



FINAL DETERMINATION

IN THE MATTER OF	:
	:
JACK WISOR,	:
Requester	:
	:
v.	: Docket No.: AP 2021-0488
	:
CITY OF MCKEESPORT,	:
Respondent	:

On February 24, 2021, Jack Wisor (“Requester”) submitted a request (“Request”) to the City of McKeesport (“City”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking “[a]ll records that contain information about the current locations of homeless tent encampments/tent cities located within the boundaries of the City ... as of 2.24.21.” The City did not respond within five business days of receiving the Request, and the Request was, therefore, deemed denied on March 3, 2021. *See* 65 P.S. § 67.901.

On March 10, 2021, the Requester filed an appeal with the Office of Open Records (“OOR”), stating grounds for disclosure. The OOR invited both parties to supplement the record and directed the City to notify any third parties of their ability to participate in this appeal. *See* 65

P.S. § 67.1101(c). The City did not make a submission in this matter and has not submitted proof that it notified any third parties about this appeal.¹

Section 708 of the RTKL places the burden of proof on the public body to demonstrate that a record is exempt from disclosure. 65 P.S. § 67.708(a)(1). In the present case, the City did not comply with the RTKL by timely responding to the Request, nor did it provide any factual or legal support for denying access to responsive records. Based on the City's failure to comply with the statutory requirements of the RTKL or provide any evidentiary basis in support of an exemption under the RTKL, the City did not meet its burden of proof under the RTKL. *See* 65 P.S. § 67.305.²

For the foregoing reasons, the Requester's appeal is **granted**, and the City is required to provide all responsive records within thirty days. 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 Allegheny County Court of Common Pleas. *See* 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 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.³ This Final Determination shall be placed on the OOR website at: <https://openrecords.pa.gov>.

¹ The record in this matter closed on March 19, 2021. Having received no response, the OOR reached out to the parties and afforded the City through March 30, 2021, to make a submission. To date, the City has not submitted any evidence in this appeal.

² *See generally* 65 P.S. § 67.1304(a) (noting that a court “may award reasonable attorney fees and costs of litigation ... if the court finds ... the agency receiving the ... request willfully or with wanton disregard deprived the requester of access to a public record ... or otherwise acted in bad faith...”); 65 P.S. § 67.1305(a) (“A court may impose a civil penalty of not more than \$1,500 if an agency denied access to a public record in bad faith”).

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

FINAL DETERMINATION ISSUED AND MAILED: April 8, 2021

/s/ Magdalene C. Zeppos-Brown

MAGDALENE C. ZEPPOS-BROWN, ESQ.
ASSISTANT CHIEF COUNSEL

Sent to: Jack Wisor (via email only); and
J. Jason Elash, Esq., AORO (via email only)