



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

**MARK MELLAY,
Requester**

v.

**CITY OF GREENSBURG,
Respondent**

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Docket No. AP 2016-1705

The Office of Open Records (“OOR”) received the above-captioned appeal under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.* Upon review of the file, the appeal is dismissed as premature for the following reason:

On July 8, 2016, Mark Mellay (“Requester”) submitted a RTKL request (“Request”) to the City of Greensburg (“City”) Police Department (“Department”), seeking police reports and other records. Having received no response from the City, the Requester filed an appeal with the OOR on October 12, 2016, arguing that the Request had been denied.¹

On October 20, 2016, the City made a submission, explaining that the City’s Open Records Officer did not receive the Request until the appeal was filed. The City also provided a copy of the Request, marked as received on July 8, 2016, and the attestation of Susan Trout, Open Records Officer for the City, who attests that the Department received the Request on July 8, 2016, but that it was not forwarded or delivered to her.

Section 901 of the RTKL states that “[t]he time for response shall not exceed five business days from the date the written request is received by the open-records officer for an agency.” 65 P.S. § 67.901; *see also Commonwealth v. Donahue*, 98 A.3d 1223 (Pa. 2014). Here, the City’s Open Records Officer attests that she did not receive the Request prior to the appeal being filed. As a result, the appeal is **dismissed as premature**.² The Requester is not

¹ The Requester did not include a copy of either the Request or the City’s alleged response. On October 13, 2016, the OOR ordered the Requester to provide copies of these documents.

² The City argues that the Request was not directed to the City’s Open Records Officer. *See* 65 P.S. § 67.703. However, the Request was made on a Standard Right-to-Know Request Form and explains that it is being submitted to the Department. *See* 65 P.S. § 67.505(a) (stating that this form “shall be accepted by all ... local agencies in addition to any form used by the agency to file a request under this act”). Because the City’s Open Records Officer is the open-records officer for the Department, the Request was necessarily directed to her. *Cf. Commonwealth v.*

precluded from refiling the Request, and if necessary, filing a new appeal pursuant to the requirements of 65 P.S. § 67.1101(a)(1).

This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to the Westmoreland County Court of Common Pleas. 65 P.S. § 67.1302(a). All parties and the OOR must be served with notice of the appeal and have an opportunity to respond according to court rules as per Section 1303. 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.³ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: October 26, 2016



APPEALS OFFICER
KYLE APPLGATE, ESQ.

Sent to: Mark Mellay;
Susan Trout

Office of Open Records, 103 A.3d 1276 (Pa. 2014). Under Section 703 of the RTKL, “[e]mployees of an agency shall be directed to forward requests for records to the open-records officer.” 65 P.S. § 67.703. As a result, the Department was required to forward the Request to the City’s Open Records Officer, but did not do so in this case. Regardless, because the City’s Open Records Officer did not receive the Request prior to the appeal being filed, the appeal is premature.

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