

School.

- [Item 6] All John Rudolf's performance reviews at Franklin Towne Charter High School.
- [Item 7] All documents referring to John Rudolf's status, conduct, performance, evaluation or behavior at Franklin Towne Charter High School.
- [Item 8] All minutes of Franklin Towne Charter High School Board of Trustee meetings between April 2021 and the present.
- [Item 9] All notices of Franklin Towne Charter High School Board of Trustee meetings between April 2021 and the present.
- [Item 10] All agendas for Franklin Towne Charter High School Board of Trustee meetings between April 2021 and the present.
- [Item 11] All minutes and other records of Board of Trustee discussions, votes or actions concerning John Rudolf between April 2021 and the present.
- [Item 12] All documents relating to the approval of John Rudolf's contract, raises and bonuses for 2016 to present.
- [Item 13] The most recent employment contract between John Rudolf and Franklin Towne Charter High School.
- [Item 14] All versions of Franklin Towne Charter High School's Teacher Handbook in effect at any time between April 2021 and the present, including all restatements, amendments and revisions made during this time period.

As the Requester did not receive the Charter High School's response within five business days of the Request, on May 24, 2023 the Requester filed an appeal with the Office of Open Records ("OOR"), claiming that the Request was deemed denied. *See* 65 P.S. § 67.901. The OOR invited both parties to supplement the record and directed the Charter High School to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c). The record in this matter closed on June 5, 2023. On June 9 and June 13, 2023, the OOR contacted the open records officer for the Charter High School inquiring as to whether the Charter High School would submit evidence in this appeal. On June 20, 2023, the Charter High School submitted a letter from counsel stating "we will comply with any subsequent deadlines and continue to gather documents, to the extent they exist, and send them to opposing counsel, either through the OOR process or

informally.” The Charter High School also submitted 195 pages of responsive records.¹

LEGAL ANALYSIS

The Charter High School is a local agency subject to the RTKL. 65 P.S. § 67.302. Records in the possession of a local 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 Charter High School 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)).

Local agencies have the burden of proving that records are exempt from access. 65 P.S. § 67.708(a)(1). The Charter High School did not submit any legal argument or evidence in support of withholding responsive records. Indeed, on appeal, the Charter High School provided responsive records to the Requester. Because the Charter High School does not dispute that the Requester is entitled to access any remaining records, the appeal is granted as to those records.

CONCLUSION

For the foregoing reasons, the appeal is **granted in part** and **dismissed as moot in part**, and the Charter High School is required to provide all remaining responsive records to the Requester within thirty days, or, in the alternative, a sworn affidavit or a statement made under the penalty of perjury detailing the search performed and demonstrating that additional records do not

¹ The appeal is dismissed as moot in part as to the responsive records provided by the Charter High School during the course of the appeal. *See Kutztown Univ. of Pa. v. Bollinger*, 217 A.3d 931 (Pa. Commw. Ct. 2019) (holding that an appeal is properly dismissed as moot where no controversy remains).

exist. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal or petition for review to the Philadelphia 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 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.² This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: June 22, 2023

/s/ Catherine R. Hecker

CATHERINE R. HECKER, ESQ.
APPEALS OFFICER

Sent via the portal to: Robert Eyre
Jocelyn Mendez

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