



**pennsylvania**  
OFFICE OF OPEN RECORDS

**FINAL DETERMINATION**

<b>IN THE MATTER OF</b>	:	
	:	
<b>CHRISTINE ELLEX,</b>	:	
<b>Requester</b>	:	
	:	
<b>v.</b>	:	<b>Docket No.: AP 2022-2221</b>
	:	
<b>SCHUYLKILL HAVEN BOROUGH,</b>	:	
<b>Respondent</b>	:	

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.* For the following reasons, the appeal is dismissed.

On September 6, 2022, Christine Ellex (“Requester”) submitted a request (“Request”) to Schuylkill Haven Borough (“Borough”) pursuant to the RTKL, seeking records, including maps, pertaining to an identified subdivision.

On September 13, 2022, the Borough sent the Requester a letter notifying her that “a timely response will be provided”<sup>1</sup> However, as the Requester did not receive the Borough’s final response within five business days of the Request, the Requester claimed that the Request was deemed denied. *See* 65 P.S. § 67.901.

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<sup>1</sup> The Borough notified the OOR that this was intended as an extension pursuant to 65 P.S. § 67.902(b)(2), but the letter did not contain any of the mandatory elements of a thirty-day notice under the RTKL, such as a statement that an extension was being taken or the legal rationale for the extension. Therefore, the notice was not an effective extension under the RTKL. *See, e.g., McLaughlin v. Connellsville Police Dep’t*, OOR Dkt. AP 2021-0922, 2021 PA O.O.R.D. LEXIS 1136.

On September 22, 2022, the Requester filed an appeal with the OOR, challenging the Borough's deemed denial of the Request. *See* 65 P.S. § 67.901. The OOR invited both parties to supplement the record and directed the Borough to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On October 5, 2022, the Borough provided a variety of responsive records<sup>2</sup> and notified the Requester that some specified maps could not be duplicated electronically but could be inspected by appointment. In support of its assertion, the Borough submitted the verification of the Borough's Open Records Officer, Kaitlyn Tinari, who attests that she conducted a search and provided the Requester with all responsive records on appeal.<sup>3</sup> This evidence demonstrates that the Borough provided all records responsive to the Request to the Requester on October 5, 2022. Moreover, the Requester has not submitted any evidence or argument to the contrary. Therefore, because the Borough provided all responsive records to the Requester, the appeal is **dismissed as moot**. *Kutztown Univ. of Pa. v. Bollinger*, 217 A.3d 931 (Pa. Commw. Ct. 2019) (holding that an appeal is properly dismissed as moot where no controversy remains).

The file is now closed and no further action will be taken. 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 Schuylkill 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 court rules as per Section 1303 of the RTKL. However, as

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<sup>2</sup> Specifically, a responsive ordinance, a set of zoning and liquid fuel maps, several sets of minutes and certification of the minutes.

<sup>3</sup> Under the RTKL, an attestation is generally competent evidence to sustain an agency's burden of proof. *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 competent evidence that the Borough 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)).

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>4</sup> This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: November 23, 2022**

*/s/ Jordan C. Davis*

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SENIOR APPEALS OFFICER  
JORDAN DAVIS

Sent to: Christine Ellex (via email only);  
Mark Semanchik, Esq. (via email only)

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<sup>4</sup> See *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).