

OOOR RESPONSE TO PETITION FOR RECONSIDERATION

DATE ISSUED AND MAILED: April 9, 2024

IN RE: *Charles Williams, III v. Unionville-Chadds Ford Sch. Dist.*, OOR Dkt. AP 2024-0864

Upon review of the petition for reconsideration (“Petition”) filed by the Requester, Charles Williams, III, with the Office of Open Records (“OOR”) to the above-referenced docket number, the Petition is **DENIED**.

Section 902 of the Right-to-Know Law (“RTKL”) gives agencies the discretion to *unilaterally* invoke a extension of time, up to thirty (30) days, for certain enumerated reasons. *See* 65 P.S. § 67.902(b)(1) (“Upon a determination that one of the factors listed in subsection (a) applies, the open-records officer shall send written notice to the requester within five business days of receipt of the request for access under subsection (a)”). If the agency wishes to extend its time to respond beyond thirty days, the requester must agree to such an extension in writing. 65 P.S. § 67.902(b)(2). Section 902(b)(3) of the RTKL, cited in the Petition, involves extensions beyond thirty days, which the requester must agree to in writing. Section 902(b)(3) is not applicable to extensions that may be unilaterally invoked by an agency.

While the Requester does not agree with the application of Section 902 to his case, we are dealing with settled law. *See, e.g., Levy v. Senate of Pa.*, 65 A.3d 361, 381 (Pa. 2013) (“... [T]he agency has five days to issue its initial determination, subject to a thirty-day extension.... If the agency does not act or receive the agreement of the requester, the request is deemed denied at the expiration of the five or thirty-five days”); *Dep’t of Transp. v. Drack*, 42 A.3d 355, 361 (Pa. Commw. Ct. 2012) (“Section 902(b) of the RTKL requires an agency to provide a final response to a requester within thirty days, unless a requester provides written agreement granting an agency a further extension”). Because agencies are permitted to take a unilateral thirty-day extension, upon their open-records officer determining that one of several factors apply, the Appeals Officer rightly concluded that the instant appeal was premature. The District’s March 26, 2024 correspondence meets the requirements of 65 P.S. § 67.902(b)(2), and identifies factors set forth in 65 P.S. § 67.902(a).

Finally, the Final Determination is a final order which may be appealed, as set forth in the Final Determination itself, pursuant to 65 P.S. § 67.1302(a). *But see* 65 P.S. § 67.1304(b). Alternately, the Requester may file a new appeal to the OOR, stemming from a final response issued by the District or a deemed denial of the request after the District’s time to respond has elapsed.

Issued by:
/s/ Kyle Applegate

CHIEF COUNSEL

Sent via E-File Portal: Charles Williams, III; Agency Open Records Officer