



**FINAL DETERMINATION**

IN THE MATTER OF	:	
	:	
RACHEL HEIMANN,	:	
Requester	:	
	:	
v.	:	Docket No.: AP 2021-0248
	:	
PENNSYLVANIA OFFICE OF THE	:	
LIEUTENANT GOVERNOR,	:	
Respondent	:	

The Office of Open Records (“OOR”) received the above-captioned appeal under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.* Upon review of the file, the appeal is **dismissed** for the following reason:

On January 12, 2021, Rachel Heimann (“Requester”) emailed a RTKL request (“Request”) to the Pennsylvania Office of the Lieutenant Governor (“Office”), seeking records reflecting expenditures and staff salaries. Having received no response from the Office, the Requester filed an appeal with the OOR on February 4, 2021, arguing that the Request had been deemed denied. *See* 65 P.S. § 67.901. The OOR invited both parties to supplement the record and directed the Office to notify any third parties of their ability to participate in the appeal. *See* 65 P.S. § 67.1101(c).

On February 26, 2021, the Office submitted the affidavit of Christine Kauffman, the Office's Open Records Officer, who attests that the Office did not receive the Request because it was sent to an email address that is no longer used by the Office.<sup>1</sup>

Under the RTKL, a statement made under the penalty of perjury may serve as sufficient evidentiary support. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). Because the Office's Open Records Officer did not receive the Request prior to the filing of this appeal, the appeal is **dismissed as premature**. *See* 65 P.S. § 67.901 (stating that "[t]he time for response shall not exceed five business days from the date the written request is received by the open-records officer for an agency"); *see also Commonwealth v. Donahue*, 98 A.3d 1223 (Pa. 2014).

For the foregoing reason, the Office 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 Commonwealth Court. 65 P.S. § 67.1301(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 Section 1303 of the RTKL. 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.<sup>2</sup> This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

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<sup>1</sup> Ms. Kauffman also attests that the requested records do not exist in the Office's possession, but may exist in the possession of the Pennsylvania Office of the Budget.

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

**FINAL DETERMINATION ISSUED AND MAILED: March 1, 2021**

/s/ Blake Eilers

Blake Eilers, Esq.

Appeals Officer

Sent to: Rachel Heimann (via email only);  
Christina Kauffman (via email only);  
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