FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
SEAN SMITH,	:	
Requester	:	
	:	
v.	:	**Docket No: AP 2023-0477**
	:	
MONTGOMERY COUNTY,	:	
Respondent	:	

FACTUAL BACKGROUND

On March 3, 2023, Sean Smith ("Requester") submitted a request ("Request") to Montgomery County ("County") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq*., stating "Please provide me with the county's 2010 Captial Budget." On March 3, 2023, the County responded to the Requester indicating that the County's Open Records Policy requires an address be provided on the form before the County would process the Request.

On March 6, 2023, the Requester filed an appeal with the Office of Open Records ("OOR") claiming that the Request was deemed denied.[1] *See* 65 P.S. § 67.901. The OOR invited both parties

[1] The Requester claimed that the Request was deemed denied; however, the County submitted evidence that it responded to the Request on March 3, 2023 and informed the Requester that a full address on either the State's Open Records Request Form or the County's Open Records Request Form must be included with all RTK Requests.

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

On March 15, 2023,[2] the County submitted the attestation of Joshua Stein, Solicitor for the County, arguing that the County "has adopted an Open Records/Right to Know Policy, which states that an Open Record Request must contain at a minimum the [n]ame of Requester; … [the a]ddress of [R]equester…." and upon receipt of the Request, immediately notified the Requester that the County has a posted policy requiring the name of a Requester, the address of a Requester, and the records sought with sufficient specificity.

Between March 6 and March 15, 2023, the Requester submitted numerous email correspondences to the OOR arguing, among other things, that a policy which requires a physical address is a violation of the right to privacy under both Pennsylvania and United States Constitutions. The Requester also asks the OOR to review several cases in support his position, *Smith v. West Chester Area School District*, OOR Dkt. AP 2022-1586, 2022 PA O.O.R.D. LEXIS 2040, *Mollick v. Worcester Township*, OOR Dkt. AP 2011-0023, 2011 PA O.O.R.D. LEXIS 238, *Altieri v Montgomery County*, OOR Dkt. 2023-0300, 2023 PA O.O.R.D. LEXIS 405, and *Altieri v Bucks County*, OOR Dkt. AP 2023-0400, 2023 PA O.O.R.D. LEXIS ___. In two separate emails, the Requester included unsworn statements which read "I attest that I am a US citizen and resident" and "I attest that I am a US resident."

LEGAL ANALYSIS

The County argues that it properly denied the Requests because the Requester did not provide a valid U.S. address on the Request form, which is required by the County's posted Open

[2] The County made its submission through the OOR's Portal; however, the instant appeal is not a Portal appeal. The County also submitted its evidence via email and included the Requester.

Records Policy. Section 504 of the RTKL provides the following authority to agencies for the purpose of implementing the RTKL:

> (a) AUTHORITY.— An agency may promulgate regulations and policies necessary for the agency to implement this act ....
>
> (b) POSTING.— The following information shall be posted at each agency and, if the agency maintains an Internet website, on the agency's Internet website:
>
> (1) Contact information for the open-records officer.
> (2) Contact information for the Office of Open Records or other applicable appeals officer.
> (3) A form which may be used to file a request.
> (4) Regulations, policies and procedures of the agency relating to this act.

65 P.S. § 67.504. An agency with a posted policy requiring the use of a form may deny access to the requested records where the requester fails to use the required form, provided that the agency timely responds to the requests notifying the requester of the policy. *See Pa. Gaming Control Board v. Office of Open Records*, 103 A.3d 1276, 1282 (Pa. 2014); *Donahue v. Hazleton Area Sch. Dist.*, OOR Dkt. AP 2013-1702, 2013 PA O.O.R.D. LEXIS 996 (holding that the district could not use its policy as a basis for denying a request because the district deemed denied the request, rather than timely responding to the request by notifying the requester of its policy); *see also Smith v. Montgomery County*, OOR Dkt. AP 2023-0303, 2023 PA O.O.R.D. LEXIS ___; *Robins v. Phila. Police Dep't*, OOR Dkt. AP 2016-0595, 2016 PA O.O.R.D. LEXIS 652; *Fennell v. Phila. Police Dep't*, OOR Dkt. AP 2016-0393, 2016 PA O.O.R.D. LEXIS 513.

