



On July 15, 2021, the Requester filed an appeal with the Office of Open Records (“OOR”), stating grounds for disclosure.<sup>1</sup> The OOR invited both parties to supplement the record and directed the School to notify any third parties of their ability to participate in this appeal. *See* 65 P.S. § 67.1101(c). Because the School did not make a timely submission, on August 31, 2021, the OOR reopened the record, but the School failed to respond.<sup>2</sup>

Section 708 of the RTKL places the burden of proof on the public body to demonstrate that a record is exempt from disclosure. 65 P.S. § 67.708(a)(1). In the present case, the School failed to comply with the RTKL by providing any factual or legal support for denying access to responsive records.<sup>3</sup> Based on the School’s failure to comply with the statutory requirements of the RTKL or provide any evidentiary basis in support of an exemption under the RTKL, the School did not meet its burden of proof under the RTKL. *See* 65 P.S. § 67.305.

For the foregoing reasons, the Requester’s appeal is **granted**, and the School is required to provide all responsive records within thirty days. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal or petition for review to the Philadelphia 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 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

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<sup>1</sup> The Requester provided the OOR with additional time to issue a final determination in this matter. *See* 65 P.S. § 67.1101(b)(1).

<sup>2</sup> On September 1, 2021, an OOR staff member called the phone number listed on the School’s website as the contact number for the School’s Open Records Officer. Upon being informed that the number was incorrect, the OOR then called the number provided and left a voicemail. To date, the OOR has not received a response.

<sup>3</sup> *See generally* 65 P.S. § 67.1304(a) (noting that a court “may award reasonable attorney fees and costs of litigation ... if the court finds ... the agency receiving the ... request willfully or with wanton disregard deprived the requester of access to a public record ... or otherwise acted in bad faith...”); 65 P.S. § 67.1305(a) (“A court may impose a civil penalty of not more than \$1,500 if an agency denied access to a public record in bad faith”).

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: September 8, 2021**

/s/ Blake Eilers

Blake Eilers, Esq.

Appeals Officer

Sent via email to: Greg Mayle; Janira Gonzalez

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