



**FINAL DETERMINATION**

**IN THE MATTER OF**

**MARK MILLER,  
Requester**

**v.**

**BEDFORD COUNTY,  
Respondent**

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**Docket No.: AP 2022-1855**

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** for the following reason:

On June 10, 2022,<sup>1</sup> Mark Miller (“Requester”) submitted a RTKL request (“Request”) to Bedford County (“County”), seeking records related to a security upgrade, contract and vendor information, and financial records. On June 10, 2022, the County invoked a thirty-day extension to respond. *See* 65 P.S. § 67.902.<sup>2</sup>

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<sup>1</sup> The Request is dated June 9, 2022, but the County’s final response indicates that it was received on June 10, 2022; the appeal form also lists this latter date. In response to the OOR’s request for confirmation of the operative dates, the County confirmed that the Request was received on June 10, 2022.

<sup>2</sup> The County stated simply that it was “requesting a 30 day extension.” Section 902(b)(2) of the RTKL requires that an agency notify a requester in writing that the request is under review, specify why an extension is needed, and provide a date by which the requester can expect a response. *See* 65 P.S. § 67.902(b)(2). However, despite the fact that the County failed to satisfy these requirements, the Requester was on notice that the County was invoking an extension of time to respond. *See, e.g., Leiphart v. Pa. Leadership Charter Sch.*, OOR Dkt. AP 2020-0862, 2020 PA O.O.R.D. LEXIS 1584 (finding that an email noting that the agency needed additional time to respond but that did not meet the requirements of Section 902(b)(2) was sufficient to put the requester on notice of the extension); *compare Aliota v. Erie Cnty. Gaming Revenue Auth.*, OOR Dkt. AP 2022-1151, 2022 PA O.O.R.D. LEXIS 1667 (finding that an agency’s extension notice was valid despite the presence of certain errors), *with Hewitt v. Cumberland Twp. Police Dep’t*, OOR Dkt. AP 2021-2238, 2021 PA O.O.R.D. LEXIS 2485 (holding that a verbal extension notice was invalid).

When the County failed to issue a response by July 18, 2022, the Request was deemed denied on that date. *See id.* On July 22, 2022, the County provided some responsive records and purported to deny the Request in part, insofar as it sought records, the disclosure of which would threaten infrastructure security. 65 P.S. § 67.708(b)(3).<sup>3</sup>

On August 8, 2022, the Requester filed an appeal with the OOR, stating grounds for disclosure. The OOR invited the parties to supplement the record and directed the County to notify third parties of their ability to participate in the appeal. *See* 65 P.S. § 67.1101(c). On August 16, 2022, in response to the OOR’s inquiry, the parties confirmed the operative dates.

An agency has five business days from the date its open records officer receives a request to respond. 65 P.S. § 67.901; *see also Commonwealth v. Donahue*, 98 A.3d 1223 (Pa. 2014). Within that period, an agency may invoke a thirty-calendar-day extension of time to respond. 65 P.S. § 67.902. However, “[i]f the date that a response is expected to be provided is in excess of 30 days, following the five business days allowed for in section 901, the request for access shall be deemed denied.” 65 P.S. § 67.902(b)(2). Further, Section 1101(a) states that an appeal must be filed within fifteen business days of a denial or deemed denial. *See* 65 P.S. § 67.1101(a)(1).

Here, the County received the Request on June 10, 2022, and invoked an extension to respond on the same day. Thus, the County had until July 18, 2022 to respond, and the Request was deemed denied when the County did not issue a final response on that date.<sup>4</sup> That the County subsequently responded to the Request on July 22, 2022 is irrelevant because the Request had already been deemed denied by operation of law. *See* 65 P.S. § 67.902(b)(2) (stating that a request “shall be deemed denied” if a response is not timely). Accordingly, the Requester had until August

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<sup>3</sup> The County’s response did not provide the procedure to file an appeal, as required by Section 903(5) of the RTKL. *See* 65 P.S. § 67.903(5).

<sup>4</sup> It appears that the County believes that Section 902(b)(2) references *business* days, when it actually refers to *calendar* days.

8, 2022 to file an appeal with the OOR. *See* 65 P.S. § 67.1101(a)(1). However, the appeal was not filed until August 11, 2022, more than fifteen business days after the Request was deemed denied.

Accordingly, the appeal is **dismissed as untimely**. However, nothing in this Final Determination prevents the Requester from filing a new RTKL request for the same information, and if necessary, filing an appeal pursuant to the requirements of 65 P.S. § 67.1101(a)(1).

For the foregoing reasons, the County is not required to take any further action. 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 Bedford County Court of Common Pleas. 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 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.<sup>5</sup> This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: August 18, 2022**

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

Sent via email to: Mark Miller and Debra Brown

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