



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:
	:
PEDRO VALDEZ,	:
Requester	:
	:
v.	: Docket No: AP 2023-0495
	:
MONTGOMERY COUNTY,	:
Respondent	:

FACTUAL BACKGROUND

On February 27, 2023, Pedro Valdez (“Requester”) submitted a request (“Request”) to Montgomery County (“County”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking “RTK[L] requests received by this agency in electronic format from 1/22/22 to 2/25/23.”

On March 7, 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 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).

¹ The Requester claimed that the Request was deemed denied; however, the County submitted evidence that it responded to the Request and, on February 28, 2023, informed the Requester that a full address on either the OOR’s Standard Request Form or the County’s Open Records Request Form must be included with all RTKL requests. *See* Stein Affidavit ¶¶ 4-7.

On March 20, 2023, the County submitted the Affidavit of Joshua Stein, Esq., Solicitor for the County, who affirms that the County has an Open Records Policy that requires a requester to provide a full address when submitting a RTKL request. On March 21, 2023, the Requester submitted a position statement arguing, among other things, that an address is not required under the RTKL.

LEGAL ANALYSIS

The County argues that it properly denied the Request because the Requester did not provide a valid address on the request form, which is required by the County's posted Open 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 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 provides as follows:

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.

65 P.S. § 67.1308.

Here, the County exercised its statutory authority to “promulgate regulations and policies necessary for the agency to implement” the RTKL. 65 P.S. § 67.504. Regarding the procedure for filing a RTKL request, the County’s policy provides that a request must contain the name and address of the requester. *See* Montgomery County Open Records Policy.²

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).³

² <https://www.montcopa.org/DocumentCenter/View/4077/RTK-Policy-Updated-11-20-2017?bidId=> (last accessed March 30, 2023).

³ 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. In addition, we note that the Pennsylvania Supreme Court has recognized that individuals possess a constitutional right to privacy in certain personal information, including home addresses, that requires courts and administrative tribunals to conduct a balancing test prior to public disclosure. *See generally Pa. State Educ. Ass’n v. Commonwealth*, 148 A.3d 142 (Pa. 2016). However, such an analysis and determination would be conducted in the event that the County is required to disclose its RTKL request forms, not when the County requires the submission of an address on the request form.

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 2012-0029, 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 the instant matter, the County responded to the Request on the same business 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 request 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 mailing address is not necessary because an email address was provided on the Request and seeks electronic records. However, the issue of how the record should be provided by the agency based on the Requester’s stated preference 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.

An agency is entitled to deference in the interpretation of its own regulations. *See Tire Jockey Serv., Inc. v. Pa. Dep't of Env'tl. 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”). 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. 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. We have previously found that 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 Open Records policy requiring that a requester’s address be include on a request.⁴

In *Volkova Burda v. Montgomery County*, OOR Dkt. AP 2019-2168, 2019 PA O.O.R.D. LEXIS 1940, the OOR 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

⁴ The Requester is not prohibited from refileing the Request and using one of the forms required by the County’s policy and including address information.

a street address or post office box in addition to the town, state and county” *Id.* Similar to *Volkova-Burda*, here, 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 here, the Requester did not comply. Additionally, the Requester points to no public interest that might outweigh the County’s interest in having the Policy.

Accordingly, the County permissibly denied 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. *See Volkova-Burda, supra; Smith v. Montgomery Cnty.*, OOR Dkt. AP 2023-0477, 2023 PA O.O.R.D. LEXIS 609.

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.⁵ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>

FINAL DETERMINATION ISSUED AND MAILED: March 31, 2023

/s/ Kathleen A. Higgins

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

Sent via portal to: Pedro Valdez; Joshua Stein, Esq.