



# pennsylvania

OFFICE OF OPEN RECORDS

## FINAL DETERMINATION

**IN THE MATTER OF**

**GERARD GREGA,  
Requester**

**v.**

**WEATHERLY AREA SCHOOL  
DISTRICT,  
Respondent**

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**Docket No: AP 2021-0752**

### **INTRODUCTION**

Gerard Grega<sup>1</sup> (“Requester”) submitted a request (“Request”) to the Weatherly Area School District (“District”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking official meeting minutes. The Request was denied, and the Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **denied**, and the District is not required to take additional action.

### **FACTUAL BACKGROUND**

On March 3, 2021, the Request was filed, seeking in relevant part:

[A]n electronic COPY of the 2019-20 official WASD School Board Caucus (OR) Regular Meeting “Minutes”, as recorded, where the WASD School Board APPROVED the “Re-instatement” of Policy #006.1 – “Attendance at Meetings by Electronic Communications”.

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<sup>1</sup> Mr. Grega is a member of the District’s Board of School Directors.

On April 7, 2021, after a thirty-day extension to respond, 65 P.S. § 67.902(b), the District granted the Request directing the Requester to the District website for the May 13, 2020, Regular Meeting minutes.

On April 9, 2021, the Requester appealed to the OOR challenging the sufficiency of the records provided and stating grounds for disclosure. The OOR invited both parties to supplement the record and directed the District to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On April 20, 2021, the District submitted a position statement, verified under penalty of perjury by District Solicitor Jeffrey Rockman, that the District had provided access to the unofficial minutes, but that the Official Minutes are not maintained in electronic format and the District is not required to convert the hard copies into an electronic format. The District offered to make copies available to the Requester for a fee.

### **LEGAL ANALYSIS**

“The objective of the Right to Know Law ... is to empower citizens by affording them access to information concerning the activities of their government.” *SWB Yankees L.L.C. v. Wintermantel*, 45 A.3d 1029, 1041 (Pa. 2012). Further, this important open-government law is “designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials and make public officials accountable for their actions.” *Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), *aff’d* 75 A.3d 453 (Pa. 2013).

The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. § 67.503(a). An appeals officer is required “to review all information filed relating to the request” and may consider testimony, evidence and documents that are reasonably probative and

relevant to the matter at issue. 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. The decision to hold a hearing is discretionary and non-appealable. *Id.* Here, neither party requested a hearing.

The District is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.302. Records in the possession of a local agency are presumed public unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. Upon receipt of a request, an agency is required to assess whether a record requested is within its possession, custody or control and respond within five business days. 65 P.S. § 67.901. An agency bears the burden of proving the applicability of any cited exemptions. *See* 65 P.S. § 67.708(b).

Section 708 of the RTKL places the burden of proof on the public body to demonstrate that a record is exempt. In pertinent part, Section 708(a) states: “(1) The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence.” 65 P.S. § 67.708(a)(1). Preponderance of the evidence has been defined as “such proof as leads the fact-finder ... to find that the existence of a contested fact is more probable than its nonexistence.” *Pa. State Troopers Ass’n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Pa. Dep’t of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

The District asserts that the appeal should be dismissed as moot as it made the official meeting minutes available to the Requester for a fee. The Requester asserts that while the District granted the Request, the *official* minutes were never provided.

Section 701 of the RTKL provides that “[a] record being provided to a requester shall be provided in the medium requested if it exists in that medium; otherwise, it shall be provided in the medium in which it exists.” 65 P.S. § 67.701. Although the RTKL does not define “medium,” the OOR has defined it as “the substance through which something is transmitted or carried, a ‘means,’ such as on paper or on the hard-drive or on a database or over the internet.” *Acton v. Fort Cherry Sch. Dist.*, OOR Dkt. AP 2009-0926, 2009 PA O.O.R.D. LEXIS 786, *aff’d*, No. 2010-719 (Wash. Com. Pl. July 26, 2011), *aff’d*, 38 A.3d 1092 (Pa. Commw. Ct. 2012), petition for allowance of appeal denied, 57 A.3d 72 (Pa. 2012). Here, the Requester sought electronic copies, meaning he sought the record in an electronic medium.

Attorney Rockman affirms that the official meeting minutes are only available in hard copy and the District would charge a \$0.25 fee per page to make copies.<sup>2</sup> Under the RTKL, a sworn affidavit or 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). In the absence of any evidence that the District has acted in bad faith, “the averments in [the statement] should be accepted as true.” *McGowan v. Pa. Dep’t of Env’tl. Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014) (citing *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)).

Here, the District fulfilled its obligations on appeal under the RTKL by making hard copies of the records available to the Requester for duplications, and the District is entitled to charge the Requester up to \$ 0.25 per page to obtain copies of these records, pursuant to the OOR’s Fee Schedule. *See also Weiss v. Williamsport Area School District*, 872 A.2d 269 (Pa Commw. Ct 2005) (\$0.25 per page is a reasonable fee).

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<sup>2</sup> The District explains that the online minutes are not the official minutes, rather the official minutes are number stamped physical copies and kept in a book.

Section 901 of the RTKL requires that “[a]ll applicable fees shall be paid in order to receive access to the record requested.” 65 P.S. § 67.901. The RTKL favors a contemporaneous exchange of fees for records, but in no event is an agency required to provide records without first receiving duplication fees and/or postage. *Siford v. Franklin County Dist. Attorney’s Office*, OOR Dkt. AP 2020-2289, 2020 PA O.O.R.D. LEXIS 3062; *Frame v. Menallen Twp.*, OOR Dkt. AP 2009-1072, 2010 PA O.O.R.D. LEXIS 155. As such, the District is not required to provide copies of the records to the Requester prior to receiving the applicable duplication fees.

### CONCLUSION

For the foregoing reasons, the appeal is **denied**, and the District is not required to take any additional 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 Carbon 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 as per Section 1303 of the RTKL. 65 P.S. § 67.1303. 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>3</sup> This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: May 3, 2021**

*/s/ Erin Burlew*

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ERIN BURLEW, ESQ.  
APPEALS OFFICER

Sent to: Gerard Grega (via email only);  
Jeffrey Rockman, Esq. (via email only);  
Theresa Barna (via email only)

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