Furthermore, Section 1308 of the RTKL sets forth limitations on what an agency may require in a policy or regulation, stating:

> [a] policy or regulation adopted under this act may not include any of the following:
>
> > (1) A limitation on the number of records which may be requested or made available for inspection or duplication.
> > (2) A requirement to disclose the purpose or motive in requesting access to records.

See 65 P.S. § 67.1308. The County exercised its statutory authority to "promulgate regulations and policies necessary for the agency to implement" the RTKL. Regarding the procedure for filing a RTKL request, the County's policy provides, in pertinent part, the following:

> The Law sets forth various specifications for the contents of a written request. To qualify as a written request under the Open Records Law and the County Open Records Policy the request must
>
> (a) be directed to the appropriate Open Records Officer designated above,
>
> (b) be submitted on or with the proper forms, as outlined above, and
>
> (c) contain, at a minimum, the following information:
>
> i. name of requester;
>
> ii. address of requester; and
>
> iii. records being sought, identified or described with sufficient specificity to allow the County to ascertain which records are being requested.[3]

A review of Section 703 of the RTKL, which proscribes the necessary elements of a written request, reveals that the statutory language includes the requirements that "a written request must be addressed to the open records officer designated pursuant to section 502;" that a request "should identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested;" and, that the request "shall include the name and *address* to which the agency should address its response." 65 P.S. § 67.703 (emphasis added).[4]

While the term "address" is not defined under the RTKL, words are to be construed according to their common and approved usage. 1 Pa.C.S. § 1903. The OOR has previously interpreted the word "address" as commonly referring to both a physical "street" address, as well as a post office box address. *See Louw v. Planet Abacus Charter School*, OOR Dkt. AP 2012-

[3] https://www.montcopa.org/DocumentCenter/View/4077/RTK-Policy-Updated-11-20-2017?bidld= (last accessed March 23, 2023).

[4] Neither the RTKL nor the County's policy require that the address be a home address, allowing requesters to provide their choice of a home address, business address, post office box, or other mailing address.

0029, 2012 PA O.O.R.D. LEXIS 463, *6; *see also Merriam-Webster's Collegiate Dictionary* (11th ed. 2004) (defining "address" as "directions for delivery on the outside of an object (as a letter or package").

In *Louw*, the only issue before the OOR was "whether the Requester is required to provide 'the name of his company, his title, and the physical address and phone number of his company' in order to receive responsive records from the Charter School." OOR Dkt. AP 2012-0029, 2012 PA O.O.R.D. LEXIS 463. The Charter School requested that the Requester provided the additional information before it would send the responsive records; however, the requester had already provided a post-office box number and an email address. *Id*. The OOR concluded that the Charter School could not require the additional information because the purpose behind the provision requiring a requester to provide an address is to inform an agency as to where a response should be sent, and the requester had already provided a post office box. *See* 65 P.S. § 67.703.

Here, the County responded to the Request on the same day that the Request was received informing the Requester that the County's Open Records Policy requires that an address accompany all RTKL requests. The County's response included a link to the Open Records Policy that permits a requester to utilize the OOR's standard statewide form or the County's form, as required by Section 505 of the RTKL, 65 P.S. § 67.505. Regarding the County's requirement that an address be included on the form, Section 1308 does not contain such a prohibition, Section 703 specifically requires that a written request "shall include the name and address to which the agency should address its response," and the Requester has not pointed to another RTKL provision or other authority prohibiting the County from including an address requirement in its policy.

The Requester argues that a policy requiring an address is a violation of the constitutional right to privacy as the Requester believes that the entire content of records requests are public

records. However, the issue of whether an address listed on a RTKL request form should be subject to public access pursuant to a subsequent RTKL request is wholly distinguishable from the issue here, which is, what an agency is permitted to require from a requester on its form at the initial request stage without running afoul of Sections 504, 701 and 1308 of the RTKL. The Pennsylvania Supreme Court has recognized that individuals possess a constitutional right to privacy in certain personal information, including home addresses, but that right to privacy is weighed in a balancing test. *See generally Pa. State Educ. Ass'n v. Commonwealth*, 148 A.3d 142 (Pa. 2016). However, Requester's right to privacy argument is misplaced as the issue pending before the OOR is not whether the Requester's address should be disclosed to the public.

The Requester further argues that because he "attested" to being a US resident via an unsworn statement in an email, that somehow negates the ability of the County to have a policy which requires the submission of an address on RTKL requests received. The Requester asks the OOR to review the *Altieri*,[5] *Smith*,[6] and *Mollick* cases in support of his argument that an "address" is not required. The issue in this appeal is not whether the Requester is a US resident, but instead is whether the County is permitted to require an address to be provided on RTKL requests.

