

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Huitt Danvers, :
Petitioner :
 :
v. :
 :
Department of Aging, : No. 2324 C.D. 2012
Respondent : Submitted: June 28, 2013

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

OPINION NOT REPORTED

MEMORANDUM OPINION BY
PRESIDENT JUDGE PELLEGRINI FILED: July 18, 2013

Huitt Danvers (Petitioner) appeals from a Final Determination of the Office of Open Records (OOR) denying his appeal from the Department of Aging’s (Department) denial of his request for records pertaining to his mother pursuant to the Right-to-Know Law (RTKL).¹ Finding no error, we affirm.

On September 4, 2012, Petitioner filed a request with the Department seeking “[r]ecords ... for [a] complaint filed against Adult Protective Services (Washington City) [related to the] issue of forcing my mother into [a] nursing home, neglecting her health, and forcing a medical procedure which left [] her

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

suffering for six month[s] and resulting in her death.” (Reproduced Record [R.R.], Item 6, Attachment A, at 1.) The Department denied the request on the basis that “the data requested is restricted due to Protective Services regulations ... [and t]he identified records are subject to a constitutionally protected right of privacy.” (R.R., Item 6, Attachment B, at 1.) The denial further directed Petitioner to seek the information from the Southwestern Pennsylvania Agency on Aging under the Older Adult Protective Services Act (Protective Services Act).²

After his initial appeal to the OOR was dismissed as untimely, Petitioner filed a Petition for Reconsideration, which the OOR granted. The OOR denied Petitioner’s appeal, agreeing with the Department that the records were exempt from disclosure under Section 306(a) of the Protective Services Act, 35 P.S. §10225.306(a). This appeal followed.³

On appeal, Petitioner challenges the OOR’s decision on the basis that the Department “willfully and deliberately violated so many other required parts of the ... Act, [so] the Act was essentially rendered irrelevant.” (Petitioner’s Brief, at 6.) In essence, he argues that the alleged handling of his mother’s care warrants disclosure of the records he seeks.

² Act of July 1, 1988, P.L. 381, *as amended*, 35 P.S. §§10225.101-10225.5102.

³ Our scope of review for a question of law under the RTKL is plenary. *Office of the Governor v. Raffle*, 65 A.3d 1105, 1109 n.4 (Pa. Cmwlth. 2013) (quoting *Stein v. Plymouth Township*, 994 A.2d 1179, 1181 n.4 (Pa. Cmwlth. 2010)). “A reviewing court, in its appellate jurisdiction, independently reviews the OOR’s orders and may substitute its own findings of fact for that of the agency.” *Bowling v. Office of Open Records*, 990 A.2d 813, 818 (Pa. Cmwlth. 2010), *appeal granted*, 609 Pa. 265, 15 A.3d 427 (2011).

The RTKL specifically provides that records which are exempt from disclosure under federal or state law are not public records for purposes of applying the RTKL. Section 306 of the Act of February 14, 2008, P.L. 6, 65 P.S. §67.306. Section 306(a) of the Protective Services Act states, in relevant part:

[I]nformation contained in reports, records of investigation, client assessment and service plans shall be considered confidential and shall be maintained under regulations promulgated by the department to safeguard confidentiality. Except as provided below, this information shall not be disclosed to anyone outside the agency other than to a court of competent jurisdiction or pursuant to a court order.

35 P.S. §10225.306(a).⁴

The Protective Services Act provides a clear prohibition from disclosing reports and records of investigation, which are the records Petitioner seeks, and none of the narrow exceptions set forth in the Act are applicable here. Further, to the extent that Petitioner believes the records should nonetheless be disclosed, given the fact that he is the son of the subject of the records, we agree with the OOR that the RTKL is to be construed with regard to the status of the records sought, not to the relationship or status of the individual seeking them. *See Weaver v. Department of Corrections*, 702 A.2d 370, 371 (Pa. Cmwlth. 1997),

⁴ A limited number of exceptions exist, none of which are applicable here. The exceptions allow access by law enforcement officials, service providers, the subject of a report made under the suspicion that an older individual is in need of protective services, and appropriate Department staff when the Department is involved in a hearing or for monitoring agency performance. Act of July 1, 1988, P.L. 381, *as amended*, 35 P.S. §10225.306(b); *see also* §10225.302.

appeal denied, 553 Pa. 685, 717 A.2d 536 (1998) (holding that under the previous Right-to-Know Act, “the right to examine a public record is not based on whether the person requesting the disclosure is affected by the records ... but whether any person’s rights are fixed.”).

Accordingly, we affirm the OOR’s decision.

DAN PELLEGRINI, President Judge

