



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:
	:
JIM GARLAND,	:
Requester	:
	:
v.	: Docket No: AP 2023-0463
	:
PENNSYLVANIA PUBLIC UTILITY	:
COMMISSION,	:
Respondent	:

FACTUAL BACKGROUND

On February 13, 2023, Jim Garland (“Requester”) submitted a request (“Request”) to the Pennsylvania Public Utility Commission (“PUC”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking [a]ny information you have that would permit natural gas to be transported in plastic pipes an[d] if so under what conditions.”

On February 15, 2023, the PUC granted the Request and provided information for how to access relevant portions of the Federal Code online and specifically stated, “The use of plastic pipe is common and referenced throughout the Federal Code.”

On March 3, 2022, the Requester appealed to the Office of Open Records (“OOR”), arguing, among other things, that the PUC did not provide any information that the use of plastic pipes to transport natural gas is legal and that the PUC is hiding behind federal statutes.¹ The OOR

¹ The Requester further states that he submitted a Freedom of Information Act (“FOIA”) request to Present Biden for

invited both parties to supplement the record and directed the PUC to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).²

On March 8, 2023, the PUC submitted a position statement arguing that it granted the Requester, provided access to the relevant records in its response, and that the Requester is simply taking issue with the substance of the provided records. The Requester did not provide a submission in the appeal.

LEGAL ANALYSIS

The PUC is a Commonwealth agency subject to the RTKL. 65 P.S. § 67.301. Records in the possession of a Commonwealth agency are presumed to be public, unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. As an agency subject to the RTKL, the PUC is required to demonstrate, “by a preponderance of the evidence,” that records are exempt from public access. 65 P.S. § 67.708(a)(1). Preponderance of the evidence has been defined as “such proof as leads the fact-finder ... to find that the existence of a contested fact is more probable than its nonexistence.” *Pa. State Troopers Ass’n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Pa. Dep’t of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

The PUC argues that it has made all responsive records available by providing information to the Requester regarding how to access portions of the Federal Code that reference use of plastic pipes to transport natural gas. Section 704(b) of the RTKL permits an agency to respond to a

a hard copy of the relevant Federal Code sections and that “it is prudent for the assigned OOR official to wait for this response before making a final determination in this matter.” Section 1102 of the RTKL states, “The appeals officer may admit into evidence testimony, evidence and documents that the appeals officer believes to be reasonably probative and relevant to an issue in dispute. The appeals officer may limit the nature and extent of evidence found to be cumulative.” 65 P.S. § 67.1102(a)(2). The FOIA request for Federal Code sections is not relevant to the determination of whether the PUC has met its burden to provide public records under the RTKL. Accordingly, the final determination in this appeal shall issue in accordance with the timeframes set forth in 65 P.S. § 67.1101(b).

² The Requester included a list of eight individuals and entities, including the open records officer for PUC, that he believes are third parties to this appeal.

request for records “by notifying the requester that the record is available through publicly accessible electronic means[.]” 65 P.S. § 67.704(b)(1). Moreover, directing a requester to an internet website satisfies an agency’s obligation under Section 704 of the RTKL. *See Citizens for Pennsylvania’s Future v. Pa. Turnpike Comm’n*, OOR Dkt. AP 2015-0726, 2015 PA O.O.R.D. LEXIS 856. The Requester does not argue that he is unable to access the records,³ but rather appears to be challenging the legality of the use of plastic pipes to transport natural gas and that the PUC did not provide him proof that use of plastic pipes to transport natural gas is legal.⁴ The PUC met its burden under the RTKL that it provided all responsive records to the Request. *See* 65 P.S. § 67.704(b)(1).

CONCLUSION

For the foregoing reasons, the appeal is **denied**, and the PUC 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 Commonwealth Court. 65 P.S. § 67.1301(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.⁵ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

³ The Requester indicated that he made a FOIA request seeking hard copies of the Federal Code sections, but did not notify the PUC pursuant to Section 704(b)(2) that he requested to have the sections of Federal Code converted to paper. *See* 65 P.S. § 67.704(b)(2).

⁴ An agency is not required to explain the legality of its actions or provide legal research for a requester in response to a RTKL request. *See Askew v. Pa. Off. of the Governor*, 65 A.3d 989, 993 (Pa. Commw. Ct. 2013); *see also, Faggiolo v. Aston Twp.*, OOR Dkt. AP 2022-0934, 2022 PA O.O.R.D. LEXIS 1479.

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

FINAL DETERMINATION ISSUED AND MAILED: March 24, 2023

/s/ Catherine R. Hecker

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