pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
STEVEN BURDA,	:	
Requester	:	
	:	
v.	:	**Docket No: AP 2016-1308**
	:	
PENNSYLVANIA TURNPIKE	:	
COMMISSION,	:	
Respondent	:	

On July 29, 2016, Steven Burda ("Requester") submitted a request ("Request") to the Pennsylvania Turnpike Commission ("Commission") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq*., asking the Commission to "request and provide [the Requester] with a copy of" the study performed by the Montgomery County Planning Commission, "look[ing] at several possible E-ZPass ramp locations within the county and Henderson Road was one of them, as was Lafayette Street, which was considered their highest priority." On August 5, 2016, the Commission denied the Request, stating that it is not required to comply with the Request. However, the Commission provided a link to Montgomery County's website, where the study could be found.

On the same day, the Requester appealed to the Office of Open Records ("OOR"), challenging the denial.[1] The Requester asked the OOR to conduct a hearing and an *in camera* review; however, the OOR has the necessary, requisite information and evidence before it to properly adjudicate the matter and the Requester's request is hereby denied.

Section 704 of the RTKL authorizes an agency to "respond to a request by notifying the requester that the record is available through publicly accessible electronic means…." 65 P.S. § 67.704(b)(1). An agency is only required to provide paper copies upon written request, "[i]f the requester is unwilling or unable to access the record electronically." *Id*. An appeal to the OOR is not "a written request to the agency to have the record converted" such that it triggers an agency's responsibility to take further action pursuant to Section 704(b)(2) of the RTKL. *See Borden v. Ridgebury Twp.*, OOR Dkt. AP 2011-1460, 2011 PA O.O.R.D. LEXIS 1223. Here,

[1] On August 9, 2016, the OOR ordered the Requester to submit a copy of the original Request. On August 14, 2016, the Requester complied.

the Commission directed the Requester to the website where the study could be found, and the Requester did not, prior to the appeal, indicate that he is unwilling or unable to access the study in electronic form.

For the foregoing reasons, the appeal is **denied**, and the Commission is not required to take any further action. 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 Commonwealth Court. *See* 65 P.S. § 67.1301(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond as per Section 1303 of the RTKL. However, as 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.[2] This Final Determination shall be placed on the OOR website at: http://openrecords.pa.gov.

FINAL DETERMINATION ISSUED AND MAILED: September 2, 2016

/s/ Blake Eilers
Blake Eilers, Esq.
Appeals Officer

Sent to: Steven Burda (via e-mail only);
Lynn Shollenberger (via e-mail only)

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