

supplement the record and directed the District to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On January 23, 2023, the District submitted a position statement arguing that the appeal is premature. More specifically, the District asserts that the Open Records Officer, Linda Sitter, was on vacation from December 22, 2022, until January 3, 2023, and that the Request was not received until January 4, 2023. The District further asserts that it issued a timely thirty-day extension notice on January 5, 2023, pursuant to Section 902(b) of the RTKL, making this appeal prematurely filed.

Also, on January 23, 2023, the Requester submitted a position statement arguing that the appeal is not premature because the District should have an alternate Open Records Officer and the alternate should have carried out the District's obligations under the RTKL, in Ms. Sitter's absence. The Requester suggests that the current District Superintendent is the alternate Open Records Officer.²

The District submitted the attestation made under the penalty pursuant to 18 Pa.C.S. § 4909, from Ms. Sitter. The Sitter attestation states that she "was on vacation from December 22, 2022 through [her] return to work on January 4, 2023" and that "[she] received the Request ... upon [her] return to work on January 4, 2023." The Sitter attestation further states, that an extension letter was issued one business day from receipt of the Request, on January 5, 2023. Sitter Attestation, ¶¶ 2-4. Under the RTKL, a statement made under the penalty of perjury may serve as sufficient evidentiary support. *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).

² The Requester also alleges that District officials and other appointed officials, such as the solicitor's law firm, are not being accountable to tax payers or properly following the laws of the Commonwealth and the Rules of Professional Conduct. The Requester suggests that the OOR should "send a responsible letter to the appropriate public elected and appointed officials to initiate an investigation of both public entities"; however, such allegations are not within the purview of the OOR's jurisdiction and the RTKL does not provide any statutory authority to refer matters or alleged concerns related to other Commonwealth laws.

Section 901 of the RTKL states “[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 (emphasis added). When analyzing this exact issue in light of the language of the RTKL, the Pennsylvania Supreme Court concluded, “pursuant to the plain language of Section 901 of the RTKL, ... agencies must respond to RTKL record requests within five business days of the request’s receipt by the agency’s open-records officer.” *Commonwealth v. Donahue*, 98 A.3d 1223, 1241 (Pa. 2014).

The District’s evidence demonstrates that Ms. Sitter was not in her District office on December 27, 2022, the date when the Request was submitted by email and that she did not receive the Request until her return to the District office on January 4, 2023. In addition, the evidence demonstrates that the District issued a thirty-day extension letter within one business day of receipt of the Request.

The Requester argues that the Request should have been processed by the District’s alternate Open Records; however, the Requester does not present evidence of who that individual is or that the District, in fact, has an alternate. While the OOR recommends this practice, the fact remains that the District’s Open Records Officer did not actually receive the Request until January 4, 2023, and timely invoked an extension of time to respond. *See Koval v. Canton Borough*, OOR Dkt. AP 2022-2256, 2022 PA O.O.R.D. LEXIS 2488. Furthermore, as the Request was submitted during the District’s December holiday closure, the alternate Open Records Officer would not be working on December 27, 2022.³ Therefore, in accordance with Section 902 of the RTKL, 65 P.S. § 67.902(b)(1), the District timely invoked its thirty-day extension to respond and the final response is not due until February 10, 2023. Accordingly, the appeal is **dismissed as premature**.

³ See <https://resources.finalsite.net/images/v1674567255/mtsdcorg/hydlgyqypasw1b2n4pk1/22-23DistrictCalendarJan232023.pdf> (last accessed January 24, 2023).

The Requester is not prohibited from filing an appeal should the District deny or deem deny the Request, 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 Erie 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 as per Section 1303 of the RTKL. 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.⁴ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: January 24, 2023

/s/ Kelly C. Isenberg

SENIOR APPEALS OFFICER
KELLY C. ISENBERG, ESQ.

Sent to: Louis Aliota (via email only);
Timothy Wachter, Esq. (via email only);
Linda Sitter (via email only)

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