. 65 P.S. §67.708(b)(30).

Additionally, the medical records, including psychiatric and psychological records, sought by Govan are also exempt from disclosure pursuant to section 708(b)(5) of the RTKL, which provides:

A record of an individual's medical, psychiatric or psychological history or disability status, including an evaluation, consultation, prescription, diagnosis or treatment; results of tests, including drug tests; enrollment in a health care program or program designed for participation by persons with disabilities . . . or related information that would disclose individually identifiable health information.

65 P.S. §67.708(b)(5). Further, pursuant to section 708(b)(28)(i) of the RTKL, Govan's records while in state care are exempt from disclosure as a record "identifying an individual who . . . receives social services." 65 P.S. §67.708(b)(28)(i).

Accordingly, the Officer did not err in determining that the records Govan sought were exempt from disclosure.

Next, Govan contends that the OOR erred in dismissing his appeal for failing to address the Officer's grounds for denial because such grounds are inapplicable to this matter.

Pursuant to section 1101(a)(1) of the RTKL, when a requester files an appeal with the OOR, the requester must provide "the grounds upon which the requester asserts that the record is a public record . . . and shall address any grounds stated by the agency for . . . denying the request." 65 P.S. §67.1101(a)(1); *see also Saunders v. Pennsylvania Department of Corrections*, 48 A.3d 540, 542-43 (Pa. Cmwlth. 2012) (stating that when the open records officer asserts that the requested records are exempt from disclosure, section 1101 of the RTKL requires the petitioner to offer reasons that the exemption does not apply).

Here, Govan contends that, as an authorized individual, he has a right to the records requested. He does not, however, assert that the records are public records, nor does he address any of the grounds stated by the Officer for denying his request. (Govan Appeal Letter, 10/17/12, at 1.) We recognize that Govan seeks access to his personal records; however, those records are not accessible through the RTKL because they are exempt from disclosure. Therefore, the OOR did not err in dismissing Govan's appeal.

Accordingly, we affirm.

ROCHELLE S. FRIEDMAN, Senior Judge

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	:
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ORDER

AND NOW, this 30th day of May, 2013, we hereby affirm the October 22, 2012, order of the Office of Open Records.

ROCHELLE S. FRIEDMAN, Senior Judge