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By Email

Joshua Young, Esq.
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RE: Request for Reconsideration of Dismissal of Appeal

Dear Mr. Young:

This letter is in response to the Final Determination in *Williams v. Unionville-Chadds Ford School District*, OOR Dkt. AP 2024-0864, issued on April 2, 2024 (the “Final Determination”).

In support of its denial of my appeal, the Office of Open Records (“OOR”) cites 65 P.S. § 67.902(b)(1)-(2) for the proposition that the Unionville-Chadds Ford School District (the “District”) “has five (5) business days, followed by thirty (30) calendar days” from the date the request is received within which to produce the records or deny the request. However, the Final Determination does not address the express language of Sections 901 or 902(b)(3), which provide the statutory basis for my appeal.

Section 902(b)(3) provides as follows: “[i]f the requester agrees to the extension, the request shall be deemed denied on the day following the date specified in the notice if the agency has not provided a response by that date.” *See* 65 P.S. § 67.902(b)(3) (emphasis added). The “notice” referenced in that subsection is the written notice requesting additional time to respond to the request, which must cite one or more of the factors listed in Section 902(a). *See* 65 P.S. § 67.902(b)(1). Section 902(b)(2) requires that the notice specify the reason for the requested extension, and a “*reasonable date*” on which the agency believes it will produce the records. *See* 65 P.S. § 67.902(b)(2).

In my appeal, I stated that the District did not obtain (or even request) my consent to an extension, and that its basis for invoking an additional *thirty days* to respond was not reasonable, but rather pretextual and in bad faith. The Final Determination does not address that issue.

Nothing in the express language of Section 902(b) grants a state agency the right to unilaterally invoke an additional thirty days to comply with its obligations under the statute. The Supreme Court of Pennsylvania has held that “[a] statute’s plain language generally provides the best indication of legislative intent.” *See Uniontown Newspapers, Inc. v. Pennsylvania Department of Corrections*, 243 A.3d 19, 32 (Pa. 2020) (internal citations omitted). In that

regard, the Court also held that it does not “interpret statutory words in isolation,” but rather interprets the provisions “with reference to the context in which they appear.” *Id.*

When Sections 901 and 902 are read in unison, the context is clear. If an agency could unilaterally invoke an additional 30 days to respond to a request, then the “general rule” requiring a response within 5 business days would be meaningless. Likewise, if an agency can simply take “five (5) business days, followed by thirty (30) calendar days” to respond to every request, then the words “[i]f the requester agrees to the extension” in Section 902(b)(3) serve no purpose. In order for the “general rule” in Section 901 to have any meaning, a requester must be free to withhold consent from a requested extension and appeal the deemed denial of the request. In such an appeal, the burden would be on the agency to demonstrate its good faith basis for requesting additional time to respond.

If the General Assembly actually intended to give state agencies “five (5) business days, followed by thirty (30) calendar days” to respond to requests, it could have drafted Section 901 to say just that. That is not what the General Assembly intended. Instead, Section 901 requires agencies to “make a *good faith* effort to determine if the record requested is a public record...or financial record and whether the agency has possession, custody or control of the identified record,” and to respond as promptly as possible, but no later than “five business days from the date the written request is received[.]” 65 P.S. § 67.901. If an agency desires additional time, Section 902(b)(3) expressly requires that it obtain the requester’s consent to the extension. 65 P.S. § 67.902(b)(3). That is particularly important in this case, where the requester believes the agency is seeking an extension in bad faith.

As evidence of the District’s bad faith, it waited a full 5 business days before it unilaterally invoked an extension, and did not explain why it reasonably requires another **30 days** to respond. Rather, the District cited Section 902(a)(7), which permits an agency to request additional time if “the extent or nature of the request precludes a response” within 5 business days. 65 P.S. § 67.902(a)(7). My request is not extensive. It is narrowly focused on certain insurance contracts and applications, and the financial records demonstrating the payment of premiums. Moreover, I offered to clarify my request if the District believed it lacked specificity, but the District never contacted me. It should also be noted that the District’s open records officer is also its Director of Finance and Treasurer, and therefore presumably had access to those records on the day he received my request. If the open records officer determined that my request was “extensive” the day he received it, then the District could have requested an extension that day.

The District also cited Section 902(a)(4) as a basis for its desired extension. Section 902(a)(4) permits an agency to request an extension in order to conduct a legal review to determine “***whether the record is subject to access***” under the statute. 65 P.S. § 67.902(a)(4). To the extent any such legal review was even necessary, it could have been completed in a matter of minutes. The term “public record” is broadly defined, and only excludes certain records listed in Section 708. *See* 65 P.S. § 67.102 and § 67.708(b). Section 708(b) expressly provides that contracts with an insurance carrier, administrative service organization or risk management office, as well as the financial records relating to the provision of insurance, are ***not exempt*** from

disclosure under the statute. 65 P.S. § 67.708(b)(27). Again, the District waited a full 5 business days to assert the need for additional time, and then did not explain why it requires another **30 days** to review unambiguous statutory language.

The District's March 26 letter does not explain why it considers my request to be "extensive," nor does it explain why it requires 30 days to conduct a legal review to determine whether insurance contracts and financial records are "subject to access" under the statute. Rather, the District is abusing the process and delaying the production of those records in bad faith.

Based on the foregoing, I respectfully request that the OOR reconsider its dismissal of my appeal, and specifically address the plain meaning of the statutory language discussed herein. If, however, the OOR will not reconsider its dismissal, I respectfully request clarification as to whether the Final Determination is a final order from which I may take an appeal to the Chester County Court of Common Pleas, or if the OOR believes that such an appeal to the Court of Common Pleas would be interlocutory in nature.

Respectfully submitted,



Charles T. Williams, III

cc: Dr. Victoria Baratta, President, Unionville-Chadds Ford School Board
Mr. Joseph Deady, Open Records Officer