



**FINAL DETERMINATION**

IN THE MATTER OF	:	
	:	
LEONARDO MOJICA-CARRION,	:	
Requester	:	
	:	
v.	:	Docket No.: AP 2021-1402
	:	
BERKS 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 July 13, 2021,<sup>1</sup> Leonardo Mojica-Carrion (“Requester”), an inmate at SCI-Mahanoy, submitted an appeal to the OOR, alleging that Berks County (“County”) failed to respond to a RTKL request he mailed to the County on or about June 30, 2021. Along with his appeal, the Requester submitted a handwritten form entitled “Right To Know Request” dated June 30, 2021. The OOR invited both parties to supplement the record and directed the County to notify any third parties of their ability to participate in the appeal. *See* 65 P.S. § 67.1101(c).

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<sup>1</sup> The appeal was received by the OOR on July 20, 2021; however, it was postmarked July 13, 2021, and is considered filed on that date. *See Commonwealth v. Jones*, 700 A.2d 423, 426 (Pa. 1997).

Section 703 of the RTKL states that “[a] written request for access to records may be submitted in person [or] by mail ... [and] must be addressed to the open-records officer designated pursuant to section 502.” 65 P.S. § 67.703. In *Pa. Gaming Control Bd. v. Office of Open Records* (“*Schneller*”), the Pennsylvania Supreme Court determined that, where an agency failed to respond to a request, the request must be addressed to the appropriate agency open records officer in order to trigger appellate rights pursuant to the RTKL. 103 A.3d 1276 (Pa. 2014); *see also Prison Legal News v. Pa. Dep’t of Corr.*, OOR Dkt. AP 2014-1993, 2015 PA O.O.R.D. LEXIS 105.

In this case, the Requester directed the “Right To Know Request” to “James Polyak, Solicitor” at an address in the Berks County Courthouse. On July 29, 2021, the County submitted a position statement and the attestation, made under the penalty of perjury, from Maryjo Gibson, the County’s Open Records Officer. Ms. Gibson attests that she, as the County’s Open Records Officer, does not oversee RTKL requests submitted to the Berks County Clerk of Courts and that the Clerk of Courts has a separate Open Records Process and Open Records Officer. Additionally, Ms. Gibson attests that “Mr. James M. Polyak, Esq. serves as the Solicitor for the Berks County Clerk of Courts” and “maintains a private law practice and is not a County employee.” Finally, Ms. Gibson attests that the “Right to Know Request” was not “addressed to the County Open Records Officer and the County Open Records Officer/Officer never received a copy of” the “Right to Know Request.”<sup>2</sup>

While Section 1101(a)(1) of the RTKL vests the OOR with jurisdiction over appeals of “written request[s] for access to ... record[s that are] ... denied or deemed denied[,]” *see* 65 P.S. § 67.1101(a)(1), the Requester failed to direct his “Right To Know Request” to the County’s Open

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<sup>2</sup> Under the RTKL, a statement made under the penalty of perjury is 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). The Requester did not make a submission during the appeal.

Records Officer or the County's Open Records Office; therefore, the County's failure to respond did not trigger appellate rights under the RTKL. *Schneller*, 103 A.3d at 1288 (...request[er]s must address their written requests to an agency's designated open-records officer in order to trigger the five-day agency obligation, the deemed denial consequence, and the appellate provisions of the RTKL...). Accordingly, this appeal is **dismissed**.<sup>3</sup>

For the foregoing reason, the County 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 Berks 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 according to 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>4</sup> This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: 2 August 2021**

/s/ Joshua T. Young

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JOSHUA T. YOUNG  
DEPUTY CHIEF COUNSEL

Sent to: Leonardo Mojica-Carrion, LS-0964 (via US Mail only);  
Cody Kauffman, Esq. (via email only);  
Maryjo Gibson, AORO (via email only)

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<sup>3</sup> Regardless of the sufficiency of the "Right To Know Request," because the County's Open Records Officer never received a copy of the document, the instant appeal was also filed prematurely. *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*") (emphasis added); *see also Commonwealth v. Donahue*, 98 A.3d 1223 (Pa. 2014).

<sup>4</sup> *See Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).