In *Mollick*, a 2011 appeal, the OOR found that the "term address is not defined under the RTKL and is not limited to a physical postal address, as the purpose behind such a provision is

[5] The cited *Altieri* cases are inapplicable to the instant appeal as the issues in both cases differ from the issue present in this appeal. In *Altieri v. Bucks County*, the County argues that the Requester was not a proper requester under the RTKL, not that it had a properly enacted policy requiring the provision of an address. *See Altieri v Montgomery County*, OOR Dkt. 2023-0300, 2023 PA O.O.R.D. LEXIS 405 In *Altieri v Montgomery County*, the OOR did not address the issue of the County's address policy because the appeal was moot. *See Altieri v Montgomery County*, OOR Dkt. 2023-0300, 2023 PA O.O.R.D. LEXIS 405.

[6] The *Smith* case is distinguishable from the instant appeal in that the issue on appeal was whether the requester was a proper requester under the RTKL. See 65 P.S. § 67.102 (defining a requester as "[a] person that is a legal resident of the United States and requests a record pursuant to this act. The term includes an agency."). Furthermore, in *Smith*, the requester actually provided an address in the form of a P.O. Box, the requester confirmed receipt of mail at the P.O. Box, and the requester's identity was confirmed through a telephone call. *Smith v. West Chester Area School District*, OOR Dkt. AP 2022-1586, 2022 PA O.O.R.D. LEXIS 2040.

presumably to inform an agency as to where a response should be sent….” However, in *Volkova Burda v. Montgomery County*, OOR Dkt. AP 2019-2168, 2019 PA O.O.R.D. LEXIS 1940, the OOR directly discussed the issue of whether the County properly interpreted its Open Records Policy to deny the request based on the Requester’s failure to comply with its promulgated Open Records policy requiring that a requester’s address be included on a request. The OOR found that “when an agency properly promulgates an Open Records Policy that does not violate any of the provisions of or prohibits set forth in the RTKL, as the County has done here, the contents of the policy and its interpretation must be left to the agency’s reasonable discretion.” The OOR further found that Montgomery County “interprets its ‘address’ requirement as requiring a street address or post office box in addition to the town, state and county …” *Id.* Similar to *Volkova-Burda*, the County reasonably interpreted its Open Records Policy to require a street address or post office box in addition to the town, state and county and the Requester did not comply with this policy.

Therefore, when an agency properly promulgates an Open Records Policy that does not violate any of the provisions of or prohibitions set forth in the RTKL, as the County has done here, the contents of the policy and its interpretation must be left to the agency’s reasonable discretion.[7] It is apparent that the County interprets its “address” requirement as requiring a street address or post office box in addition to the town, state and county and, here, the Requester did not comply. As the County’s interpretation is comparable to the OOR’s prior interpretations of the definition of “address,” the County’s interpretation is not unreasonable. Accordingly, the County permissibly denied the Request based on the Requester’s failure to comply with its promulgated

[7] An agency is entitled to deference in the interpretation of its own regulations. *See Tire Jockey Serv., Inc. v. Pa. Dep’t of Envtl. Prot.*, 915 A.2d 1165, 1187-88 (Pa. 2007) (finding that an agency is entitled to deference in interpreting its own regulations); *see also Highmark, Inc. v. Voltz*, 163 A.3d 485, 493 (Pa. Commw. Ct. 2017) (finding that the department was entitled to great deference in its construction of the Insurance Statutes because “[it] is specifically delegated administration and enforcement of insurance matters”).

Open Records Policy requiring that a requester's address be include on a request.[8] *See Volkova-Burda, supra*.

CONCLUSION

For the foregoing reasons, the appeal is **denied**, and 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 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 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.[9] This Final Determination shall be placed on the OOR website at: http://openrecords.pa.gov.

FINAL DETERMINATION ISSUED AND MAILED: March 24, 2023

/s/ *Catherine R. Hecker*

CATHERINE R. HECKER, ESQ.
APPEALS OFFICER

Sent via email to: Sean Smith; Joshua Stein, Esq.; Lauren Raikowski, AORO

[8] The Requester is not prohibited from refiling the Request and using one of the forms required by the County's policy and including address information.
[9] *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).