



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:
	:
TERRY MUTCHLER AND OBERMAYER	:
REBMAN MAXWELL AND HIPPEL,	:
Requester	:
	: Docket No: AP 2025-2295
v.	:
	:
CITY OF BETHLEHEM,	:
Respondent	:

On July 22, 2025,¹ Terry Mutchler, Esq., and Obermayer Rebman Maxwell and Hippel, (“collectively Requester”) submitted a request (“Request”) to the City of Bethlehem (“City”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking, among other things, various records related to the expansion of State Route 412 from I-78.

The City did not respond within five business days of receiving the Request, and the Request was, therefore, deemed denied on July 29, 2025 65 P.S. § 67.901. On August 19, 2025, the Requester filed an appeal with the Office of Open Records (“OOR”). The OOR invited both parties to supplement the record and directed the City to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

¹ While the Request is dated July 21, 2025, Attorney Mutchler attests that, following the filing of the instant appeal, the City’s then Open Records Officer, Zachary Cole-Borgh, stated that the Request had not been opened or marked received until after July 22, 2025. *See* Mutchler Attestation, ¶7.

Subsequently, the Requester sought to stay the appeal on four occasions for the purpose of working towards a resolution of the appeal with the City, and the OOR granted the stay requests. On November 14, 2025, the Requester notified the Requester that the stay should be lifted and the appeal should proceed to a Final Determination. The OOR reopened the appeal record for party submissions and set a filing deadline of November 26, 2025, and a Final Determination deadline of December 17, 2025.

On November 25 2025, the Requester submitted a position statement in support of the appeal and the Attestation in Support of Position Statement authored by Attorney Mutchler and made pursuant to the penalties set forth in 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities (“Mutchler Attestation”). To date the City has not provided a submission on appeal.²

Local agencies have the burden of proving that records are exempt from access. 65 P.S. § 67.708(a)(1). Here, the City did not comply with the RTKL by timely responding to the Request, nor did the City participate on appeal by submitting legal argument or evidence in support of withholding records. Accordingly, the City did not meet its burden of proof under the RTKL. 65 P.S. § 67.305.

For the foregoing reasons, the appeal is **granted**, and the City is required to take any further action to provide the requested records to the Requester within thirty days, or, in the alternative, a sworn affidavit or a statement made under the penalty of perjury demonstrating that the records do not exist. This Final Determination is binding on all parties. Within thirty days of the mailing

² Attorney Mutchler attests that following the departure of Mr. Cole-Borghini from City employment, Ms. Cynthia Bartera, a paralegal with the City’s Solicitor’s office, took over the responsibility of obtaining and reviewing responsive records. Attorney Mutchler also attests that, when the City did not meet an agreed upon date for the exchange of records, it was learned that Ms. Bartera was unavailable due to a medical emergency. The OOR granted the Requester’s request for an additional two-day stay, in order to work with the City to move forward with a substitute open records officer, but the City ultimately did not respond to the Requester. *See Mutchler Attestation*, ¶¶ 11-18. While understanding that unforeseen circumstances may arise, it is still the City’s statutory obligation to have a designated open records officer. *See* 65 P.S. § 67.502.

date of this Final Determination, any party may appeal or petition for review to the Northampton 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 65 P.S. § 67.1303, but 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.³ All documents or communications following the issuance of this Final Determination shall be sent to oor-postfd@pa.gov. This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: December 8, 2025

/s/ Kelly C. Isenberg

KELLY C. ISENBERG
DEPUTY CHIEF COUNSEL

Sent via OOR E-file Portal to: Terry Mutchler, Esq.; Corinna Wilson, Esq.; Erika Silverbreit, Esq; Cynthia Bartera, AORO

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