



FINAL DETERMINATION

IN THE MATTER OF

**JONATHAN RICHES AND ORIGINAL
MEDIA GROUP,
Requester**

v.

**PENNSBURY SCHOOL DISTRICT,
Respondent**

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Docket No: AP 2021-1226

INTRODUCTION

Jonathan Riches and Original Media Group (collectively, “Requester”) submitted a request (“Request”) to the Pennsbury School District (“District”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking the District’s policy regarding public comment at school board meetings. The District denied the Request pursuant to its policy requiring the use of a RTKL request form, 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 any further action.

FACTUAL BACKGROUND

On June 23, 2021, the Request was filed, seeking: “[a]ll records regarding your policy on public comment during your School District Board Meetings.” The same day, the District notified the Requester that the Request could not be considered a request under the RTKL, because the

District requires that RTKL requests be submitted on a RTKL form. The District provided the Requester with directions regarding how to access that form.

On the same day, the Requester appealed to the OOR, arguing that RTKL requests can be submitted via email and claiming that the District's RTKL policy does not require the use of a form. 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. *See* 65 P.S. § 67.1101(c).

On June 28, 2021, the District asserted that the appeal was premature, as a thirty-day extension letter would be sent out later that week. On July 2, 2021, the District submitted a position statement, a letter invoking a thirty-day extension to respond to the Request, *see* 65 P.S. § 67.902(b), an email the District sent to the Requester, clarifying that it would accept requests via email, but requests needed to be submitted on a RTKL request form.¹ The District also submitted a copy of Administrative Procedure 801.1R2, which requires the use of the District's RTKL form. On July 6, 2021, the District submitted the affidavit of Christopher Berdnik, its Open Records Officer, who attests that though the Requester filed ten other requests with the District on the same day, he has not resubmitted the Request on an RTKL form. Mr. Berdnik further attests that the District has not denied the Request, and that because it invoked an extension, its response is not actually due until July 31, 2021.

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.*

¹ The Request was emailed at 8:13 p.m. on June 22, 2021, so it was not actually received by the District until the next day. The District responded at 7:50 a.m. on June 23, 2021, and the Requester emailed his appeal to the OOR at 8:06 a.m. The District sent the email referenced above at 3:57 p.m., after the Requester had already filed his appeal, but before the OOR had sent out the Notice of Appeal at 4:46 p.m. Thus, while the District argues that it did not actually deny the Request, the Request was denied when the District originally responded to the Request at 7:50 a.m.

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)).

Initially, the OOR notes that the District’s initial response to the Request stated that it was not a valid RTKL request because the Request was not submitted on an RTKL request form. The Requester appealed the District’s ability to deny a request for failure to use a form, and he has not resubmitted his Request on a RTKL form. Thus, when the District attempted to invoke a 30-day extension to respond to the Request after the appeal had already been filed, the attempt to invoke an extension was ineffective, as the Request had already been denied. *See* 65 P.S. § 67.902(b)(1) (providing that an agency may invoke a thirty-day extension of time to respond within five days of the receipt of a request); 65 P.S. § 67.1101(a) (providing that a request may appeal to the OOR within 15 business days of a denial); *but see* 65 P.S. § 67.903 (requiring a denial to include certain information).

In the instant matter, the District asserts that its response to the Request was proper because the Requester did not comply with its Open Records Policy. The RTKL provides that a requester may submit a request in person, by mail, by email or facsimile. 65 P.S. § 67.703. Further, the RTKL does not require the use of any specific form; however, an agency must accept requests made on the Standard Right-to-Know Request Form promulgated by the OOR. 65 P.S. § 67.505(a).

An agency may promulgate regulations and policies to govern its administration of the RTKL. *See* 65 P.S. § 67.504. An agency that has a posted policy requiring the use of a form may deny access to the requested records where the requester fails to use the required form, provided

that the agency timely responds to the request, notifying the requester of the policy. *See Burda v. Montgomery County*, OOR Dkt. AP 2019-2224, 2019 PA O.O.R.D. LEXIS 1813 (holding that the agency was permitted to deny the requests where the agency notified the requester that he was required to submit RTKL requests on a form); *but see Donahue v. Hazleton Area Sch. Dist.*, OOR Dkt. AP 2013-1702, 2013 PA O.O.R.D. LEXIS 996 (holding that the District could not use its policy as a basis for denying a request because the District deemed denied the request, rather than timely responding to the request by notifying the requester of its policy). Here, the District timely notified the Requester of its policy requiring the use of a RTKL Request Form.² Because the Requester failed to comply with the District's posted RTKL policy, the District was permitted to deny the Request for failing to use the proper form. *See Fennell v. Phila. Police Dep't*, OOR Dkt. AP 2016-0393, 2016 PA O.O.R.D. LEXIS 513.

CONCLUSION

For the foregoing reasons, the Requester's appeal is **denied**, and the District is not required to take any further 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 Bucks 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. 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: <http://openrecords.pa.gov>.

² With his appeal, the Requester included the District's School Board Policy 8.1.1, which does not mention the required use of a form. However, under the link to Policy 8.1.1 on the District's website is a link to "Admin Procedure 801.1R2," which does require the use of a form. *See* <https://www.pennsburyisd.org/OpenRecordsRequests.aspx>.

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

FINAL DETERMINATION ISSUED AND MAILED: July 20, 2021

/s/ Blake Eilers

Blake Eilers, Esq.

Appeals Officer

Sent to: Jonathan Riches (via email only);
Nicole Feight, Esq. (via email only);
Christopher Berdnik (via email only)