



FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
ADAM EHRLICH,	:	
Requester	:	
	:	
v.	:	Docket No.: AP 2024-0675
	:	
CITY OF PHILADELPHIA OFFICE	:	
OF PROPERTY ASSESSMENT,	:	
Respondent	:	

On February 28, 2024, Adam Ehrlich (“Requester”) submitted a request (“Request”) to the City of Philadelphia Office of Property Assessment (“Office”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

- 1) Please provide a record or document showing the total # of active, unique OPA accounts and account numbers that are assigned to Real Property addresses within the City of Philadelphia. In other words, please provide a record showing the total number of property addresses within the City.
- 2) Please provide a record/document/spreadsheet showing the total # of unique properties addresses/OPA Accounts within the City of Philadelphia that are coded/designated/listed within their OPA records as “Vacant Land” or “Land”. In other words, please provide a record showing the total number of Vacant Lots/Vacant Land parcels there are, in total, within the City of Philadelphia according to the records being kept [by the Office].

On March 8, 2024, the Requester filed an appeal to the OOR, arguing that the Request had been deemed denied. The OOR invited both parties to supplement the record and directed the Office to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On March 29, 2024, the Office submitted a position statement arguing that it had timely invoked a 30-day extension under Section 902 of the RTKL and that the appeal must be dismissed as untimely. In support of this argument, the Office submitted the attestation of Feige Grundman, the Open Records Officer for the City of Philadelphia's Law Department, who attests that:¹

3. On March 11, 2024, I received access to the above-referenced appeal with the regarding a RTKL request to the City of Philadelphia Department of Records, seeking:

1) Please provide a record showing the total # of unique properties addresses [sic] owned by "The City of Philadelphia" or "City of Philadelphia".

2) Please provide a record showing the total # of unique properties addresses [sic] owned by any/all agencies under the City of Philadelphia where the listed owner on the current Deed for the Publicly owned properties are recorded under a name other than "CITY OF PHILADELPHIA" or "The City of Philadelphia"

3) Please provide a recording showing the # of those unique properties owned/held by the City and its Agencies that are coded/designated/listed as "Vacant Land" or "Land".

4) Please provide a spreadsheet or other digital records that contain all of the Property Addresses, OPA Numbers, and listed Owner for each of these Vacant Land parcels publicly owned by the City & its Agencies.

4. Mr. Ehrlich's appeal on its face fails to meet the minimal requirements for a sufficient submission of an appeal to the OOR, as he has failed to include the City's March 6, 2024 correspondence regarding this matter that he has received.

5. Mr. Ehrlich's RTKL submission underlying this appeal was sent to the Office of Property Assessment with a time stamp of February 27, 2024 at 11:24 PM, i.e., outside of normal business hours. In accordance with the City's Open Records Policy,¹ the request was deemed received on February 28, 2024.

¹ Under the RTKL, a sworn affidavit or statement made under the penalty of perjury may serve as sufficient evidentiary support. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). In the absence of any evidence that the Office has acted in bad faith, "the averments in the [attestation] should be accepted as true." *McGowan v. Pa. Dep't of Env'tl. Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014) (citing *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)).

6. On February 28, 2024, Mr. Ehrlich's request was receipted into the Law Department's case management system, where it was assigned receipt #26897 and an automatic acknowledgement email was sent to Mr. Ehrlich, see attached.

7. On March 6, 2024—five business days after receipt—the City timely asserted a 30-day extension of time to respond to request #26897, see attached.

The same day, the Requester sought an opportunity to respond, asserting that he could provide evidence that the appeal was timely. On April 4, 2024, the Requester submitted a series of responses which he had received from the Office on April 3, 2024, which purported to grant request #26897 by providing a link to the City of Philadelphia's website.² Additionally, the Requester submitted arguments that Attorney Grundman's attestation was deficient in various ways, and that the City of Philadelphia is bound by 234 Pa. Code § 576.1 to accept electronic service on the day it is submitted, and therefore could not treat the Request as filed on February 28, 2024. The Requester additionally argued that he had never received the extension.³

Under the RTKL, an agency must respond to a RTKL request within five business days or that request is deemed denied and may be appealed to the OOR. 65 P.S. § 67.901. An agency may invoke an extension of thirty calendar days to respond to that request if the statutory requirements are met, but that invocation must occur within the initial five business days, or the Request is deemed denied. 65 P.S. § 67.902. Here, the Office argues that the Request was submitted on February 28, 2024, and that an extension of time was taken on March 6, 2024.

The OOR agrees that the Request was submitted on February 28, 2024; however, the Office's attestation does not demonstrate that an extension of time was taken. The attestation and

² <https://www.opendataphilly.org/>

³ On April 11th, 12th, and 17th, 2024, the Requester submitted a wide array of documents and filings intended to demonstrate the City of Philadelphia's bad faith in other matters. On April 16, 2024, the OOR notified the Requester that none of the April 11 or 12th filings were relevant to the instant appeal and would not be accepted. The OOR additionally does not find the documents submitted on the 17th to be relevant. 65 P.S. § 67.1102(a)(2) ("The appeals officer may admit into evidence testimony, evidence and documents that the appeals officer believes to be reasonably probative and relevant to an issue in dispute. The appeals officer may limit the nature and extent of evidence found to be cumulative.")

submission include copies of the RTKL request which was responded to, and it is not the same document as the Request at issue in this appeal. The Office's submission includes a copy of the email which started that request process and other intermediate proceedings, and it is clear from the record that the Office's 30-day extension and attestation are both discussing that RTKL request rather than the one on appeal at this docket.⁴ Furthermore, while that RTKL request and the Request at issue in this appeal seek very similar—and potentially identical—records, they do differ in both form and content. As such, the Office has demonstrated that it invoked a 30-day extension in response to the RTKL request at #26897, but not in reference to the instant Request.

Because the Office's evidence does not show that it invoked a 30-day extension in response to the instant Request, the Office has not demonstrated that the instant appeal is premature. Additionally, the Office has not submitted any argument or evidence to show that records responsive to the Request do not exist or would be subject to any exemption. As a result, the OOR is constrained to grant this appeal and direct the Office to provide the Requester with any responsive records.⁵

For the foregoing reasons, the Requester's appeal is **granted**, and the Office is required to provide the Requester with all responsive records within thirty days. This Final Determination is binding on the parties. Within thirty days of the mailing date of this Final Determination, either party may appeal to the Philadelphia Court of Common Pleas. *See* 65 P.S. § 67.1302(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond according to court rules as per Section 1303 of the RTKL. However, as

⁴ That RTKL request was sent on February 27, 2024 at 11:24 PM as averred, and covers a very similar subject (vacant properties in the city), but is a four-part request with somewhat different terms. It was also sent to a different individual and office within the City.

⁵ The Requester has repeatedly argued that the Office's inaccurate submission should be taken as a sign of bad faith; but it is apparent from the record that the Office simply mistook one RTKL request for a nearly identical request filed by the same Requester within a few hours of the instant Request. The OOR discerns no reason from the record to find that the Office acted in bad faith.

the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.⁶ All documents or communications following the issuance of this Final Determination shall be sent to oor-postfd@pa.gov. This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: April 18, 2024

/s/ Jordan Davis

SENIOR APPEALS OFFICER
JORDAN C. DAVIS, ESQ.

Sent via OOR portal to: Adam Ehrlich;
Feige Grundman, Esq.;
Drew Aldinger, Esq.

⁶ See *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).