



**FINAL DETERMINATION**

<b>IN THE MATTER OF</b>	:	
	:	
<b>JACK WISOR,</b>	:	
<b>Requester</b>	:	
	:	
<b>v.</b>	:	<b>Docket No.: AP 2021-0487</b>
	:	
<b>CITY OF PHILADELPHIA MAYOR’S</b>	:	
<b>OFFICE,</b>	:	
<b>Respondent</b>	:	

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 February 24, 2021, Jack Wisor (“Requester”) submitted a RTKL request (“Request”) to the City of Philadelphia Mayor’s Office (“Office”), seeking “[a]ll records that contain information about the current locations of homeless tent encampments/tent cities located within the boundaries of the City of Philadelphia – as of 2.24.21.” Having received no response from the Office, the Requester filed an appeal with the OOR on March 10, 2021, asserting that the Office failed to timely respond and that the Request was, therefore, deemed denied. *See* 65 P.S. § 67.901.

On March 18, 2021, the Office submitted a position statement, asserting that it did not receive the Request until it received the Official Notice of Appeal from the OOR on March 10,

2021. In support, the Office submitted the sworn affidavit of Kathleen Lonie, the Office's Open Records Officer, who affirms that she checked her email account, and she did not receive the Request until the Office received notice of the instant appeal from the OOR. Under the RTKL, a sworn affidavit is generally competent evidence to sustain an agency's burden of proof. *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 until March 10, 2021, the Office had until March 17, 2021, to issue its response. *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* 65 P.S. § 67.703 ("A written request must be addressed to the open-records officer designated pursuant to section 502."); *Commonwealth v. Donahue*, 98 A.3d 1223 (Pa. 2014). Because the appeal was filed on March 10, 2021, the appeal is **dismissed as premature**.

For the foregoing reason, the Office is not required to take any further action. This Final Determination is binding on the parties. Within thirty days of the mailing date of this Final Determination, either party may appeal to the Philadelphia 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 court rules as per 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>1</sup> This Final Determination shall be placed on the OOR's website at: <https://openrecords.pa.gov>.

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<sup>1</sup> *See 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*

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Sent to: Jack Wisor (via email only);  
Kathleen Lonie, AORO (via email only); and  
Feige Grundman, Esq. (via email only)