



**FINAL DETERMINATION**

<b>IN THE MATTER OF</b>	:	
	:	
<b>PAXTON STEWART,</b>	:	
<b>Requester</b>	:	
	:	
<b>v.</b>	:	<b>Docket No.: AP 2021-1874</b>
	:	
<b>PENNSYLVANIA DEPARTMENT OF</b>	:	
<b>TRANSPORTATION,</b>	:	
<b>Respondent</b>	:	

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 August 27, 2021, Paxton Stewart (“Requester”) submitted a request (“Request”) to the Pennsylvania Department of Transportation (“Department”) pursuant to the RTKL, seeking records regarding the condition of State Route 119 at a particular address before and after a waterline project. As the Requester did not receive the Department’s response within five business days of the Request, on September 7, 2021, the Requester filed an appeal with the OOR, arguing that the Request was deemed denied.<sup>1</sup> *See* 65 P.S. § 67.901.

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<sup>1</sup> The Requester granted the OOR a 30-day extension to issue a final determination. *See* 65 P.S. § 67.1101(b)(1) (“Unless the requester agrees otherwise, the appeals officer shall make a final determination which shall be mailed to the requester and the agency within 30 days of receipt of the appeal filed under subsection (a).”).

On September 20, 2021, the Department submitted a position statement asserting that the appeal is deficient for failing to include the final response, but also indicating that all responsive records had been provided. In support of its assertion, the Department submits the statement made under penalty of perjury of Adam Marshall, District Permits Engineer. Mr. Marshall affirms that a final response including all responsive records was emailed to the Requester on September 3, 2021. Under the RTKL, a sworn affidavit or statement made under the penalty of perjury 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). In the absence of any evidence that the Department has acted in bad faith, “the averments in [the statement] should be accepted as true.” *McGowan v. Pa. Dep’t of Env’tl. Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014) (citing *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)). Therefore, because the Department provided all responsive records to the Requester, who has not challenged the sufficiency of the records provided, the appeal is **dismissed as moot**.

For the foregoing reasons, the Department is not required to take any further action. 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.<sup>2</sup> This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

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

**FINAL DETERMINATION ISSUED AND MAILED: October 22, 2021**

*/s/ Erin Burlew*

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APPEALS OFFICER

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