



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
JOSH MONIGHAN,	:	
Requester	:	
	:	
v.	:	Docket No.: AP 2021-1165
	:	
DELAWARE COUNTY,	:	
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 May 25, 2021, Josh Monighan (“Requester”) submitted a RTKL request (“Request”) to Delaware County (“County”), seeking records related to mail-in voting ballots.

On June 14, 2021, the Requester appealed to the Office of Open Records (“OOR”), arguing that the Request was deemed denied, 65 P.S. § 67.901, and stating grounds for disclosure. The OOR invited both parties to supplement the record and directed the County to notify any third parties of their ability to participate in this appeal. *See* 65 P.S. § 67.1101(c).

On June 16, 2021, the County submitted a copy of a June 2, 2021 letter notifying the Requester it had invoked a thirty-day extension of time to respond to the Request pursuant to

Section 902(b) of the RTKL, 65 P.S. § 67.902(b). By email dated June 16, 2021, the Requester acknowledged that the appeal had been prematurely filed and directed that the appeal be dismissed.

Section 901 of the RTKL states 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.” 65 P.S. § 67.901; *see also Commonwealth v. Donahue*, 98 A.3d 1223 (Pa. 2014). The evidence presented by the County demonstrates that the Request was received by the Open Records Officer on May 25, 2021, and within five business days of receiving the Request, it timely notified the Requester of its intent to invoke a thirty-day extension. *See* 65 P.S. §§ 67.902(a)(3)-(4); 67.902(b)(1). The Requester does not dispute the County’s argument. Because the County timely invoked its thirty-day extension to respond on June 2, 2021, the appeal is **dismissed as premature**.¹

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 Delaware 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.² This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

¹ Upon receipt of the County’s response, which is due on July 2, 2021, or a deemed denial of the Request, the Requester may file a new appeal with the OOR pursuant to the requirements of 65 P.S. § 67.1101(a).

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

FINAL DETERMINATION ISSUED AND MAILED: June 21, 2021

/s/ Kelly C. Isenberg

KELLY C. ISENBERG, ESQ.
APPEALS OFFICER

Sent to: Josh Monighan (via email only);
Anne Coogan, AORO (via email only)