



FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
DWIGHT BOWEN,	:	
Requester	:	
	:	
v.	:	Docket No.: AP 2021-0830
	:	
PENNSYLVANIA STATE POLICE,	:	
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.* For the following reasons, the appeal is dismissed.

On April 1, 2021, Dwight Bowen (“Requester”), an inmate at SCI-Greene, mailed a request (“Request”) to the Pennsylvania State Police (“PSP”) pursuant to the RTKL, seeking communications from SCI-Pine Grove to PSP regarding a death.

As the Requester did not receive the PSP’s response within five business days of the Request, on April 16, 2021, the Requester filed an appeal with the OOR, arguing that the Request was deemed denied. *See* 65 P.S. § 67.901.

On May 3, 2021, the PSP submitted a position statement claiming the Request was received on April 8, 2021, and on April 15, 2021, the PSP had invoked a thirty-day extension to respond. *See* 65 P.S. § 67.902(b). In support of its assertion, the PSP submits the statement made under penalty of perjury of William Rozier, the Open Records Officer and a copy of the extension letter.

Under the RTKL, an affidavit 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). Based on the materials provided, the PSP has shown that it invoked a timely extension to respond to the Request. The RTKL does not require that a requester receive an extension notice within five business days, only that the agency send the extension notice during that time period. *See Cap v. City of Allentown*, No. 2011-C-3533, slip op. at 4 (Lehigh Com. Pl. Jan. 20, 2012). Accordingly, the appeal is **dismissed as premature**.

The PSP's response to the Request is currently due on or before May 15, 2021. Upon receiving a final response from the PSP or the Request being deemed denied, the Requester may file a new appeal with the OOR pursuant to the requirements of 65 P.S. § 67.1101(a).

The file is now closed and no further action will be taken. 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 Commonwealth Court. *See* 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 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.¹ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: May 4, 2021

/s/ Erin Burlew

APPEALS OFFICER
ERIN BURLEW, ESQ.

¹ *See Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

Sent to: Dwight Bowen, FR6891 (via US mail only);
Kathryn Daczka, Esq. (via email only);
William Rozier (via email only)