

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Thomas Wisniewski, :
Petitioner :
v. : No. 2489 C.D. 2010
Department of Corrections, : Submitted: April 15, 2011
Respondent :

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FRIEDMAN

FILED: June 10, 2011

Thomas Wisniewski (Requester) petitions for review, *pro se*, of the October 26, 2010, order of the Office of Open Records (OOR) dismissing his appeal from the Department of Corrections' (DOC) decision to grant in part and deny in part his request for information under the Right-to-Know Law (RTKL).¹ Based on our review of the certified record and the parties' submissions to this court, we dismiss Requester's appeal as moot.

On August 2, 2010, Requester filed a RTKL request with the DOC seeking access to commissary reports showing the number of inmate orders submitted and rejected between June 1, 2010, and July 31, 2010. On September 8, 2010, the DOC granted access to reports showing all inmate orders submitted; however, it

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

denied access to reports showing the inmate orders rejected on the ground that such records do not exist.

On September 24, 2010, Requester filed an appeal with the OOR challenging the partial denial of his request. On October 7, 2010, the DOC sent a letter to the OOR, which stated:

Following further review of [Requester's] claim, the Department has identified the requested records and by copy of this letter, [Requester] is informed that his request was denied in error. The requested records (183 pages) will be enclosed with [Requester's] copy of this letter and sent at no cost to him.

Because [Requester] received access to the requested records, this appeal is rendered moot.

(Letter from DOC to OOR, 10/7/10, at 2.)

By letter dated October 22, 2010, the OOR notified Requester of its receipt of the DOC's letter and asked Requester if he was willing to withdraw his appeal. Four days later, on October 26, 2010, the OOR entered a final determination dismissing Requester's appeal as moot, "[b]ased upon the DOC's submission of the Report, which shows the rejected orders . . . as requested." (Final Determination at 2.)

By letter dated October 28, 2010, Requester informed the OOR that he had not received either the DOC's October 7, 2010, letter or any of the requested

records. Thus, Requester stated that he was not willing to withdraw his appeal at that time.²

By letter dated November 2, 2010, Requester sought reconsideration of the OOR's final determination. Again, Requester stated that he had not received the requested documents from the DOC. On November 19, 2010, the OOR denied Requester's petition for reconsideration.

In his petition for review, Requester argues that the OOR erred in dismissing his appeal based on the DOC's "unsubstantiated" letter stating that it would send copies of the requested documents to Requester. (Petition for Review, ¶ 16.) Requester also continues to assert that he has not received the documents at issue. (*Id.*) Therefore, he asks this court to vacate the OOR's decision, impose sanctions on the DOC, and award him fees and costs. We decline to do so, however, because we conclude that Requester's present appeal has been rendered moot.

Even if Requester had not received the requested documents at the time his petition for review was filed, as he asserts, Requester now concedes that he has received them. In his brief, Requester states:

On or about December 21, 2010, petitioner received a copy of the Certified Record and at this time, **a copy of the [DOC's] submission letter and responsive report was received** since it was included in the official record; which conveniently contained the 183 pages of the computer printouts that were initially requested.

² It appears that, when Requester wrote the October 28, 2010, letter, he had not yet received the OOR's final determination and was responding only to the OOR's October 22, 2010, letter inquiring about the status of his appeal.

(Requester’s Brief at 11 (emphasis added); *see id.* at 9.) Because Requester received the documents during the pendency of this appeal, there is no longer a controversy regarding his access to the requested records.

We also deny Requester’s request for sanctions based on the DOC’s alleged “misrepresentation” to the OOR that it would provide the documents to Requester. (Petition for Review, ¶ 18.) The DOC’s initial denial of Requester’s RTKL request was based on its belief, at the time, that such records did not exist. Once the DOC realized that it was mistaken, it promptly admitted its error and stated that it would send the records to Requester at no cost, even though it was entitled to charge him for copying and postage. In ultimately providing the documents, either by mailing them to Requester or by including them in the certified record, the DOC has demonstrated that its promise was not made in bad faith.

Accordingly, we dismiss Requester’s appeal as moot.

ROCHELLE S. FRIEDMAN, Senior Judge

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Department of Corrections,	:	
	:	
Respondent	:	

ORDER

AND NOW, this 10th day of June, 2011, we hereby dismiss Thomas Wisniewski's appeal from the October 26, 2010, final determination of the Office of Open Records as moot.

ROCHELLE S. FRIEDMAN, Senior Judge