

## **FINAL DETERMINATION**

DATE ISSUED: December 6, 2022

IN RE: *David Harrington v. Montgomery County*, OOR Dkt. AP 2022-2639

Upon review of the appeal filed with the Office of Open Records (“OOR”) to the above-referenced docket number, as well as the submission of the Montgomery County (“County”), it is determined that the appeal is **DISMISSED** because:

**The appeal is premature.** The appeal states that the Request was filed on October 30, 2022, and deemed denied on November 4, 2022; however, the County never received a copy of the Request. *See Stein Attestation.*<sup>1</sup> Because an appeal may only be filed from the denial or deemed denial of a request, and the County did not receive the Request prior to receiving the appeal, the appeal must be dismissed as premature. 65 P.S. § 67.901. The Requester is not prohibited from filing the Request with the County and, if necessary, filing an appeal with the OOR pursuant to the requirements of 65 P.S. § 67.1101(a)(1).

For this reason, the County is not required to take any further action. Within thirty days of the mailing date of this Final Determination, either party may appeal or petition for review with the Montgomery 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 65 P.S. § 67.1303. 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.<sup>2</sup>

Issued by:

*/s/ Berk V. Demiral*

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BERK V. DEMIRAL, ESQUIRE  
APPEALS OFFICER

Sent via mail to: David Harrington,  
Sent via email to: Joshua M. Stein, Esquire

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<sup>1</sup> The Stein Attestation was made subject to penalties under 18 Pa.C.S. § 4904 relating to unsworn falsifications to authorities. Further, the Attestation was submitted after the record closed for this appeal. However, in order to develop the record, the submission was considered. See 65 P.S. § 67.1102(b)(3) (stating that “the appeals officer shall rule on procedural matters on the basis of justice, fairness, and the expeditious resolution of the dispute”)

<sup>2</sup> *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).